

## Master Licensing and Services Agreement (“MLSA”)

This Master Licensing and Services Agreement (the “**MLSA**”), along with any schedules, exhibits, amendments and Sales Order Quotations (the “**Agreement**”) is between Circle Cardiovascular Imaging, Inc. with a registered address at 1100, 800 5<sup>th</sup> Ave SW, Calgary, Alberta, Canada T2P 3T6 (“**Circle**”) and the client of which their respective information is outlined in the Sales Order Quotation (the “**Customer**”), each a “**Party**” and together referred to as the “**Parties**”.

**WHEREAS**, subject to this Agreement, Circle agrees to license to the Customer the Software identified in a Sales Order Quotation, from time to time.

**WHEREAS**, Circle offers the support and maintenance services described under Schedule A, including any trainings agreed upon in a Sales Order Quotation (the “**Support Services**”), the whole subject to a Sales Order Quotation.

**WHEREAS**, the Customer would like to obtain the Software, Support Services, Installation Services, Professional Services and any goods, services or products identified in a Sales Order Quotation from time to time (the “**Software Services**”).

**NOW, THEREFORE**, the Parties agree as follow:

### 1. DEFINITIONS

- 1.1 “**Affiliate**” means, generally, with respect to any Party, any other entity controlling, controlled by, or under common Control with such Party.
- 1.2 “**Applicable Laws**” means all federal, state, provincial, regional, territorial and local laws, statutes, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and official releases of or by any government, or any authority, department or agency thereof or self-regulatory organization, including any regulatory clearances applicable to the Software, and which Circle has obtained and represented accordingly to the Customer in accordance with the Documentation for this Software.
- 1.3 “**Basic Support**” means the Support Services associated with the subscription license offerings of the Software further described in Schedule A.
- 1.4 “**BETA or Research Software**” means any free trial, early deployment, beta testing, trial, and other Software which are provided as beta to the Customer or Software that is not approved for clinical use as per the regulatory authorities.
- 1.5 “**Control**” and its derivatives means: (i) the legal, beneficial, or equitable ownership, directly or indirectly, of (a) at least fifty percent (50%) of the aggregate of all voting equity interests in a Party, or (ii) equity interests having the right to at least fifty percent (50%) of the assets of a Party; (iii) the right to control, directly or indirectly, the management or direction of a Party by contract or corporate governance document, or (iv) in the case of a partnership, the holding by a Party (or one of its Affiliates) of the position of sole general partner.
- 1.6 “**Derivative Work**” means a work based on one or more pre-existing works, including a condensation, transformation, translation, modification, expansion, or adaptation, that, if prepared without authorization of the owner of the copyright of such pre-existing work, would constitute a copyright infringement under Applicable Laws.
- 1.7 “**Documentation**” means the documentation describing the functionalities applicable to the Software, including the modules available, along with any specifications, Minimum Systems Requirements, and product descriptions, which are made available by Circle to Customer, as modified from time to time, or any user documentation which describes how to use the Software, and made available by Circle, or an authorized licensor on behalf of Circle, to

Customer.

- 1.8 **“Effective Date”** means the date at which both Parties have entered into this MLSA either by digital signature, digital acceptance or otherwise by the issuance of a purchase order corresponding to an initial Sales Order Quotation which refers this Agreement for the first time.
- 1.9 **“End Users”** means an individual who is authorized to access and use the Software by the Customer, in accordance with any limitations set forth in this Agreement, or who is otherwise provided access to the Software.
- 1.10 **“Intellectual Property”** means any and all intellectual property, including, without limitation, works, inventions (whether patentable or not), discoveries, improvements, trade secrets, know-how, scientific formulae, data, information, images, reports, results, analysis, software, models, research and development information, technical information, prototypes, specifications, patterns, drawings, algorithms, products, compositions, processes and protocols, methods, tests, devices, computer programs, trademarks and any and all proprietary rights provided under patent law, copyright law, trademark law, design patent or industrial design law, semiconductor chip or mask work law, or any other statutory provision or civil or common law principles applicable to the protection of intangible proprietary information or rights, including trade secret law, which may provide a right in any of the foregoing as well as any and all applications, registrations or other evidence of a right in any of the foregoing.
- 1.11 **“Installation Services”** means any on-site or off-site installation services for the Software which is performed for Customer pursuant to a Sales Order Quotation.
- 1.12 **“Licence Fees”** means the fees paid for the Software, including any Support Services, indicated on a Sales Order Quotation from time to time.
- 1.13 **“Minimum Systems Requirements”** means the minimum requirements which Customer’s systems must have in order to use the Software; the whole as described from time to time in the Documentation.
- 1.14 **“Premium Support”** means the premium support services that can be purchased with subscription offerings of the Software as further described in Schedule A.
- 1.15 **“Sales Order Quotation”** means a Sales Order Quotation issued by Circle for the Software Services which contains the description of the Software Services to be provided to the Customer, the Licence Fees and any other fees, costs and expenses agreed upon pursuant to this Agreement, the Subscription Term, any Support Services to be provided, and any limits or additional terms applicable to a Software, such as any designed computers, sites and number of seats for the use of a Software, where applicable. For the avoidance of doubt, Circle shall not be bound by any modifications issued by Circle to the Sales Order Quotation to which it has not approved in writing, including in any purchase order corresponding to a Sales Order Quotation.
- 1.16 **“Software”** means a computer software product, in object code form only, and any related Documentation as made available to the Customer in accordance with a Sales Order Quotation, as well as later authorized releases or versions of such Software, if any, which is provided to the Customer in accordance with this Agreement, including the Support Services.
- 1.17 **“Representatives”** means a Party’s Affiliates, licensors, employees, developers, officers, directors, and agents.
- 1.18 **“Support Services”** means any support services Circle agrees to provide Customer pursuant to this Agreement including TAP, Basic Support, and Premium Support.
- 1.19 **“TAP Services”** or **“TAP”** means the support services associated with the perpetual license offerings of the Software further described in Schedule A.

## 2. PROCUREMENT OF SOFTWARE SERVICES

- 2.1 The MLSA contains the general terms applicable to the Software Services (the “**General Terms**”). The schedules attached to this MLSA contain the terms and conditions applicable to certain Software Services, as described under each schedule (the “**Specific Terms**”). The Specific Terms are deemed part of, and integrated, in the Agreement. The Specific Terms include, if applicable and without limitation Schedule A: Software Support Services.
- 2.2 **Sales Order Quotation.** The Software Services are procured through a Sales Order Quotations. Each Sales Order Quotation is deemed to be part of this Agreement once executed by the Customer, indicated by either a signature or acceptance of the Sales Order Quotation or the issuance of a purchase order by Customer corresponding to a Sales Order Quotation issued by Circle. Each Sales Order Quotation may only be modified through a change order agreed upon by both Parties and executed in the same manner as a Sales Order Quotation (each a “**Change Order**”).
- 2.3 **Precedence.** In case of conflicts between their respective terms, the order of precedence between the documents is as follow: (1) Change Order; (2) Sales Order Quotation; (3) Specific Terms, (4) General Terms, each as amended from time to time.
- 2.4 **Authority.** Each Party represents and warrants that (a) it has the full power and legal authority to enter into this Agreement and perform its obligations hereunder and the consent of a third party is not necessary for this Agreement to be binding on the Parties; (b) it is licensed to operate its business in the manner contemplated herein and (c) each person entering into this Agreement on behalf of an entity is authorized to do so.
- 2.5 **Minimum Systems Requirements.** The Customer agrees and acknowledges that the IT specifications for the use and configurations of the Software are materially as set forth in the Documentation and the Sales Order Quotation, and the Customer is responsible for ensuring that the Software can be installed in the Customer’s IT infrastructure prior for acquiring the Software.
- 2.6 **Installation Services.** Unless stated otherwise in a Sales Order Quotation, the Customer is solely responsible for the installation of the Software. Circle may agree to provide Installation Services as part of a Sales Order Quotation, which may be provided subject to additional fees, terms, and conditions.
- 2.7 **Training Services.** The Software Services include the provision of the training services as indicated in a Sales Order Quotation.
- 2.8 **Support Services.** Subject to the terms of this Agreement, including the payment of applicable fees, Circle will provide the Support Services as further described in this Agreement or the Sales Order Quotation in a professional workmanlike manner.
- 2.9 **Professional Services.** If Circle agrees to provide any additional services, such as professional services on a time and material basis, such professional services shall be provided at the then-current standard rate, subject to a Sales Order Quotation (the “**Professional Services**”).
- 2.10 **Provision.** The delivery of the Software Licence will be made as soon as possible (within thirty (30) days of the execution of a Sales Order Quotation). The Software, including any update and/or licence file shall be made available by electronic means of email or Internet download, such as with a Software Licence electronic key delivered electronically after installation.
- 2.11 **Release Support.** Circle will only support the current released version of the Software and one version back (E.g. v1.2 & v1.1) with defect fixes. Any software version older than one version back will not be privy to defect fixes and the User is strongly recommended to upgrade to the newer version for the benefit of any corrections.

### 3. SOFTWARE LICENCES

- 3.1 **Licence Grant.** Subject to this Agreement, Circle hereby grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable, revocable (but only pursuant to this Agreement) right and licence to use the object code version of the Software identified in a Sales Order Quotation (the “**Software Licence**”), including to install, download, access, and use (and to allow its End Users to access and use) the Software as intended under this Agreement. All rights not expressly granted hereunder are reserved by Circle.
- 3.2 **Subscription Software Licence.** Software Licence(s) which are provided on a Subscription Term or PU allotment shall expire pursuant to the conditions as set forth in this Agreement and in the Sales Order Quotation.
- 3.2.1 **Subscription Term Software Licence.** If the Sales Order Quotation contains a subscription to the Software, the Software Licence and corresponding Support Services purchased by the Customer as outlined in a Sales Order Quotation, shall be included within the subscription pricing and will be billed based on the frequency indicated on such Sales Order Quotation, for the length of time identified by such Sales Order Quotation (the “**Subscription Term**”). Circle will provide a Software Licence with an expiry aligned to billing frequency duration over the Subscription Term of such Sales Order Quotation starting from the date of the corresponding invoice(s) and subject to payment terms of the Sales Order Quotation.
- 3.2.2 **Per Use Subscription.** If the Sales Order Quotation contains a per use (“PU”) allotment to the Software, the Software shall be provided a Subscription Term for a maximum number of uses per year, described as quantity, outlined in the Sales Order Quotation. Basic Support shall be provided with the PU Software Licence. The Software Licence shall expire upon Customer exceeding the applicable annual PU allotment or Subscription Term.
- 3.3 **Term Licence.** If the Sales Order Quotation contains a term to the Software License, Circle shall provide a Software Licence aligned with the duration of the term as set forward in the Sales Order Quotation (“**Term Licence**”). Customer shall be billed for the Term Licence and corresponding Support Services purchased by the Customer as outlined in a Sales Order Quotation at the beginning of the Term Licence and the Software Licence shall become active from the date indicated on the Sales Order Quotation upon payment of the corresponding invoice(s) for the duration set forth in the Sales Order Quotation.
- 3.4 **Evolve Program.** The evolve program offering allows a Customer to surrender a previously purchased Perpetual Software License in exchange for a current version of the Software on a Subscription Term, but the program is only available to customers who have acquired and purchased: (a) a cvi42 capital license prior to January 1, 2023 or (b) a cvi42 capital license after January 1, 2023 and held such license for at least 364 days (the “**Evolve Program**”). If the customer does not meet these criteria then the Customer is not eligible for the Evolve Program. If the Sales Order Quotation contains a purchase of the Evolve Program, Circle shall provide Subscription Services to a current version of the Software on a Subscription Term as stipulated in the Sales Order Quotation and the Parties terminate Customer’s existing Perpetual Software Licences of cvi42 as set out in the Sales Order Quotation, and Sections 3.1 and 3.5 do not apply to such Sales Order Quotation. Additional information on the Evolve Program is set out in the Sales Order Quotation and/or the Documentation. If the Sales Order Quotation contains a purchase of the Evolve Program, Customer agrees:
- (i) the applicable Perpetual Software Licenses are terminated effective as of the start date of the Subscription Services indicated in the Sales Order Quotation, despite any terms to the contrary in the applicable software license agreements (including any contrary terms in the perpetual license grants and the survival clauses in the agreements that granted such Perpetual Software Licenses);
  - (ii) the license agreements that granted such Perpetual Software Licenses are also terminated and the licenses granted in such agreements do not survive termination, despite any contrary terms in such agreements;

- (iii) no credits or payments apply to such termination;
  - (iv) Circle has no further support or maintenance obligations for the Perpetual Software Licenses, despite any contrary terms in the applicable agreements that granted the Perpetual Software Licenses and included such support or maintenance obligations
  - (v) the Software License on a Subscription Term begins on the start date indicated on the Sales Order Quotation.
- 3.5 **Perpetual Licence.** If the Software Licence is purchased and no Subscription Term, PU, or Term Licence is applicable, then the Software Licence shall be deemed perpetual (the “**Perpetual Software Licence**”). The Perpetual Software Licence shall include twelve (12) months of TAP Service starting on the date the licence key is provided to Customer. If authorized in writing by Circle, such as through the Evolve Program, the Customer may be authorized to transfer a Perpetual Software Licence into a subscription-based licence to obtain the then-current version of the Software, the whole subject to any additional terms and conditions agreed upon by the Parties in a Sales Order Quotation.
- 3.6 **Use by End User.** All rights, obligations, restrictions and other provisions that are applicable to either End User or Customer in relations to the provision of the Software Services shall be the responsibility of the Customer. The Customer is responsible to ensure that End User uses the Software Services in accordance with this Agreement and shall be liable for any End Users using or accessing the Software in breach of this Agreement as if such acts or omissions were conducted by Customer. All terms, rights, and restrictions, in this Agreement that are applicable to the Customer shall be applicable to the End User as well.
- 3.7 **Restrictions.** Except if specifically authorized in a Sales Order Quotation, the Customer may not (a) engage in, cause or permit the reverse engineering, disassembly, recompilation, translate, modification or any similar manipulation of the Software, including to create, or recreate the source code, internal structure, functionality or organization of any Software or any part thereof from any such Software, object code or other information that may be made available to it, or to aid, assist or otherwise permit any other party to do so; (b) make any Software available to third parties or use it to process third party data; (c) create Derivative Works of any Software; (d) sublicense, loan, lease, distribute, assign or otherwise transfer any Software or copies thereof, in whole or in part, or otherwise make any Software available to third parties; (e) install, use or access the Software at or from any location other than on the designated computer or server at the designated site, as indicated in a Sales Order Quotation; (f) intentionally develop methods to enable unauthorized parties to use, recreate or infringe the Software; (g) copy the Software or any part thereof, or otherwise include any portion of the software in any other hardware or software except as otherwise expressly permitted herein; (h) to the extent it is not related to the Customer’s Intellectual Property, contest or challenge the ownership or validity of, or adopt, apply for, register or otherwise seek to legally protect any of Circle’s or its licensor’s Intellectual Property, or aid or abet others in doing so; (i) work around or circumvent any technical limitations in the Software without Circle’s prior written consent; and (j) use any tool or other means to enable features or functionalities that are otherwise disabled, inaccessible or undocumented in the Software. The Customer remains liable for all of its End Users using or accessing the Software in breach of this Agreement.
- 3.8 **Copying.** The Customer will not copy any Software, except that the Customer may make and maintain one (1) copy of each Software for archival purposes, provided such copies includes all copyright, proprietary rights and other notices included on or in such Software, and is securely deleted in accordance with this Agreement.
- 3.9 **Ownership.** The Software provided to Customer are licensed, not sold to Customer. Except for the rights expressly granted to Customer under this Agreement, all right, title and interest in each Software shall at all times remain the property of Circle and its licensors. The Customer understands and agrees that it will take title only to the media on which a Software is provided, and that each Software shall remain the property of, and proprietary to, Circle, or its licensor,

as the case may be.

- 3.10 **Breach.** A breach of this Section 3 shall entitle Circle to seek, in addition to any other rights and remedies hereunder or at law, injunctive or equitable relief, and such further relief as may be proper from a court of competent jurisdiction as set forth in this Agreement.

#### 4. BETA, NON-COMMERCIAL, OR RESEARCH USE ONLY SOFTWARE

- 4.1 **Permitted Uses.** If the Customer is provided with a BETA or Research Software (or if certain components of the Software are identified as BETA or Research Software) or not for clinical use in a Sales Order Quotation, or the Documentation or any subsequent Change Order, then the use of the Software will be limited to the Permitted Uses, as modified in the Specific Terms for such Software. If the Software, or parts of the Software, is provided as a BETA Software, the Permitted Uses shall mean, and be limited to, unless specifically indicated otherwise in a Sales Order Quotation, the internal research and internal testing of the BETA or Research Software inclusive of usability testing, the provision of Feedback, and for retrospective and prospective clinical studies or as authorized in writing by Circle. If the Software is not provided as BETA or Research Software, the Permitted Uses shall be for the purposes of supporting health professional's decision-making regarding, or as authorized in writing by Circle. Customer shall delete all BETA or Research Software at the end of the BETA or Research Software period including but not limited to the trial licences.
- 4.2 **Exclusion of Liability.** The Customer agrees and understands that some functionalities may not be available in the BETA or Research Software, and the BETA or Research Software may not be as performant as the commercial version of such BETA or Research Software. Notwithstanding anything to the contrary, the Customer agrees and understands that (a) the BETA or Research Software is provided without Software Warranty; (b) Circle and its licensors disclaims all applicable warranties, whether implied or express, regarding the BETA or Research Software; and (c) the BETA or Research Software is provided "as-is", at Customer's risks and perils.

#### 5. INTELLECTUAL PROPERTY

- 5.1 **Feedback.** Circle is the sole and exclusive owner of its Intellectual Property, and the Software is licensed, not sold. As between the Parties, Circle shall also be the sole owner of any suggestions, enhancement requests, recommendations or other feedback provided by the Customer or its End Users to Circle, so long as they are related to the Software Services (the "Feedback") and the Customer hereby assigns to Circle, without limitation of any kind, all of its rights, titles, and interests therein, Circle accepting such assignment. The Customer and its End Users waive any moral rights in the Feedback, or where not possible, assign such moral rights to Circle.
- 5.2 **Notices.** The Customer will not remove, alter, obscure, or obliterate any trademarks, marks, logo, or other proprietary notices incorporated in, marked, or affixed to the Software or Documentation, including any notices applicable to open-source software. The Customer will not add identifying marks, logos, or labels to the Software, or to any written materials accompanying the Software without Circle's prior written approval.

#### 6. CONFIDENTIAL INFORMATION

- 6.1 **Confidential Information.** In this Agreement "Confidential Information" means all information, regardless of format, disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), whether directly or indirectly, of a business, financial, scientific, or technical nature, and includes, without limitation, all information relating to technologies, designs, inventions, concepts, methods, processes, techniques, know-how, trade secrets, creative works, patents or patent applications, models, drawings, data, prototypes, blueprints,

business plans, pending projects, plans, studies, research and development, customer lists, customer information, vendor lists, financial statements, strategy, marketing and development plans, information relating to prices, costs and profits, information relating to current, future or eventual agreements, as well as any other information that a reasonable business person would regard as confidential. Confidential Information shall also include all documents prepared by the Receiving Party which contain, reflect, or are based upon, in whole or in part, Confidential Information.

- 6.2 **Exceptions.** Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no fault of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party, as shown by the Receiving Party's written files and records as they existed prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without any use of or reference to the Disclosing Party's Confidential Information, as proven by the Receiving Party's written files and records.
- 6.3 **Restrictions.** The Receiving Party agrees to keep the Confidential Information strictly confidential and shall not disclose or use any Confidential Information of the Disclosing Party for purposes other than to deliver, improve or use the Software Services. Subject to the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, directors, attorneys, financial advisors, contractors and agents provided that (a) such person or entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with, or to enforce its rights under or with respect to this Agreement, or as otherwise naturally occurs in such person's scope of responsibility, (b) such disclosure is made pursuant to an obligation of confidentiality that is no less stringent than that set forth in this Agreement; and (c) such disclosure is not in violation of Applicable Law. The Receiving Party assumes full responsibility for the acts or omissions of any person or entity to which it discloses Confidential Information of the Disclosing Party regarding their use of such Confidential Information.
- 6.4 **Maintenance of Confidentiality.** The Receiving Party agrees that it shall take all reasonable measures to protect the confidentiality, integrity and availability of the Confidential Information of the Disclosing Party and avoid unauthorized use or disclosure of the Confidential Information of the Disclosing Party. Without limiting the foregoing, each Party shall take at least those measures that it takes to protect its own highly Confidential Information. The Parties agree that any Confidential Information shall at all times remain the property of the Disclosing Party and that, except as authorized under this Agreement, neither Party shall make any copies of the Confidential Information of the other Party unless the same are previously approved in writing by the other Party or as reasonably required to perform the services or for business continuity purposes. Each Party shall reproduce the other Party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.
- 6.5 **Legally Compelled Disclosure.** In the event the Receiving Party is required to disclose the Disclosing Party's Confidential Information pursuant to a valid order by a court or other governmental body or as otherwise required by Applicable Law, prior to any such compelled disclosure, the Receiving Party will (a) notify the Disclosing Party of the legal process, and allow the Disclosing Party to assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure, unless prevented to do so by Applicable Law; and (b) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. If such protection against disclosure is not obtained, the Receiving Party will be entitled to disclose the Confidential Information, but only

as and to the extent necessary to legally comply with such compelled disclosure.

- 6.6 **No Implied Rights.** Nothing contained in this Section 6 shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or licence to any Confidential Information of the other Party.
- 6.7 **Cooperation.** At the Disclosing Party's request, the Receiving Party shall cooperate fully, to the extent it does not conflict with the Receiving Party's business interest, with the Disclosing Party in any and all legal actions taken by the Disclosing Party to protect its rights in the Confidential Information. The Disclosing Party shall bear all out-of-pocket costs and expenses reasonably incurred by the Receiving Party in the course of such cooperation.
- 6.8 **Freedom of Information Requests.** If Customer is a public authority or agency which is subject to requests for information under applicable freedom of information legislation ("**FOI Request**") and receives a FOI Request which may require the disclosure of Confidential Information provided under this Agreement or a Sales Order Quotation, Customer shall inform Circle of the nature and scope of the FOI Request before disclosing such information. Customer shall give Circle at least five (5) business days to provide to Customer Circle's position as to whether such information must be disclosed under the applicable freedom of information legislation. Customer shall not disclose Confidential Information if it is exempt from disclosure under applicable freedom of information legislation. If Customer discloses any Confidential Information under a FOI Request under the basis the information is not exempt from disclosure under applicable freedom of information legislation, Customer shall notify Circle of the disclosure immediately. Customer acknowledges that the terms of this Agreement and the Sales Order Quotation, including without limitation, the Licence Fees and Payment Terms, are Confidential Information and disclosure of which would cause commercial prejudice to Circle.

## 7. FEES; PAYMENT TERMS

- 7.1 **Payment Terms.** The Customer agrees to pay Circle Licence Fees according to the Sales Order Quotation within thirty (30) days from the invoice date of the Software, which shall be issued upon either the signing of the Sales Order Quotation or the issuance of a purchase order by the Customer to Circle. The Customer agrees that late fees are subject to monthly interest of 1.5% or 18% annually. The Customer shall be responsible for any costs resulting from the collection, including reasonable attorneys' fees. Customer's failure to pay shall be considered a material breach of this Agreement. In the case of subscription Licence Fees for future years, invoices shall be issued in advance based on the billing frequency indicated on the Sales Order Quotation and the date of the signing of the Sales Order Quotation or the receipt of purchase order. Should Customer fail to pay the invoice within the thirty (30) day period, any subscription-based licence rights granted herein shall expire and Circle may terminate this Agreement and as a result of such termination, Customer shall delete the software and provide a certificate by an authorized legal representative of the Customer that such deletion occurred. Subscription pricing is subject to increases up to 5% annually during the Subscription Term, as set forth in the Sales Order Quotation.
- 7.2 **Applicable Taxes.** If Circle is required by Applicable Laws or by administration thereof to collect taxes related to the sale from the Customer, the Customer shall pay such taxes to Circle concurrent with, and in addition to the payment of any consideration payable pursuant to this Agreement, unless the Customer qualifies for an exemption from any such applicable taxes, in which case the Customer shall, in lieu of payment of such applicable taxes to Circle, deliver to Circle such certificates, elections, or other documentation required by Applicable Laws or the administration thereof to substantiate and effect the exemption claimed by the Customer. Where Circle is not required by law or by administration thereof to collect applicable taxes, the Customer shall pay such taxes directly to the appropriate taxing authority and shall provide evidence of such payment to Circle upon request.



7.3 **Tax Deduction.** The Customer shall make all payments under this Agreement without any deduction or withholding for or on account of any taxes (“**Tax Deduction**”) unless a Tax Deduction is required by Applicable Laws. If a Tax Deduction is required by Applicable Laws: then (a) where such Tax Deduction relate to any tax other than an income tax imposed on Circle’s net income, the relevant amount payable by the Customer hereunder shall be increased to the amount that would, following any required Tax Deduction, result in Circle receiving the amount that would have been received if no Tax Deduction were required, (b) Customer shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), notify Circle accordingly, and (c) the Customer shall timely remit the amount of such Tax Deduction to the appropriate taxing authorities. The Customer will use commercially reasonable efforts to mitigate, reduce, or eliminate any Tax Deduction (including, but not limited to, by taking advantage of any reduced rate of tax provided for by any applicable international agreement for the avoidance of double taxation then in force).

7.4 **Financial Audit.** During the Term, and for a period of two (2) years thereafter, the Customer will maintain materially complete books and records regarding the use of the Software Licence including reasonable information pertaining to the Customer’s use of the Software such as to allow Circle to audit that the Licence Fees paid by the Customer are in accordance with this Agreement. The Customer agrees to pay for any Licence Fees which are due to Circle in accordance with the terms of this Agreement.

## 8. SOFTWARE WARRANTY

8.1 **Limited Warranty.** The Software is provided as an aid or adjunct to processes or decisions that can be made without the Software. Subject to this Agreement, Circle warrants that, for a period of one (1) year from the delivery (the “**Warranty Period**”) that each Software licensed hereunder will operate in material conformance with the Documentation (the “**Software Warranty**”). Neither Circle, nor its licensors will have an obligation with respect to the Software, if its failure to meet the Software Warranty results from it (a) not being properly installed, used, or maintained when Customer is responsible for the foregoing; (b) modification or (c) use or combination with products or software not validated and approved in writing by Circle. Circle does not warrant that (i) the operation of any Software will be uninterrupted or error-free; (ii) that any errors in the Software will be corrected; (iii) that any Software will satisfy the Customer’s requirements; or (iv) that any Software will operate in the combinations that the Customer selects for use. If a Software is repaired or replaced, the Warranty Period is not extended, and any subsequent replacement or correction of a Software shall not commence a new Warranty Period but shall be covered by any existing Warranty Period.

8.2 **Exclusive Remedy.** Circle and its licensors’ entire liability, and Customer’s exclusive remedy, for any claim that the Software Warranty has been breached shall be for Circle, at its option, pursuant to the Support Services and during the Warranty Period, to either (a) replace any defective media which prevents the affected Software from satisfying the Software Warranty; (b) attempt to correct any material and reproducible errors reported by the Customer in such Software; or (c) terminate this Agreement and refund the Licence Fees paid for the defective Software during the Warranty Period, after a reasonable deduction to reflect any period of use.

8.3 **Intellectual Property Indemnity.** Circle will indemnify the Customer against any third-party claim that the normal use of the Software is found to infringe the Intellectual Property of any other party provided that Circle or its licensor is given immediate and complete control of such claim, and that the Customer does not prejudice Circle or the licensor’s defence of such claim. The Customer agrees to give Circle all reasonable assistance with such claim. Circle will not have an indemnification obligation pursuant to this Section 8.3 with respect to a claim to the extent such claim is directly attributable to: (a) use of the Software in violation of this Agreement, (b) use of non-current versions of the Software when Circle has made newer,

non-infringing versions available to Customer, (c) altered versions of the Software (unless the specific alteration was made by or for Circle), or (d) the combination by Customer, or anyone Customer permits to use the Software, with any software, hardware or process not provided by Circle unless the Software substantially embodies all of the essential elements of an invention claimed in any patent asserted in such claim. For avoidance of doubt, if the accused invention at issue in a patent infringement claim is a third-party software application, that uses only the output of the Software and is not otherwise based on the Software, then such claim would not be subject to indemnification. If a Software is found to infringe any such Intellectual Property, at Circle's sole discretion and expense, Circle may (a) obtain a licence from such third party for the Customer's benefit or (b) replace or modify the Software so that it is no longer infringing, or (c) terminate this Agreement, and subject to 8.2 refund the Licence Fees paid for such Software under warranty. The foregoing states the entire liability of Circle to Customer in respect of the infringement of the Intellectual Property of any third party.

## 9. DISCLAIMERS

- 9.1 **Disclaimer.** The warranties set forth herein are exclusive in connection with the Software Services provided by Circle and its licensors under this Agreement, and are in lieu of all other warranties, express or implied, including without limitation any warranty of merchantability, fitness for a particular purpose, non-infringement, or use, all of which are hereby disclaimed and excluded by Circle and its licensors.
- 9.2 **Decision Making.** The Customer acknowledges that the Software does not constitute or replace professional medical advice, nor does it replace decision-making. The Customer and the End Users are responsible for making all required verifications to ensure the soundness and accuracy of the suggested findings. The Customer agrees and understands that outputs from the use of the Software are dependent on the quality, accuracy, representativeness, and integrity of the data that the Customer inputs in the Software, and that Circle does not have any control over, and is not responsible, for such inputs. The Customer agrees and understands that neither Circle nor its Representatives have any liability for any decisions resulting from the use of the Software or any outputs from the Software.
- 9.3 **Ethical and Professional Use.** The Customer is solely responsible for determining if the use of the Software is permitted by Applicable Laws, and if the use of the Software is compliant with the ethical obligations of End Users. The Customer agrees and understands that the Software may contain or use artificial intelligence technologies, and such technologies may not be appropriate in certain contexts or projects. Except as set forth otherwise, the Customer is solely responsible for validating that the Software, as described in the Documentation, can be used for the Customer's intended purposes. The Customer is responsible for ensuring that qualified health professionals are using the Software and that such use by qualified health professionals is not in breach of their professional obligations or ethical obligations in any territory in which the Software is used.
- 9.4 **Prohibited Use.** Subject to Applicable Laws, neither Circle nor its Representatives will be responsible for any damages resulting (a) from the use of the Software in breach of this Agreement or Applicable Laws; (b) resulting from an installation, other than by Circle, in violation of the documented instructions of Circle, including in the Documentation; (c) the use of the Software elsewhere than at the designated site, or by End Users who are not qualified to use the Software; or (d) the use of the Software other than as reasonably intended, for medical purposes, under the supervision of health professional, in accordance with the Documentation. Circle nor its Representatives shall be obliged to provide Support Services if the request results are from the aforementioned prohibited uses.

## 10. LIMITATION OF LIABILITY

- 10.1 **Limitation of Liability.** Subject to Applicable Laws, neither Circle nor its Representative shall be liable for any lost data, lost profits, lost revenue, or any other form of consequential,

indirect, incidental, special, or punitive loss or damage, even if Circle and its Representatives shall have been advised of the possibility of such potential loss or damage, and even if a remedy set forth herein is found to have failed of its essential purpose. In no event will Circle and its Representatives' liability of any kind under any theory, including contract and tort, with respect to the Software Services covered by this Agreement and all other performance by Circle and its Representatives under this Agreement exceed the Licence Fees paid hereunder during the twelve (12) months prior to the date of the events which gave rise to the liability.

## 11. TERM; TERMINATION

- 11.1 **Term.** This Agreement shall take effect on the Effective Date and shall continue until terminated by either Party in accordance with this Agreement (the “**Term**”).
- 11.2 **Termination without Cause.** The Agreement may be terminated subject to a thirty (30) days prior written notice by a Party to the other Party during the Term if there are no active Sales Order Quotation. If there are any active Sales Order Quotation, the Agreement shall continue in full force for these Sales Order Quotation until such Sales Order Quotation are terminated or expired, except that no additional Sales Order Quotation may be added to the Agreement once the Agreement is terminated by either Party. The Fees are non-reimbursable and non-cancellable unless indicated otherwise in this Agreement.
- 11.3 **Termination for Cause.** Notwithstanding the provisions of Section 11.2, this Agreement may be terminated earlier by either Party (the “**Notifying Party**”) upon written notice to the other Party (the “**Defaulting Party**”): (a) if the Default Party files a petition of any type as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership or otherwise loses legal control of its business voluntarily; (b) if the Defaulting Party is in material breach of this Agreement and has failed to cure such breach within sixty (60) days of receipt of written notice thereof from the Notifying Party, or (c) if the event of Force Majeure affecting the Defaulting Party continues for more than six (6) months.
- 11.4 **Rights and Obligations on Termination.** In the event of termination of this Agreement for any reason, the Parties shall have the following rights and obligations: (a) neither Party shall be released from the obligation to make payments of amounts then or thereafter due and payable on any account (b) the Customer shall return to Circle, and destroy all copies of the Software, Software Licence electronic key, and Documentation; (c) the Customer shall cease to use any Software, and (d) the following Sections shall survive the Term of this Agreement: Sections 3.7 Restrictions, 3.9 Ownership, 4 Beta, Non-Commercial, or Research Use Only Software, 5 Intellectual Property, 7 Fees, Payment Terms, 7.4 Financial Audit, 8 Software Warranty, 9 Disclaimers, 10 Limitations of Liability, and 13 Miscellaneous.

## 12. FORCE MAJEURE

- 12.1 **Definition.** A “**Force Majeure**” means any event or condition beyond the reasonable control of either Party which prevents, in whole or in material part, the performance by one of the Parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of state or government action, riots, disturbance, war, strikes, lockouts, slowdowns, prolonged shortage of energy or other suppliers, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion, or any refusal or failure of any governmental authority to grant any export licence legally required.
- 12.2 **Notice.** Upon written notice to the other Party, a Party (including its licensors) affected by an event of Force Majeure shall be suspended without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder. Such notice shall include a description of the nature of

the event of Force Majeure, its cause, and its expected and possible consequences. The Party claiming Force Majeure shall also promptly notify the other Party as soon as the event ceases to affect its performance under this Agreement.

### 13. MISCELLANEOUS

- 13.1 **Governing Law and Jurisdiction.** This Agreement shall be governed by and interpreted under the laws of Alberta, Canada. The Parties hereby irrevocably submit and attorn to the jurisdiction of the Courts of the district of Calgary, Alberta, Canada. Each Party waives irrevocably its rights to participate in a class action lawsuit against the other Party.
- 13.2 **Relationship.** This Agreement does not make either Party the employee, agent, or legal representative of the other Party for any purpose whatsoever nor does it constitute a joint venture or partnership between the Parties. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party. Each Party is acting as an independent contractor.
- 13.3 **Assignment.** Neither Party may assign or transfer this Agreement or any of its rights and obligations under this Agreement without the prior written consent of the other Party, except that Circle may assign this Agreement without the consent of the other Party in the case of a merger, sale of shares or assets or other reorganisation and permitted assignee will be bound by the terms of this Agreement. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of any permitted assignee. Any attempted assignment in violation of this Section 13.3 shall be void.
- 13.4 **Entire Agreement.** This Agreement, including any General Terms, Specific Terms, Sales Order Quotations, exhibits, amendments and addenda which are incorporated into, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all proposals, oral or written, and all negotiations, conversations, discussions, and licensing agreement between the Parties. Except as provided in this Agreement, this Agreement may not be modified, amended, rescinded, cancelled, or waived, in whole or in part, except by written amendment signed by both Parties hereto.
- 13.5 **Severability.** If any provision of this Agreement is found unenforceable under any of the laws or regulations applicable thereto, such provision shall be deemed stricken from this Agreement, but such invalidity or unenforceability will not invalidate any of the other provisions of this Agreement.
- 13.6 **Counterparts.** This Agreement or the corresponding Sales Order Quotation may be executed by scanned electronic form, digitally, or by issuance of a purchase order by the Customer in response to the Sales Order Quotation provided by Circle, or otherwise and in one or more counterparts in the English language and each such counterpart shall be deemed an original hereof. In case of any conflict between the English version and any translated version of this Agreement, the English version shall govern.
- 13.7 **No Waiver.** No failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
- 13.8 **Further Assurances.** The Parties shall perform all such further acts, provide such further documents or written assurances, and execute such further documents as are reasonably required or necessary to carry out the acts and transactions contemplated by this Agreement.
- 13.9 **Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if given by registered or certified mail, postage prepaid, return receipt requested, by private courier service, or by email addressed to the respective addresses of the Parties as written below or at such other addresses as the respective Parties may designate by like notice from time to time. Notices so given shall be effective upon (a) receipt by the Party to which notice is given, or (b) on the fifth Business Day following domestic mailing or the tenth Business Day following international mailing, as may be the case, whichever occurs first.



## SCHEDULE A – SOFTWARE SUPPORT SERVICES

### 1. Definitions

**1.1. “Support Hours”** means from 9:00 a.m. to 5:00 p.m. for Basic Support customers or TAP customers, and 7:00 a.m. to 7:00 p.m. for Premium Support Customers, in the Customer’s respective time zone, Monday through Friday, excluding statutory holidays:

**1.1.1.** in the province of Alberta, Canada, if the Customer is located in the Americas;

**1.1.2.** in the jurisdiction of the United Kingdom if the Customer is located in Europe, the United Kingdom or Africa; and

**1.1.3.** in Malaysia if the Customer is located in Asia.

### 2. General Support Services

**2.1.** Circle shall provide Customer the following Support Services based on the support Customer is owed pursuant to this Agreement and articulated below:

Table 1

Services Title	Description of Service	Support Category Customer Receiving Service
Software Upgrades	Customer has access to the latest versions of the Software and defect fixes to the Software through Circle’s regularly scheduled updates and upgrades.	TAP, Basic Support, Premium Support
Deployment assistance **	Circle Customer Technical Support Team will assist (Advise, Guide) in the implementation of the Software in the Customer’s IT environment.	TAP, Basic Support, Premium Support
System Migration Assistance **	Circle Customer Technical Support Team will assist (Advise, Guide) in the migration of the Software and data from an existing installation (infrastructure) to new infrastructure.	TAP, Basic Support, Premium Support
Preferred rates for additional licenses	Additional licenses to the Software are available to the customer at a discounted rate.	TAP, Basic Support, Premium Support
Remote Clinical Specialist	Initial remote clinical application software training (for up to 2 hours remote) in order to understand how the product is used within cardiac post processing workflow. Subsequent clinical application software training (for up to 2 hours remote) in conjunction with an upgrade / update of the Software.	TAP, Basic Support, Premium Support
Remote technical application support **	Circle Customer Technical Support Team will assist (Advise, Guide) in the identification and troubleshooting of application defects and unexpected application behaviours via email, phone or Web-based meeting technology (i.e. Teams, WebEx, Zoom).	TAP, Basic Support, Premium Support
Prioritized Remote technical application support **	Circle Customer Technical Support Team will provide prioritized assistance (Advise, Guide) in the identification and troubleshooting of application defects and unexpected application behaviours via email, phone or Web-based meeting technology (i.e. Teams, WebEx, Zoom). Customer shall receive Premium Support response time as articulated in Table 3 of this Schedule A and priority response ahead of non Premium Support subscribers for other than Critical support issues (categories 2 through 4).	Premium Support
Remote Technical Support Training **	If desired, Circle Customer Technical Support Team will provide one dedicated training session (up to an 8 hour session) for the Customer’s application administrators and/or IT administrators in the implementation, configuration and day to day maintenance activities required by the Software as Customer personnel requires (up to max of twice per year).	Premium Support
Service report upon request (quarterly)	Upon request, the Customer will receive reports on the tickets issued by their organization which will include a summary listing, counts of issue statuses and types.	Premium Support
Onsite Clinical Applications Specialist	Upon request, and at a mutual agreed upon time, the Customer will receive onsite application training inclusive of one (1) full training day annually.	Premium Support
Test environment license upon request	If desired, Circle will provide licenses (Sales and/or Marketing to determine details) for a test environment provided by the Customer. These licenses shall only be permitted to be used to provide Customer with the ability to test new versions and/or configurations of the Software.	Premium Support

**\*\* NOTE for Customers:** All Support Services shall consist of support for End Users that does not involve Circle taking control of the Customer’s IT infrastructure (hands-off support).

### 3. Support Protocol

**STEP 1.** During the Support Hours the Customer may request Support Services using Circle's web-based platform available at [www.circlecvi.com](http://www.circlecvi.com), or contact Circle's customer services by phone at +1 (403) 338-1870, or by e-mail at [support@circlecvi.com](mailto:support@circlecvi.com). The Customer agrees to designate a point of contact for the Support Services. Any failure to communicate based on the foregoing protocol may lead to deviation from the level of support provided pursuant to this Agreement. Customer shall have access to Circle's support team to enable the End User to receive verbal instruction to troubleshoot issues with the Software pursuant to this support protocol.

**STEP 2.** Circle will determine a categorization of the End User's problem based on the categories below once Circle has been given all relevant information from the End User as to the nature of the problem.

#### Category 1—'High'

The Software is unusable for normal operations, for example:

- a) the Software consistently produces material incorrect results, or fails catastrophically in response;
- 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 designated computers supported by the Software;
- e) the system response time materially and unduly deteriorates with system loading;  
or
- f) Injury, death or potential injury or potential death due to direct or indirect malfunction of the Software.

#### Category 2—'Moderate'

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 functions;
- b) because of internal errors; or
- c) the Software performs properly on some of the designated computers that are supported but is unusable on others.

#### Category 3—'Low'

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 designated computers supported by the Software but does not perform all documented functions on all designated computers.

#### Category 4—'Negligible'

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 3.** Once Circle has received the information from the End User regarding the problem, Circle will attempt to provide a Response based on the response times listed in the table below. For the purposes of this Schedule, “**Response**” means a response provided by a Circle support services personnel either by phone or e-mail, which:

- a) responds to an initial problem report provided by the End 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; or
- d) provides a satisfactory explanation of the progress being made to resolve the problem.

The following are the response times applicable to all TAP or Basic Support Customers:

Table 2

Problem Category	Response Required	Maximum 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

As part of the Premium Support Service, in addition to faster Response time, Circle will make commercially reasonable efforts to provide a resolution in the time outlined below. “**Resolution**” means that Circle will provide solution to the customer’s problem to the extent the problem is caused by an issue in the software that deviates from what is provided in the Agreement and does not require the provision of Excluded Services.



Table 3

Priority	Definition	Initial Response Time(s) in hours	Temporary Resolution or Workaround*	Permanent Solution**
<b>Category 1 Critical</b>	Patient safety is at risk and/or the Production Clinical or Research system is down or un-operational.	Initial Response Time: 1 hour  Updates: Every two (2) hours during the Support Hours while Circle is responsible for rectifying the issue, or a workaround or resolution is in progress, for the avoidance of doubt Circle shall not provide response while waiting for Customer's input or action.	1-5 business days.  Upon mutual agreement with the Customer, Circle will initiate travel to be on site to provide assistance in the event the Parties believe this would improve the issue within the Software in the interest of ensuring the system is not able to resume operation.	Within 4 weeks.
<b>Category 2 Severe</b>	The Software is usable, but incomplete, or in some way causing disruption to normal operations.  Customers' business severely restricted.	Initial Response Time: (4) hours  Updates: Each day, during the Support Hours while Circle is responsible for rectifying the issue, or a workaround or resolution is in progress, for the avoidance of doubt Circle shall not provide response while waiting for Customer's input or action.	5 business days.	Next maintenance release; not to exceed 2-3 months
<b>Category 3 Moderate</b>	The Software is usable, but inconvenience is caused to normal operations with some limitations.	Initial Response: 24 hours  Updates: No less than once every three (3) days during the Support Hours while Circle is responsible for rectifying the issue, or a workaround or resolution is in progress, for the avoidance of doubt Circle shall not provide response while waiting for Customer's input or action.	20 business days.	Next major release not to exceed 1 year
<b>Category 4 Low</b>	Minor problems that do not directly affect normal operations, or areas where an amendment to the Software would enable improved operation of the Software	Initial Response: 72 hours  Updates every two (2) weeks, during the Support Hours while Circle is responsible for rectifying the issue, or a workaround or resolution is in progress, for the avoidance of doubt Circle shall not provide response while waiting for Customer's input or action.	If available.	Reviewed annually

**\*Temporary Resolution/Workaround** - The time from when Customer reports the problem to Circle, until Circle diagnoses the issue and provides a temporary solution and service restoration work around. To expedite the resolution, Circle may request additional information and/or dial-in capabilities to the Customer's environment. FOR THE AVOIDANCE OF DOUBT, CIRCLE SHALL ONLY BE REQUIRED TO MAKE COMMERCIALY REASONABLE EFFORTS TO ADHERE TO THE TIMES IN THE TABLE.

**\*\*Permanent Solution** - The time from which the issue is reported to Circle and the Software defect is fixed in a product maintenance release or product market release. If the issue is a defect of the Software, this is the typical time frame and method in which a permanent resolution can be delivered to the Customer site. FOR THE AVOIDANCE OF DOUBT, CIRCLE SHALL ONLY BE REQUIRED TO MAKE COMMERCIALY REASONABLE EFFORTS TO ADHERE TO THE TIMES IN THE TABLE.

- 4. Excluded Services.** The following services are specifically excluded from this Agreement and the Support Services, unless specifically stated to the contrary below or agreed otherwise in a Sales Order Quotation.
1. Support or training on, any software not supplied by Circle;
  2. modifications or enhancements to the Software other than standard off-the-shelf updates or upgrades to the Software developed and provided by Circle;
  3. Implementation, data conversion, and or for new versions of the Software;
  4. Problems or inconsistencies in the Software occurring after and as a result of the End 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;
  5. 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;
  6. Support or training related to the failure or malfunction of system hardware;
  7. 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 to End User on a time and materials basis;
  8. Support or training required by personnel other than End User's named liaisons. This can be available upon request but will be charged by Circle to End User on a time and materials basis;
  9. 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 to End User on a time and materials basis. For clarity and the avoidance of doubt, Circle shall not be responsible for managing or overseeing End User's IT environment or technological infrastructure;
  10. Remote application migration assistance by Circle support specialist; provided however this is included in the Premium Support Service. Further, this can be available upon request but will be charged by Circle to End User on a time and materials basis;
  11. Except as otherwise expressly provided in this Agreement, retraining the End User's personnel whether in person or by telephone;
  12. Support requests outside the Support Hours; and
  13. Disaster recovery services.
- 5. Disqualification from Support Services.** Circle shall not be obliged to provide any Support Services, or other form or assistance, in connection with: (a) any Software that has been modified, altered, or enhanced without Circle's prior written consent, or (b) problems arising from improperly combining the Software with any product or improperly installing the Software and (c) problems that arise from misuse, accident, modification, unsuitable physical or operating environment, improper maintenance or failure caused by a third party product.
- 6. Supported Versions.** Any software version older than one version back will not be supported and the Customer is strongly recommended to upgrade to the newest version.