

## **END USER LICENSE AGREEMENT**

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 1100,

800 5<sup>th</sup> Avenue SW, Calgary, Alberta, Canada (hereinafter referred to as "**Circle**")

- and -

The User of the Software including the institution and individuals installing and using the Software as outlined and evidenced by and in the signature line below (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:

1. "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) "Boston Scientific" shall mean the entity Boston Scientific Corporation, a Delaware corporation having a principal place of business at 300 Boston Scientific Way, Marlborough, MA 01752 USA

- (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 or Boston Scientific 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 described in the Documentation provided by Circle or Boston Scientific;
- (h) “Hours of Operation” mean the times as set out in Schedule A within the “Hours of Support” 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) “Non-Permitted Uses” means using the Software for any use other than Permitted Uses and includes, without limitation, reverse engineering, disassembling, decompiling or otherwise disseminating the source code from the Software;

(l) “Party” means one of either Circle or the User whereas “Parties” means both Circle and the User;

(m) “Permitted Uses” includes:

1. 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.

(n) “Reported Error” means an Error that has been reported according to the procedures described in Schedule “A”;

(o) “Statement” means the document given to the User with the license length and miscellaneous terms;

(p) “Software” means the WATCHMAN TruPlan software and any other software provided by Circle to the User, whichever is delivered to the User from purchase or for evaluation, as well as any updates, Documentation and any other documentation or manuals provided by Circle to assist with the use of the computer software or updates;

(q) “Support Services” means the support accompanying software maintenance that is further described in Schedule A.

Note: New versions of the Software available pursuant to the Support Services will only be available for those Users who meet the minimum specifications of the future Software versions as set forth in the applicable Documentation.

(s) “Training” means on-site training and/or remote product training;

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 and the User and supersedes all prior and contemporaneous agreements or representations or warranties of any kind.

1.7 User understands and agrees that Circle, and not Boston Scientific, is the owner of the Software and, as such, User agrees that any claims it has regarding the use of the Software (including the breach of this Agreement) will be brought against Circle and not Boston Scientific.

## **ARTICLE 2 - GRANT OF LICENSE**

2.1 The license type for the Software will be provided on a subscription basis. The subscription will be valid for the duration as outlined on the Statement; however, accessibility will be subject to the overarching agreement between Boston Scientific and Circle remaining effective and valid. The subscription is inclusive of the Support Services.

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

2.3 Neither this Agreement nor the License may be sublicensed, assigned or transferred by the User, except as set forth in this Agreement.

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 on request provided such request is limited to two times a calendar year unless otherwise required by a governmental body.

2.5 The User covenants that it will not use the Software for Non-Permitted Uses.

2.6 Any such additional licenses of the Software acquired will be governed by the terms and conditions of this Agreement.

2.7 Circle will only provide Support Services for the most recent 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.

2.8 Circle 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.

2.9 User shall not rent, lease, loan, sublicense, the Software to others, 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.

2.10 User acknowledges that the Software does not constitute or replace professional medical advice, nor does it replace decisionmaking. User is responsible for making all required verifications to ensure the soundness and accuracy of the suggested findings. The User agrees and understands that the image processing component is dependent on the quality, accuracy, representativeness and integrity of the inputs, and that any outputs will depend on the such inputs. User agrees and understands that Circle has no liability for any decisions resulting from the use of the Software or any outputs from the Software.

### **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 trademark, unless given express written permission by Circle.

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.

3.3 The User agrees that exclusive right, title and ownership of all Intellectual Property remains with Circle 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 or the User or one of the User's employees, agents or contractors and any Intellectual Property provided to the User while Circle or its agent provides Support Services or fulfils any obligation under this Agreement. For the avoidance of doubt, the preceding sentence does not grant acquire title or interest in the data processed through the Software.

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.

## **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 agrees to abide by the reasonable requested 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:

1. 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.

4.7 Circle shall have no liability whatsoever for customer data with respect to such data's accuracy, quality, compliance with third party Intellectual Property and compliance with applicable laws, including privacy requirements such as consent. User agrees and understands that the customer data is hosted locally, and that User is solely responsible for the confidentiality, integrity and availability of customer data in the local servers of User. User is solely responsible for responding to individuals' rights requests and for performing an independent privacy risk assessment regarding the use of the Software, if required by applicable laws. Notwithstanding the foregoing, Circle shall deploy commercially reasonable efforts to share with User all reasonably necessary information for such purposes.

4.8 User agrees and acknowledges that the IT specifications for the use of the Software are materially as set forth in the Documentation, and User is responsible for ensuring that the Software can be installed in its IT infrastructure prior for acquiring the Software.

## **ARTICLE 5 - REPRESENTATIONS AND WARRANTIES & LIMITATIONS OF LIABILITY**

5.1 The Parties represent and warrant to each other that:

- 1. 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 represents that it is legally capable of providing support to the User as required by the terms of this Agreement.

5.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW CIRCLE DOES NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOFTWARE. THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED "AS IS", "AS AVAILABLE" AND "WHERE IS". EXCEPT AS SET FORTH IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED WITHOUT ANY REPRESENTATION AND/OR WARRANTY OF ANY KIND AND CIRCLE MAKES NO OTHER REPRESENTATIONS, CONDITIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY, LEGAL OR OTHERWISE REGARDING THE ACCURACY, RELIABILITY OR COMPLETENESS OF THE CONTENT, OUTPUTS OR DATA WHICH ARE DERIVED FROM OR RESULTS FROM THE USE OF THE SOFTWARE, AND EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT . THE CUSTOMER HEREBY WAIVES ANY LEGAL WARRANTY EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT.

5.4 TO THE EXTENT PERMITTED BY LAW, CIRCLE'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 MARKET VALUE TO USE THE SOFTWARE FOR 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.

5.5 Circle 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.

5.6 The User agrees to indemnify and hold harmless Circle, its employees, agents and assigns from and against any costs, loss, damages, claims or expenses resulting from the User's 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 email, 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

Circle Cardiovascular Imaging Inc.

Attention: Licensing

Suite 1100, 800 5th Avenue SW

Calgary, Alberta T2P 3T6

Canada

USER

Address as laid out the Statement.

6.2 Notices will be deemed to be received:

1. on the first date of delivery if personally delivered or couriered;
- (b) on the day of dispatch if sent by 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 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, 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.

7.2 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.

### 7.3     Contents of Agreement.

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

### 7.4     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.

### 7.5     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.

### 7.6     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.

### 7.7     Force Majeure

Circle 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's reasonable control, whether similar or dissimilar to the foregoing. The User or Circle shall notify the other promptly of any material delay.

### 7.8     Agreement to Terms & Conditions

**IN WITNESS WHEREOF, the User has caused this Agreement to be executed by their respective duly authorized representative, and have duly delivered and executed this Agreement, by signing Statement or downloading the Software.**

**Schedule A**

**Technical Support Protocol**

**SUPPORT CONDITIONS AND PROTOCOL (“Support” or “Support Services”)**

User agrees that support is only available during hours of Support (“Hours of Support”) as follows:

North America:	8:00A.M - 5:00 P.M Mountain Standard Time (UTC – 7) Monday through Friday, inclusively, excluding statutory holidays in the Province of Alberta, Canada;
Europe:	8:00A.M - 5:00 P.M Central European Time (UTC – 0) Monday through Friday, inclusively, excluding statutory holidays in the United Kingdom.
Asia:	8:00A.M - 5:00 P.M Malaysia Time Zone (UTC + 8) Monday through Friday, inclusively, excluding statutory holidays in Malaysia.

Circle provides an online assistance portal for the User located at <https://www.watchman.com/en-us-implanter/truplan.html>.

User agrees to file reports of perceived defects using the web-based facility(ies) accessible through WATCHMAN TruPlan’s web site address at <https://www.watchman.com/en-us-implanter/truplan.html> at which time the defect becomes a reported defect. User may also contact Circle customer support directly by phone at +1 (403) 338-1870 or by e-mail at [support@circlecv.com](mailto:support@circlecv.com). User agrees and acknowledges that a solution to a reported defect may require Circle support personnel to obtain direct access to the software.

User agrees that all correspondence between Circle and User will go through the mutually agreed upon channel(s).

## **Support Protocol**

**Tier 1.** Circle shall provide an initial response to User within four (4) business hours. Circle and the User will mutually agree upon a categorization of the User's problem based on the categories below once Circle 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 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. Following the initial response and the categorization of the problem, Circle will respond in accordance with the response time outlined in the Figure 1.0 - Response Time as seen below.

### Category 1—'Highest'

The software is unusable for normal operations, for example:

1. 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 deteriorates unduly 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:

1. the software performs most, but not all of its documented function;

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:

1. 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—'Lowest'**

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:

1. 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.

Within Tier 1 support, Circle shall provide a technical support representative that is equipped to respond to inquiries not resolved through the online assistance portal. The technical support representative shall be knowledgeable of Software, its documentation, system requirements, and installation/configuration. The technical representative shall further assist with identifying and recording software defects.

Figure 1.0 – Response Time

Problem Category	Response Required	Time after which contact may be made
1	Initial	2 hours
	<i>Updates</i>	<i>1 Day</i>
2	Initial	8 hours
	<i>Updates</i>	<i>2 Days</i>
3	Initial	2 days
	<i>Updates</i>	<i>1 week</i>
4	Initial	7 days
	<i>Updates</i>	<i>1 month</i>

All Response Times will be subject to User using the proper channels as articulated above.

**Tier 2.** Should the Tier 1 support protocol not bring resolution to a material issue, Circle, and User may mutually agree to escalate the issue to Tier 2 support as follows. The Circle technical representative shall provide the issue information to a designated Circle software engineer and/or product specialist support personnel, as is appropriate. Such personnel shall be able to assist with identifying and recording software defects.

## **Schedule B**

### **EXCLUDED SERVICES**

The following are excluded services that do not fall within this agreement:

1. Support or training on, any software not supplied by Circle;
2. Support or training on, any third-party software supplied by Circle;
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 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;
6. Problems or inconsistencies with the computer system in 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;
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, and nightly back-ups;
10. Support or training required by personnel other than End-User's named liaisons; or
11. Support requests outside the Hours of Support.