

cvi42[®]

v.5.13.X

Terms & Conditions

SOFTWARE USAGE TERMS & CONDITIONS

THIS AGREEMENT according to the Effective Date as defined is made BETWEEN:

Circle Cardiovascular Imaging Inc. a corporation incorporated pursuant to the laws of the Province of Alberta, having an office at Calgary, Alberta (hereinafter referred to as "**Circle CVI**")

- and -

User

(hereinafter referred to as the "**User**")

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words have the meaning ascribed to them below:

- (a) "Agreement" means this contract, as well as all attached Schedules, and any written amendments made pursuant to the terms contained in this contract and its Schedules;
- (b) "Concurrent User" or CCU means:
 - (i) a User that can utilize the Software from any computer meeting the minimum specifications, and
 - (ii) has the client application of the Software loaded on said computer; and
 - (iii) is located at the designated site
- (c) "Confidential Information" means, subject to Article 4 data or information, disclosed in any form, including, but not limited to, in writing, orally or electronically, of any nature in any form including, without limitation, drawings, specifications, graphs, charts, business plans, designs, drawings, research, software, trade secrets, processes, methods, compositions, techniques, discoveries, improvements, inventions, ideas, know how, marketing plans as well as any other technical, financial or business information which is developed or disclosed for the purpose of this Agreement;
- (d) "Documentation" means the user manuals and any other documentation, written or otherwise provided by Circle CVI to accompany the Software;
- (e) "Effective Date" means the date the User first attempts to install the Software regardless if it is a purchased, evaluation, or training version;
- (f) "Error" means an error in the Software that causes it to work substantially different than as specified by the Functional Specification;
- (g) "Functional Specification" means those functional specifications of the Software provided by Circle CVI;
- (h) "Hours of Operation" mean the times as set out in Schedule A within the "Hours of TAP" Section.
- (i) "Intellectual Property" includes any industrial or intellectual property rights including, but not limited to, rights to any inventions, discoveries, improvements, patents, patent applications, copyright, trade-marks, trade names, Confidential Information, know-how, industrial designs and industrial design applications;
- (j) "License" has the meaning ascribed to it in Section 2.1 of this Agreement;
- (k) "License Key" is a data string that verifies authorized software product access;
- (l) "Non-Permitted Uses" means using the software for any use other than Permitted Uses and includes, without limitation, illegal or immoral use, reverse engineering, disassembling, decompiling or otherwise disseminating the source code from the Software;
- (m) "Party" means one of either Circle CVI or the User whereas "Parties" means both Circle CVI and the User;
- (n) "Permitted Uses" includes:
 - (i) using the Software only in the furtherance of the internal operations of the User and not for the use or benefit of third parties; and
 - (ii) using the Software for cardiovascular image analysis only at designated site as indicated in the Documentation and corresponding regulatory approvals.
- (o) "Reported Error" means an Error that has been reported according to the procedures described in Schedule "A";

(p) "Sales Order Quotation" means the document given to the User or User institution with the financial and miscellaneous terms;

(q) "Software" includes but is not limited to the cvi42, cvi42|Report and ADAS3D, or any other computer software, whichever is delivered to the User from purchase or for evaluation, as well as any updates plugins, new releases or versions, modifications or enhancements, provided by Circle CVI to the User pursuant this Agreement or any other agreement between the User and Circle CVI and any documentation or manuals provided by Circle CVI to assist with the use of the computer software or updates;

(r) "Technology Assurance Program" or TAP means the software maintenance and technical support program, further described in Schedule A, that is inclusive of the following:

(i) Software defect fixes through updates, and upgrades;

(ii) Initial clinical application software training in order to understand how the product is used within cardiac post processing workflow;

(iii) Additional Software training (2 hrs. of remote training)

Note: New versions of the Software as per the TAP will only be available for those Users who meet the minimum specifications of the future Software versions.

(s) "Training" means On-Site Training and/or Remote Product Training;

(t) "User" any person and/or healthcare institution utilizing the Software for research and/or clinical purposes.

1.2 Singular, plural, etc.

Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neutral genders.

1.3 Headings, Articles and Sections.

The division of this Agreement into Articles and Sections and the insertion of the headings are for convenience of reference only and does not affect the construction or interpretation of this Agreement and, unless otherwise stated, all references in this Agreement or in the Schedules to Articles, Sections and Schedules refer to Articles, Sections and Schedules of and to this Agreement or of the Schedule in which such reference is made.

1.4 Schedules.

The following Schedules are appended to and form part of this Agreement:

Schedule "A" – Support Conditions and Protocol

Schedule "B" – Excluded Services

The foregoing Schedules are incorporated in this Agreement by reference as though contained in the body of the Agreement. Wherever any term, condition or provision, express or implied, of any Schedule conflicts or is at variance with any term or condition in the body of this Agreement, such term, condition or provision in the body of this Agreement prevails.

1.5 A term or condition of this Agreement can be waived or modified only by the written consent of both Parties. Forebearance or indulgence by either Party in any regard does not constitute a waiver of the term or condition to be performed, and either party may invoke any remedy available under the agreement or by law despite the forbearance or indulgence.

1.6 This Agreement constitutes the entire agreement between Circle CVI and the User and supersedes all prior and contemporaneous agreements or representations or warranties of any kind.

ARTICLE 2 - GRANT OF LICENSE

2.1 The license type for the Software will, unless otherwise specified in this Agreement, be one of the following license types: capital purchase, trial, or subscription. Unless a trial license which will be confirmed through installation without purchasing the Software, the type of license granted will be indicated on the Sales Order Quotation. Capital License Type - The User's license to use the Software will continue in perpetuity unless earlier terminated in accordance with the terms of this Agreement. Subscription License Type - The User's license to use the Software will continue until the expiration of the subscription period identified in the Sales Order Quotation unless earlier terminated in accordance with the terms of this Agreement.

2.2 Circle CVI hereby grants the User, a non-exclusive, nontransferable, non-assignable, license to use the Software (the "License") at the designated site.

cvi42 Standard Software License

- 2.3 Neither this Agreement nor the License may be sublicensed, assigned or transferred by the User.
- 2.4 The User covenants that the Software will only be used for Permitted Uses. The User further agrees to keep written records of the number of Users it currently has, and User agrees to make this information available to Circle CVI on request.
- 2.5 The User covenants that it will not use the Software for Non-permitted Uses.
- 2.6 Any such additional Software purchased will be governed by the terms and conditions of this Agreement and subject to payment to Circle CVI of the applicable fees at the then current rate.
- 2.7 The User covenants that it will purchase enough CCU's so that there is no disruption in their service in the case the CCU utilization is at a maximum.
- 2.8 Circle CVI maintains no responsibility for disruption in service according to 2.7.
- 2.9 In relation to the capital purchase license outlined in Section 2.1, Circle CVI will provide license keys from the date of invoice, subject to payment in full of the fees by the User to Circle CVI. until the end of the purchase of TAP as outlined in the Sales Order Quotation.
- 2.10 In relation to the subscription license in Section 2.1, Circle CVI will provide license key(s) for the duration of the subscription period in the Sales Order Quotation starting from the installation date subject to payment in full of the Sales Order Quotation, Software upgrades and support as outlined in Schedule A shall be included within the price and grant of the subscription licenses.
- 2.11 Circle CVI will only support the current released version of the Software and one version back. Any software version older than one version back will not be supported and the User is strongly recommended to upgrade to newer versions.
- 2.12 Circle CVI hereby grants the User a limited, non-exclusive license to copy the Documentation for the sole purpose of making the Documentation available to internal users of the Software, but in no event shall make more copies than the number of designated computers, plus one additional back up copy.
- 2.13 User shall not rent, lease, loan, sublicense, distribute sell, or create (i) derivative works of the Software, or (ii) other software that performs substantially the same processes, and obtains equivalent results as, the Software. User shall not copy or reproduce the Software.
- 2.14 The User agrees and understands, as it relates to the purchase of a perpetual license, once the User allows TAP to expire through non-payment or otherwise, Circle CVI's responsibility to support the Software also expires and the User is not entitled to any TAP services including upgrades. Upon the TAP expiration the User's use of the Software is solely the responsibility of the User and Circle CVI shall bare no responsibility.

ARTICLE 3 - INTELLECTUAL PROPERTY

- 3.1 The User agrees that nothing in this Agreement grants the User a license to use or display any Circle CVI trademark, unless given express written permission by Circle CVI.
- 3.2 The User agrees to maintain all copyright and other proprietary notices on all copies of the Software and Documentation in the same manner as when the Software and Documentation is delivered to the User by Circle CVI.
- 3.3 The User agrees that exclusive right, title and ownership of all Intellectual Property remains with Circle CVI and/or its partners at all times, including, but not limited to, any backups of the Software made by the User, whether authorized or not, any updates, changes, modifications, enhancements or improvements made to the Software whether made by Circle CVI or the User or one of the User's employees, agents or contractors and any Intellectual Property provided to the User while Circle CVI or its agent provides TAP, Services or Additional Services or fulfils any obligation under this Agreement.
- 3.4 The User covenants that it will not sell, assign, transfer, duplicate, destroy or encumber the Intellectual Property except as expressly permitted by the terms of this Agreement. The User shall not, with the use of the Software, attempt to develop any software product that contains the "look and feel" of any of the Software.

ARTICLE 4 - CONFIDENTIALITY AND PROTECTION OF PERSONAL HEALTH INFORMATION

- 4.1 The Parties each agree to hold the other Party's Confidential Information in the strictest confidence, subject to the exceptions in this Article.
- 4.2 The Parties agree that Confidential Information may be revealed to the Party's directors, officers, employers, consultant or agents who need to know, provided that these parties expressly acknowledge and agree to abide by the confidentiality provisions of this Agreement.

- 4.3 The Parties agree to take all reasonable steps to prevent disclosure of the other Party's Confidential Information.
- 4.4 The Parties agree to notify each other immediately if either is compelled by legal proceedings, applicable law or a valid court order to reveal the other Party's Confidential Information. Such compelled Party will take all reasonable steps to reveal only the Confidential Information necessary and ensure the Confidential Information will remain confidential, to the extent possible, with the applicable authority compelling disclosure.
- 4.5 Circle CVI agrees to abide by the reasonable requirements of User's policies for the protection of personal health information collected, used, or disclosed by the Software, in compliance with applicable legislation protective of personal health information for the jurisdiction of the designated site.
- 4.6 For the purposes of this Agreement, Confidential Information does not include information, which is:
- (a) available to the public other than by breach of this Agreement by the recipient thereof;
 - (b) rightfully received by the recipient from a third party without confidential limitations;
 - (c) known to the recipient prior to first receipt of the information from the discloser; or
 - (d) disclosed by a discloser to a third party without restriction on disclosure.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

- 5.1 The Parties represent and warrant to each other that:
- (a) they are duly incorporated and subsisting under the laws of their place of incorporation;
 - (b) they have the power and are authorized to enter into this Agreement;
 - (c) they will not breach or interfere with third party's rights by carrying out the terms of this Agreement and abiding by this Agreement's terms and conditions; and
 - (d) they will not enter into agreements with third parties, which will interfere with the compliance with the terms and conditions of this Agreement.
- 5.2 Circle CVI represents that it is legally capable of providing support to the User as required by the terms of this Agreement.
- 5.3 USER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SOFTWARE IS AT USER'S SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH USER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND CIRCLE CVI AND CIRCLE CVI'S AFFILIATES (COLLECTIVELY REFERRED TO AS "CIRCLE CVI" FOR THE PURPOSES OF THE SECTION 5.3, 5.5, AND 5.6) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. CIRCLE CVI DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CIRCLE CVI OR A CIRCLE CVI AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE SOFTWARE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO SUCH USERS.
- 5.5 CIRCLE CVI'S, ITS AFFILIATES', OR PARTNERS' TOTAL LIABILITY TO THE USER OR TO ANY THIRD PARTY FOR DAMAGES ARISING FROM ANY CAUSE OF ACTION IS, IN THE AGGREGATE, LIMITED TO THE FEES ACTUALLY PAID BY THE USER DURING THE PRIOR YEAR FROM THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATION OF LIABILITY PROVISIONS OF THIS AGREEMENT REFLECT AN INFORMED VOLUNTARY ALLOCATION OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THE SOFTWARE AND THAT SUCH VOLUNTARY RISK ALLOCATION REPRESENTS A FUNDAMENTAL PART OF THE AGREEMENT BETWEEN THE USER AND CIRCLE CVI.
- 5.6 Circle CVI or its affiliates or partners, are not liable for any special, indirect, incidental, consequential, exemplary, punitive or any similar or other damages of any nature suffered by the User whatsoever including, without limitation, loss or use or lack of availability of the User's facilities, including its computer resources and any stored data, loss of profits or revenue, or other commercial loss, or any claim for contribution or indemnity in respect of any claims against the User.
- 5.7 The User agrees to indemnify and hold harmless Circle CVI, its employees, agents and assigns from and against any costs, loss, damages, claims or expenses resulting from the Users Non-Permitted Uses of the Software.

ARTICLE 6 - NOTICE

6.1 Any notice contemplated to be given to either Party under this Agreement must be in writing and may be delivered personally or sent by fax, courier or prepaid registered mail addressed to either Party according to the address below which may be changed by providing notice to the other Party:

CIRCLE CVI
Circle Cardiovascular Imaging Inc.
Attention: Licensing
Suite 1100, 800 5th Avenue SW
Calgary
Alberta
T2P 3T6
Canada

6.2 Notices will be deemed to be received:

- (a) on the first date of delivery if personally delivered or couriered;
- (b) on the day of dispatch if sent by fax or scan/e-mail; or
- (c) five (5) business days after the day of dispatch if sent by prepaid registered mail and addressed correctly to the intended recipient.

ARTICLE 7 - GENERAL TERMS

7.1 Agreement.

The terms of this Agreement will govern any Software and any Software upgrades provided by Circle CVI that replace and/or supplement the original Software, unless such Software or Software upgrade is accompanied by a separate license agreement provided by Circle CVI to User and valid and enforceable, in which case the terms of that license will govern. No agreements provided by the User that come into force automatically without an authorized signature from Circle CVI shall be valid.

7.2 Assignment.

The User agrees not to sell, convey, sublicense, delegate, assign or otherwise transfer the Software, or any component thereof, or any right therein or this Agreement, to any other person, either voluntarily or involuntarily, directly or indirectly, whether by operation of law or otherwise without the prior written consent of Circle CVI, such consent may be unreasonably withheld. Any merger, consolidation or other reorganization resulting in a change of control of the User will be deemed an assignment hereunder. Subject to the restrictions on assignment in this Agreement, this Agreement enures to the benefit of and is binding upon the permitted successors and assigns of the Parties.

7.3 Attornment.

This Agreement is governed by, and must be construed and enforced in accordance with, the laws in force in the Province of Alberta. Each of the Parties irrevocably attorns to the jurisdiction of the courts of the Province of Alberta.

7.4 Delay in Performance.

Circle CVI is not liable to the User for failure to perform this Agreement in accordance with its terms if such failure arises out of causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labour dispute, inability to obtain necessary supplies and the like.

7.5 Contents of Agreement.

The contents of this Agreement are proprietary and confidential to Circle CVI.

7.6 Risk of Loss.

The User assumes all risks of loss or damage to the Software while on the premises of or otherwise in the possession of the User.

7.7 Waiver

A term or condition of this Agreement can be waived or modified only by the written consent of all parties. Forbearance or indulgence by any party in any regard does not constitute a waiver of the term or condition to be performed, and such party may invoke any remedy available under the Agreement or by law despite the forbearance or indulgence.

7.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the offending provision shall be severed from the Agreement and the other provisions of this Agreement shall remain in full force.

7.9 Force Majeure

Circle CVI shall not be liable for delays in performing or failure to perform its obligations under this Agreement resulting directly or indirectly from, or contributed to by acts of God; acts or failures to act of the Client; acts or failures to act of civil or military authority; governmental priorities; fires; strikes; or other labour disputes; accidents; floods; epidemics; failure of the world wide web, or any other circumstances beyond Circle CVI's reasonable control, whether similar or dissimilar to the foregoing. The User or Circle CVI shall notify the other promptly of any material delay.

7.10 Agreement to Terms & Conditions

THE INSTALLATION AND/OR USE OF THE SOFTWARE WILL INDICATE THE USER AGREES TO ALL TERMS AND CONDITIONS OF THE SOFTWARE USAGE TERMS & CONDITIONS.

SCHEDULE "A"

SUPPORT CONDITIONS AND PROTOCOL

The User agrees that support is only available during Hours of TAP:

7:00A.M - 7:00 P.M Monday through Friday, in the User's respective time zone, excluding statutory holidays in the Province of Alberta, Canada;

The User agrees to file an Error using the web address report.circlecvi.com at which time the Error becomes a Reported Error. The User may then contact Circle CVI by phone (403) 338-1870, fax (403) 338-1895 or e-mail at support@circlecvi.com. The User agrees and acknowledges that a solution to a Reported Error may require Circle CVI support personnel to obtain having direct access to Software on the Designated Computer.

User Key Contact

The User agrees that all correspondence between Circle CVI and User will go through the key contact listed in the Sales Order Quotation. Any failure to communicate according to this protocol will may lead to deviation from the response times set out below.

Support Protocol

STEP 1. Circle CVI and the User will mutually agree upon a categorization of the User's problem based on the categories below once Circle CVI has been given all relevant information from the User as to the nature of the problem. If a work around or third-party solution is identified for a problem, Circle CVI and User agree to review the category originally assigned to such problem and to reassign a lower level category, as appropriate, until a full solution is developed within an agreed upon time frame.

Category 1—'Highest'

1. The Software is unusable for normal operations, for example:
 - a) the Software consistently produces material incorrect results, or fails catastrophically in response to internal errors;
 - b) the Software consistently produces material errors in measurements (within the precision of the host computer(s)) based on the quality of the input data and proper use/configuration of the Software;
 - c) the Software consistently generates material errors in the formatting or representation of data on a screen;
 - d) the Software does not perform most of its documented functions with devices supported by the Software; or
 - e) the system response time deteriorates unduly with system loading.
 - f) Injury, death or potential injury or potential death due to direct or indirect malfunction of cvi42

Category 2—'Moderate'

1. The Software is usable, but incomplete, or in some way causing disruption to normal operations, for example:
 - a) the Software performs most, but not all of its documented function; or
 - b) the Software performs properly on some of the devices that are supported but is unusable on others.

Category 3—'Low'

1. The Software is usable, but inconvenience is caused to normal operations, for example:
 - a) a defect in the Software makes a function unusable in the most convenient way; or
 - b) the Software is usable on all devices supported by the Software but does not perform all documented functions on all devices.

Category 4—'Lowest'

1. Minor problems that do not directly affect normal operations, or areas where an amendment to the Software would enable improved operation of the Software, for example:

- a) defects that can be satisfied by a documentation change; or
- b) minor defects for which there is an alternative system function or other work around.

STEP 2. Once Circle CVI has received the information from the User regarding the problem, Circle CVI will attempt to provide a Response based on the response times listed in the table below, subject to the Escalation Procedures. For the purposes of this Schedule, "Response" means a response provided by a Circle CVI support services personnel either by phone or e-mail, which:

- a) responds to an initial problem report provided by the User;
- b) results in an agreed identification of the problem category;
- c) provides an initial assessment as to the likely method to resolve the problem; and
- d) provides a satisfactory explanation of the progress being made to resolve the problem.

Problem Category	Response Required	Response Time
1	Initial	2 hours
	Updates	1 Day
2	Initial	8 hours
	Updates	2 Days
3	Initial	2 days
	Updates	1 week
4	Initial	7 days
	Updates	1 month

STEP 3. Project management personnel of User and Circle CVI will meet on a reasonable basis, or more frequently as may be required, to review the status of the Services, TAP, amendments to the Schedules, acceptance testing, invoices or estimates.

General

Circle CVI will only support the current released version of the Software and one version back. Any software version older than one version back will not be supported and the User is strongly recommended to upgrade to newer versions.

SCHEDULE "B"

EXCLUDED SERVICES

The provision of the following excluded services will only be provided by Circle CVI to the User if the Parties agree to modify this Agreement subject to the terms of this Agreement or upon the payment of additional services fees:

1. Support or training on, any software not supplied by Circle CVI;
2. Support or training on, any third-party software supplied by Circle CVI;
3. Modifications or enhancements to the Software other than standard updates and upgrades;
4. Implementation, data conversion and support for software other than the Software or for new versions of the Software;
5. Problems or inconsistencies in the Software occurring after and as a result of User adding a third-party application to the system or changing the system operating environment, including but not limited to the server and desktop hardware, unless such changes are made with the approval of Circle CVI;
6. Problems or inconsistencies with the server hardware on which the Software resides, occurring after, and as a result of, adding third-party applications to the system which reside on such server hardware, unless such changes are made with the approval of Circle CVI;
7. Disaster recovery services of any kind;
8. Support or training related to the failure or malfunction of system hardware;
9. Technical support or training related to the addition of peripherals, device integration, import formats, setting up new users and nightly back-ups. This can be available upon request but will be charged by Circle CVI to User on a time and materials basis;
10. Support or training required by personnel other than User's named liaisons;
11. Support requests outside the Hours of Operation;
12. Performing any or all system management tasks that are associated with managing the application, managing the transfer of data between systems, when or if an upgrade has been undertaken. This can be available upon request but will be charged by Circle CVI to User on a time and materials basis;
13. Remote application migration assistance by Circle CVI support specialist. This can be available upon request but will be charged by Circle CVI to User on a time and materials basis; or
14. Administrative and technical training on the Software. This can be available upon request but will be charged by Circle CVI to User on a time and materials basis; or
15. Except as otherwise expressly provided in this Agreement, retraining the User's personnel whether in person or by telephone