

DETERMINAZIONE DEL DIRETTORE DELLA S.C. ACQUISTI BENI E SERVIZI

N. 1616 _____

DEL 12.10.2021 _____

Oggetto: Aggiudicazione Procedura negoziata ai sensi dell'art. 36 comma 2, lett. "a", del D.Lgs. n. 50/16, per la fornitura di una licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici, destinato alla S.C. Radiologia del P.O. San Michele. Spesa complessiva biennale € 5.589,00 IVA esclusa. CIG ZF133365A7. Operatore economico Circle Cardiovascular.

PDTD/2021/1693

Publicata all'Albo Pretorio dell'Azienda a partire da 12.10.2021 _____ per 15 giorni consecutivi e posta a disposizione per la consultazione

S.S.D. Affari Generali Ufficio Delibere

La presente Determinazione Dirigenziale prevede un impegno di spesa a carico dell'ARNAS G. Brotzu

SI NO

IL DIRETTORE DELLA S.C. A.B.S.

- RICHIAMATO** il Dlgs n. 50/16 e s.m.i.;
- VISTA** la Deliberazione n. 589 del 15/04/2015, con la quale è stata conferita delega in diversi ambiti di attività al Direttore della SC Acquisti, Beni e Servizi;
- DATO ATTO** che con Delibera n. 673 del 30/04/20, si è provveduto ad integrare ulteriormente gli atti di competenza del Direttore della SC Acquisti, Beni e Servizi, rispetto a quelli di cui alla Deliberazione n. 589 del 15/04/20;
- ACQUISITA** la nota prot. n. 6552 del 21/07/21, agli atti di questo ufficio, con la quale il Direttore della S.C. Tecnologie Informatiche e Servizi Informativi ha richiesto l'acquisto della licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici, destinato alla S.C. Radiologia del P.O. San Michele;
- ATTESO** che si è reso necessario provvedere in merito con Procedura Negoziata ai sensi dell'art. 36 comma 2, lett. "a", del D.Lgs. n. 50/16;
- CONSIDERATO** che, ai sensi dell'art. 36, comma 6 del D. Lgs. n. 50/2016, è possibile procedere all'acquisizione della succitata fornitura attraverso una Richiesta di Offerta (RDO) sul Mercato Elettronico della Piattaforma MEPA;
- VERIFICATO** che sulla piattaforma elettronica MEPA è presente la categoria merceologica del prodotto di cui trattasi;
- ATTESO** che si è proceduto alla pubblicazione della RDO 2873805, invitando gli operatori economici AC Computer, Athena srl, Circle Cardiovascular, Extra Informatica srl, Faticoni, Passamonti srl e Tecno desk, a presentare un preventivo;
- RILEVATO** che entro il termine di scadenza, previsto per il giorno 04.10.2021 alle ore 10:00, è pervenuta l'offerta dell'operatore economico Circle Cardiovascular;
- VISTA** la relazione dell'utilizzatore, il quale ha espresso parere di conformità relativamente all'offerta dell'operatore economico Circle Cardiovascular (All. "A" fg. 1);
- VISTA** l'offerta dell'operatore economico Circle Cardiovascular (All. "B" fg. 15);
- RITENUTO** pertanto di dover aggiudicare all'operatore economico Circle Cardiovascular la Procedura negoziata ai sensi dell'art. 36 comma 2, lett. "a", del D.Lgs. n. 50/16, per la fornitura di una licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici, destinato alla S.C. Radiologia del P.O. San Michele, per una spesa complessiva biennale pari a € 5.589,00 IVA esclusa;

Segue Determinazione n. 1616 del 12.10.2021

D E T E R M I N A

- di aggiudicare all'operatore economico Circle Cardiovascular la Procedura negoziata ai sensi dell'art. 36 comma 2, lett. "a", del D.Lgs. n. 50/16, per la fornitura di una licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici, destinato alla S.C. Radiologia del P.O. San Michele, per una spesa complessiva biennale pari a € 5.589,00 IVA esclusa;
- di dare atto che la suddetta spesa di € 5.589,00 IVA esclusa, verrà imputata sul conto n. A506010107, centro di costo n. 690221;
- di disporre che l'esecuzione del relativo contratto avrà inizio contestualmente alla pubblicazione del presente atto, ai sensi dell'art. 32 comma 13 del D.Lgs n.50/16;
- di autorizzare la S.C. Contabilità, Bilancio e Controllo di Gestione all'emissione dei relativi ordini di pagamento dietro la presentazione della documentazione giustificativa recante l'attestazione di regolarità della fornitura da parte degli Uffici competenti.

Il Direttore della S.C. Acquisti, Beni e Servizi
Avv. Federica Pillai

Resp. Sett. Area Acquisti Tecnologie e Gestione della Programmazione Aziendale

Dott.ssa Jessica Troncia

Ass. Amm. Dott.ssa F.Aru



F.A.

Procedura negoziata ai sensi dell'art. 36 comma 2, lett. "a", del D.Lgs. n. 50/16, per la fornitura di una licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici, destinato alla S.C. Radiologia del P.O. CAO. Spesa complessiva € 5.589,00 IVA esclusa. CIG ZF133365A7.

VERBALE ATTESTANTE PARERE DI CONGRUITA'

Viste le schede tecniche della ditta **CIRCLE CARDIOVASCULAR**, relative alla fornitura in oggetto, si attesta quanto segue:

Il software proposto è conforme alle caratteristiche richieste, poiché permette di segmentare regioni su immagini RM multifase e produrre le relative curve di segnale T2 star. Fornisce inoltre metodi di correzione del fitting.

Il Direttore S.C. Tecnologie Informatiche e Servizi Informativi

Fig. Andrea Alimonda

Il Direttore della S.C. Radiologia
Dott. Paolo Siotto

OFFERTA ECONOMICA RELATIVA A:	
Numero RDO	2873805
Descrizione RDO	Procedura negoziata ai sensi dell'art. 36 comma 2, lett. "a", del D.Lgs. n. 50/16, per la fornitura di una licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici, destinato alla S.C. Radiologia del P.O. San Michele. Spesa complessiva € 5.589,00 IVA esclusa. CIG ZF133365A7.
Criterio di Aggiudicazione	Gara al prezzo piu' basso
Lotto	1 (licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici)
CIG	ZF133365A7
CUP	Non inserito

AMMINISTRAZIONE	
Nome Ente	AZIENDA OSPEDALIERA G. BROTZU CAGLIARI
Codice Fiscale Ente	02315520920
Nome ufficio	SERVIZIO ACQUISTI BENI E SERVIZI
Indirizzo ufficio	Piazzale Ricchi 1 - CAGLIARI (CA)
Telefono / FAX ufficio	070539441 /
Codice univoco ufficio per Fatturazione Elettronica	FIEFE2
Punto ordinante	PILLAI FEDERICA / CF:PLLFRC75H49B354P
Firmatari del contratto	GREGORY OGRODNICK / CF:GRDGGR55S02Z401Q

FORNITORE	
Ragione o Denominazione Sociale	CIRCLE CARDIOVASCULAR IMAGING B.V
Forma di partecipazione	Singolo operatore economico (D.Lgs. 50/2016, art. 45, comma 2, lett. a)

Codice Identificativo dell'Operatore Economico	NL823086884B01
Codice Fiscale Operatore Economico	NL823086884B01
Partita IVA di Fatturazione	
Sede Legale	- SINGELSTAETE SINGEL 250 - 1016 AB AMSTERDAM, THE NETHERLANDS - AMSTERDAM (PAESI BASSI)
Telefono	14033381870
Posta Elettronica Certificata	CIRLECARDIOVASCULAR@LEGALMAIL.IT
Tipologia impresa	Società costituita in altro Stato Membro UE
Numero di iscrizione al Registro Imprese/Nome e Nr iscrizione Albo Professionale	823086884
Data di iscrizione Registro Imprese/Albo Professionale	01/02/2011
Provincia sede Registro Imprese/Albo Professionale	EE
PEC Ufficio Agenzia Entrate competente al rilascio attestazione regolarità pagamenti imposte e tasse:	DP.2MILANO@PCE.AGENZIAENTRATE.IT
CCNL applicato / Settore	N.A. / INFORMATION TECHNOLOGY
Legge 136/2010: dati rilasciati dal Fornitore ai fini della tracciabilità dei flussi finanziari	
Nessun dato rilasciato	

DATI DELL'OFFERTA	
Identificativo univoco dell'offerta	7377950
Offerta sottoscritta da	OGRODNICK GREGORY
Email di contatto	CIRLECARDIOVASCULAR@LEGALMAIL.IT
L'Offerta sarà irrevocabile ed impegnativa fino al	03/12/2021 14:00
Contenuto dell'Offerta - Oggetto di Fornitura (1 di 1)	
Bando	Procedura negoziata ai sensi dell'art. 36

	comma 2, lett. "a", del D.Lgs. n. 50/16, per la fornitura di una licenza biennale del software per la misurazione del T2 nei tessuti dei pazienti talassemici, destinato alla S.C. Radiologia del P.O. San Michele. Spesa complessiva € 5.589,00 IVA esclusa. CIG ZF133365A7.
Categoria	Software per elaborazione di immagini
Descrizione Oggetto di Fornitura	Software per elaborazione immagini
Quantità	1
PARAMETRO RICHIESTO	VALORE OFFERTO
Marca	CVi42
Codice articolo produttore	T2IP511
Nome commerciale del Software per elaborazione immagini*	T2* Iron Quantification
Descrizione tecnica	T2*Iron Quantification and DICOM Viewer
Tipo contratto*	Acquisto
Tipo licenza e numero utenti	Permanent Package license # 1
Compatibilità con Sistema Operativo	Windows/OS
Contenuto della confezione	Non Applicabile. On Line
Unità di misura*	1
Versione ed Edizione	5.13
Lingua	Inglese
Prezzo*	5,589
Offerta economica per il lotto 1	
Formulazione dell'offerta economica	Valore economico (Euro)
Valore dell'offerta per il Lotto 1	5,58900000 Euro (cinque/58900000 Euro)
Oneri di Sicurezza non oggetto di ribasso e non compresi nell'Offerta: <i>(non specificati)</i>	
Costi di Sicurezza aziendali concernenti l'adempimento delle disposizioni in materia di salute e sicurezza sui luoghi di lavoro di cui all'art. 95, comma 10, del D. Lgs. n. 50/2016, compresi nell'Offerta: 0,10000000 (Euro)	

Data Limite per Consegna Beni / Decorrenza Servizi	10 giorni dalla stipula
Dati di Consegna	P.le a. ricchi, 1 Cagliari - 09134 (CA)
Dati e Aliquote di Fatturazione	Codice IPA di Fatturazione Elettronica: FIEFE2 . Aliquote: secondo la normativa vigente
Termini di Pagamento	60 GG Data Ricevimento Fattura

SITUAZIONE DI CONTROLLO DI CUI ALL'ART. 2359 C.C.

L'operatore economico non si trova rispetto ad un altro partecipante alla presente procedura di affidamento, in una situazione di controllo di cui all'articolo 2359 del codice civile o in una qualsiasi relazione, anche di fatto, che comporti che le offerte sono imputabili ad un unico centro decisionale

SUBAPPALTO

Il Fornitore dichiara che, in caso di aggiudicazione, per il lotto "1" non intende affidare alcuna attività oggetto della presente gara in subappalto

Quote # Q-08800

Circle Cardiovascular Imaging BV
 Singel Staete
 Singel 250
 1016 AB Amsterdam
 The Netherlands

Sales: +31 (800) 265 8955
 Support: +31(800) 265 8982
 europe@circlecvi.com



Contact Information

Prepared By	Gaetano Fiumano	Contact Name	Federica Pillai
Phone	+39 3922520151	Phone	
Email	gaetano.fiumano@circlecvi.com	Email	
Quote Created Date	19-Jul-2021	Expiration Date	31-Mar-2022

Customer Address Information

Bill To	Azienda Ospedaliera Brotzu Cagliari Cagliari Italy	Ship To	Azienda Ospedaliera Brotzu Cagliari Cagliari Italy
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Quote Line Items

Capex

Product Code	Product	Line Item Description	Quantity	List Unit Price	Total Discount	Total Price
T2IP511	cvi42 Iron Quantification	Iron Quantification and DICOM Viewer Package Purchase of T2 Iron Quantification license # 1	1	EUR 4.860	EUR 0	EUR 4.860
T2IT511	TAP T2 Iron Quantification	TAP T2 Iron Quantification	1,00	EUR 729	EUR 0	EUR 729
Capex LIST AMOUNT:						EUR 5.589
Capex TOTAL:						EUR 5.589

Order Terms

Length of contract (yrs)	2	Payment Terms	Net 60	Quote Total:	EUR 5.589
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Quote Acceptance

ALL INFORMATION IN THE SALES ORDER QUOTE IS CONFIDENTIAL AND INTENDED FOR THE CUSTOMER ONLY.
 VAT will be charged at the applicable rate to all EU Customers if no VAT registration number is provided at the time of Sale. In case a Valid EU VAT number is supplied then the Purchase will be subject to Reverse Charge under EC Directive Article 196

By signing this quote, sending a purchase order for the corresponding quote, or downloading the software, Customer agrees to the Software Purchase Terms and Conditions and Customer agrees that the software can only be provided only in the languages mentioned below.

Customer
 Authorized Signature: _____
 Name: _____
 Title: _____

***The signing authority warrants that they are authorized to sign on behalf of the Customer. By signing the Sales Order Quotation, the Customer agrees to all Terms and Conditions associated with this purchase.

Enclosed documents: Software Usage Terms & Conditions
 Software available in the following languages: CHS-Chinese (Simplified) / CHT-Chinese(Trad) / NL-Dutch / FR-French / DE-German / IT-Italian / JA-Japanese / KO-Korean / NO-Norwegian / PT(BR)-Portuguese(Brazil) / ES-Spanish / EN-English

Software Purchase Terms and Conditions

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

Circle Cardiovascular Imaging Inc. a corporation incorporated pursuant to the laws of the Province of Alberta, having an office at 1100, 800 5th Avenue SW, Calgary, Alberta, Canada (hereinafter referred to as "Circle")

- and -

Azienda Ospedaliera Brotzu having an office at , Cagliari, Italy (hereinafter referred to as the "User")

1. ARTICLE 1 - DEFINITIONS AND INTERPRETATION

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

- 1.1.1. "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;
- 1.1.2. "Concurrent User" or CCU means:
 - 1.1.2.1. a User that can utilize the Software from any computer meeting the minimum specifications, and
 - 1.1.2.2. has the client application of the Software loaded on said computer; and
 - 1.1.2.3. is located at the designated site(s);
- 1.1.3. "Confidential Information" means, subject to Article 8, 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;
- 1.1.4. "Defect" is an error in coding or logic that causes a program to malfunction or to produce incorrect/unexpected results and is a material deviation from the functionality laid out in the user manuals;
- 1.1.5. "Designated Computers" refers those computers that can run the Software, via a unique license assignment;
- 1.1.6. "Disaster" refers to a catastrophic and usually external event that can affect an entity's ability to continue to do business;
- 1.1.7. "Disaster Recovery" is a plan, procedures and processes for being able to re-establish the ability of an entity to continue to do business including but not limited to business continuity and/or backup management. Re-enabling of computer systems infrastructure is fundamental to Disaster Recovery;
- 1.1.8. "Documentation" means the user manuals and any other documentation, written or otherwise provided by Circle to accompany the Software;
- 1.1.9. "Effective Date" means the date the User first attempts to install the Software regardless if it is a purchased, evaluation, or training version;
- 1.1.10. "Evolve" means the specific sales offering for User's that meet the specific criteria whereby the User is permitted to freeze their current perpetual licenses for use of the modules of the Software as outlined in the Sales Order Quotation, on a subscription basis.
- 1.1.11. "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;
- 1.1.12. "License" has the meaning ascribed to it in Section 2.1 of this Agreement;
- 1.1.13. "License Key" is a data string that verifies authorized software product access;
- 1.1.14. "Non-Permitted Uses" means using the software for any use other than Permitted Uses and includes, without limitation, illegal or immoral use, reverse engineering, disassembling, decompiling or otherwise disseminating the source code from the Software;
- 1.1.15. "Party" means one of either Circle or the User whereas "Parties" means both Circle and the User;
- 1.1.16. "Permitted Uses" includes:
 - 1.1.16.1. using the Software only in the furtherance of the internal operations of the End User and not for the use or benefit of third parties; and

- 1.1.16.2. using the Software for cardiovascular image analysis only at designated site(s) as indicated in the Documentation and corresponding regulatory approvals;
- 1.1.17. "Proper Use" is predicated on and includes proper installation as per installation instructions provided with the product. Proper Use means that the product is used within cardiac post processing workflow; that the product is used by authorized personnel through a facility that is licensed to use the product(s);
- 1.1.18. "Sales Order Quotation" means the document given to the User or User institution with the financial and miscellaneous terms;
- 1.1.19. "Stand Alone End User" or SA means:
- 1.1.19.1. A User that can utilize the Software from a single designated computer meeting the minimum specifications, and
- 1.1.19.2. Has the client application of the Software loaded on said computer, and
- 1.1.19.3. Is designated to a single End User;
- 1.1.20. "Software" includes but is not limited to cvi⁴², report⁴², and ADAS3D, or any other computer software, whichever is delivered to the User from purchase or for evaluation, as well as any updates, plugins, new releases or versions, modifications or enhancements, provided by Circle to the User pursuant this Agreement or any other agreement between the User and Circle and any documentation or manuals provided by Circle to assist with the use of the computer software or updates;
- 1.1.21. "Technology Assurance Program" or TAP means the software maintenance and technical support program that is inclusive of the following:
- 1.1.21.1. Software Defect fixes through updates, and upgrades;
- 1.1.21.2. Initial remote clinical application software training in order to understand how the product is used within cardiac post processing workflow; and
- 1.1.21.3. Subsequent clinical application software training (2hrs remote) in conjunction with an upgrade / update of the product;
- 1.1.22. "TAP+" means an elevated version of the TAP, that is inclusive of all offerings within TAP, and in addition the offering as described in the Sales Order Quotation in the event the User purchases TAP+;
- 1.1.23. "Hours of TAP" means the days and hours TAP support is provided, see Schedule "A" for more information;
- 1.1.24. "Training" is provided for clinical use of the product, often referred to as just "clinical application" training;
- 1.1.25. "User" any person and/or healthcare institution including its affiliates, utilizing the Software for research and/or clinical purposes;
- 1.2. Singular, plural, etc.; Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter 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" – TAP Support Conditions and Protocol
 Schedule "B" – Excluded Services
 Schedule "C" – Notices
 Schedule "D" – Tax Status Form
 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. Forbearance 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.

2. ARTICLE 2 - GRANT OF LICENSE

- 2.1. The license type for the Software will be either in capital purchase or subscription format. This will be confirmed in the Sales Order Quotation.
- 2.2. Circle hereby grants the User, a non-exclusive, non-transferable, non-assignable, license(s) to use the Software (the "License") at the designated site(s) according to the Sales Order Quotation.

- 2.3. Capital Purchase License Type. The User's license to use the Software will continue in perpetuity unless earlier terminated in accordance with the terms of this Agreement.
- 2.4. Subscription License Type. The User's license to use the Software will continue until the expiration of the subscription period identified in the Sales Order Quotation unless earlier terminated in accordance with the terms of this Agreement. Software upgrades and support as outlined in Schedule A shall be included within the price and grant of the subscription licenses.
- 2.5. This Agreement may not be assigned or transferred by the User.
- 2.6. 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 the User agrees to make this information available to Circle on request.
- 2.7. Any such additional software/feature purchased will be governed by the terms and conditions of this Agreement and subject to payment to Circle of the applicable fees at the then current rate.
- 2.8. In relation to the capital purchase license in Section 2.3, Circle will provide license key(s) from the date of invoice, subject to payment in full of the fees by the User to Circle as outlined in the Sales Order Quotation. Notwithstanding this provision if the User pays for TAP beyond one (1) year, the license grant will be for the period of time in which TAP has been paid.
- 2.9. In relation to the subscription license in Section 2.4, Circle will provide license key(s) for the duration of the subscription period(s) in the Sales Order Quotation starting from the date of the corresponding invoice(s) subject to payment terms of the Sales Order Quotation.
- 2.10. In the event the User subscribes to the Evolve product offering as identified in the Sales Order Quotation, each of the User's previously purchased perpetual licenses shall be replaced with the Evolve product offering. In the event the User terminates their access to the Evolve product offering, Circle shall reinstate their previously purchased perpetual licenses in the most updated version available on a perpetual basis. As the User is terminating Evolve which is inclusive of TAP fees, upon termination of Evolve, TAP fee payments will be required for support of the previously purchased perpetual Software licenses.
- 2.11. 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 newer versions for the benefit of any corrections.
- 2.12. Circle hereby grants the User a limited, non-exclusive, non-transferable 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 the User make more copies than the number of Designated Computers, plus one additional back up copy.
- 2.13. The User may, in addition to the foregoing, modify, adapt, translate and localize the Documentation, provided the Documentation remains in all cases technically accurate, complete and with all original IP and copyright maintained.
- 2.14. User shall not rent, lease, loan, sublicense, distribute sell, or create (i) derivative works of the Software, or (ii) other software that performs substantially the same processes, and obtains equivalent results as, the Software. User shall not copy or reproduce the Software.

3. 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, and/or its partners, at all times, including, but not limited to, any backups of the Software made by the User, whether authorized or not, any updates, changes, modifications, enhancements or improvements made to the Software whether made by Circle or the User or one of the User employees, agents or contractors and any Intellectual Property provided to the User while Circle or its agent(s) provides TAP or any independent additional services or fulfils any obligation under this Agreement.
- 3.4. The User covenants that it will not sell, assign, transfer, duplicate, destroy or encumber the Intellectual Property except as expressly permitted by the terms of this Agreement. The User shall not, with the use of the Software, attempt to develop any software product that contains the "look and feel" of any of the Software.

4. ARTICLE 4 – TAP (See Schedule “A” for more information)

- 4.1. Circle agrees to provide TAP to the User subject to payment in full of the TAP fees by the User to Circle as outlined in any User Sales Order Quotation that is in effect.
- 4.2. Unless otherwise specified in the Sales Order Quotation, TAP is included with the purchase of a capital license for one (1) year starting on the date of invoice of the Software. Additional TAP can be purchased by User to extend TAP support.
- 4.3. TAP is included in the price of a subscription license.
- 4.4. Circle agrees to provide TAP+ subject to the User's payment in full of TAP+.

- 4.5. The User agrees that TAP will only apply to Software properly installed as per specifications, per license for the designated site(s).
- 4.6. The User agrees that Circle may assign its duties to provide TAP to a third party or retain an independent contractor to provide TAP without prior consent of User. If Circle does retain a third party for administration of TAP, Circle will remain responsible for said third party.
- 4.7. The User agrees to abide by and follow the TAP Conditions and Protocol as set out in Schedule "A" .
- 4.8. Circle' s obligation to provide TAP under this Agreement is contingent upon proper use of the Software. Circle is under no obligation to provide any TAP according to the terms of this Agreement as a result of:
 - 4.8.1. improper installation or operation as per specification by the User;
 - 4.8.2. misuse, abuse or negligent use, repair, alteration or improper storage or any use by the User which does not conform to the specific or general instructions of Circle or to the provisions of the Software' s documentation including installation and user guide(s);
 - 4.8.3. any Non-Permitted Uses of the Software or use of the Software by any unauthorized third party;
 - 4.8.4. causes external to the Software or if the Software has been subjected to an extreme power surge or electromagnetic field, whether or not through the fault of the User; or
 - 4.8.5. the User' s failure or refusal to implement Updates recommended by Circle.
- 4.9. The User agrees and understands, as it relates to a perpetual license, once the User allows TAP to expire through non-payment or otherwise, Circle' s responsibility to support the Software also expires and the User is not entitled to any TAP services including upgrades. Upon the TAP expiration the User' s use of the Software is solely the responsibility of the User and Circle shall bare no responsibility.

5. ARTICLE 5 – FEES

- 5.1. The User agrees to pay Circle License 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 issues of a purchase order by the User to Circle and in the case of subscription fees for future years, invoices shall be issued in advance on the annual anniversary date of the signing of the Sales Order Quotation or the receipt of purchase order. Should User fail to pay the invoice within the thirty (30) day period, Circle may terminate this Agreement and as a result of such termination User shall delete the software and provide a certificate by an authorized legal representative of the User that such deletion occurred.
- 5.2. The User agrees to pay Circle for any additional software accessibility (i.e. additional Users or modules) acquired by the User under this Agreement.
- 5.3. The User acknowledges that all fees are exclusive of any taxes and the User agrees that it is responsible for the payment of any applicable taxes on such fees.
- 5.4. The User agrees to pay Circle TAP fees according to the Sales Order Quotation.
- 5.5. The User agrees to pay Circle for TAP fees for additional licenses acquired by the User under this Agreement.

6. ARTICLE 6 – ADDITIONAL SERVICES

- 6.1. Circle agrees to provide services to the User for the Term of this Agreement, subject to payment of the service fees by the User to Circle.
- 6.2. If additional service is required, Circle may provide such services at its sole discretion subject to Circle's standard rates (which may be amended from time to time in Circle's sole discretion). If the provision of services requires Circle to incur travel expenses, then these travel expenses will be invoiced additionally to the service fee. If the provision of additional services requires training then the customer must provide suitable training facilities.
- 6.3. The User agrees that Circle may assign its duties to provide services to a third party or retain an independent contractor to provide services.
- 6.4. The User agrees that services are only available or worked on during Hours of TAP.
- 6.5. The User agrees to pay Circle in full for the service fees within thirty (30) days of the date of any invoices received from Circle or its agent for the provision of service, without set-off, deduction or abatement.

7. ARTICLE 7 – TAXES

- 7.1. The User agrees that they will identify their tax status to Circle as per Schedule D, as well as any requirements for federal, state, provincial, local or other taxes (whether sales tax or other), that need to be reflected in the purchase upon invoice.
- 7.2. The User agrees that failure to identify their tax status with regards to sales tax exemption may create a future tax liability. If such tax liability is identified, the User agrees to pay any additional amounts owing as assessed by the applicable taxation authorities.

8. ARTICLE 8 - CONFIDENTIALITY AND PROTECTION OF PERSONAL HEALTH INFORMATION

- 8.1. The Parties each agree to hold the other Party's Confidential Information in the strictest confidence, subject to the exceptions in this Article, and not use it for any purpose other than the purpose as it was intended upon disclosure.
- 8.2. 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.
- 8.3. 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.
- 8.4. Subject to disclosure by User to the appropriate Circle personnel, Circle agrees to abide by the reasonable requirements of User policies for the protection of personal health information collected, used, or disclosed by the Software.
- 8.5. For the purposes of this Agreement, Confidential Information does not include information, which is:
 - 8.5.1. available to the public other than by breach of this Agreement by the recipient thereof;
 - 8.5.2. rightfully received by the recipient from a third party without confidential limitations;
 - 8.5.3. known to the recipient prior to first receipt of the information from the discloser; or
 - 8.5.4. disclosed by a discloser to a third party without restriction on disclosure.

9. ARTICLE 9 - REPRESENTATIONS AND WARRANTIES

- 9.1. The Parties represent and warrant to each other that:
 - 9.1.1. they are duly incorporated and subsisting under the laws of their place of incorporation;
 - 9.1.2. they have the power and are authorized to enter into this Agreement;
 - 9.1.3. they will not enter into agreements with third parties, which will interfere with the compliance of the terms and conditions of this Agreement.
- 9.2. Circle represents that it is legally capable of providing support to the User as required by the terms of this Agreement.
- 9.3. THE SOFTWARE AND ANY SUPPORTING DOCUMENTATION, ALONG WITH THE TAP, SERVICES OR ADDITIONAL SERVICES ARE PROVIDED "AS IS". CIRCLE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXCEPT IN SECTIONS 9.1, 9.2, AND 9.4, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF: (a) MERCHANTABILITY; (b) FITNESS FOR A PARTICULAR PURPOSE; (c) NON-INFRINGEMENT; OR (d) ERROR-FREE OPERATION.
- 9.4. Circle represents, warrants, and covenants that TAP shall be performed in accordance with professional standards.
- 9.5. The entire risk of using the Software and its suitability, quality and performance resides with the User if the User does not adhere to the Permitted Uses.
- 9.6. 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 fees actually paid by the User during the current year from the date of the event giving rise to the claim except for intentional misconduct and gross negligence. The limitation of liability provisions of this agreement reflects 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.
- 9.7. 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.
- 9.8. 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 use of the Software.

10. ARTICLE 10 - GENERAL TERMS

- 10.1. 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. 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 ensures to the benefit of and is binding upon the permitted successors and assigns of the Parties.

- 10.2. **Governing Law.** This Agreement is conclusively deemed to be a contract made under the laws of the Province of Alberta, in Canada, and for all purposes is to be construed in accordance with the laws of the Province of Alberta, in Canada without regard to principles of conflicts of law.
- 10.3. **Audit of Use.** Circle shall have the right, with reasonable notice, to audit the User's use of the Software, Circle will bear the cost of the audit.
- 10.4. **Contents of Agreement.** The contents of this Agreement are proprietary and confidential to Circle.
- 10.5. **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 after receipt of the Software.
- 10.6. **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.
- 10.7. **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.
- 10.8. **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 User; acts or failures to act of civil or military authority; governmental priorities; fires; 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.
- 10.9. **Agreement to Terms & Conditions.** The installation and/or use of the Software indicates User agrees to all Circle Software Terms and Conditions.
- 10.10. If any dispute occurs between the parties relating to the application, interpretation, implementation or validity of this Agreement, the Parties agree to seek to resolve the dispute or controversy through mediation before pursuing any other proceedings. Nothing herein shall preclude any Party from seeking injunctive relief in the event that the Party perceives that without such injunctive relief, serious harm may be done to the party. Any Party to the dispute may serve notice on the other of its desire to resolve a particular dispute by mediation. The mediator shall be appointed by agreement between the Parties or, if the Parties cannot agree within five (5) days after receipt of the notice of intention to mediate, the mediator will be appointed by ADR Chambers. The mediation will be held at a mutually agreed upon location, if no agreement can be made then mediation will take place electronically through eMediation offered by ADR Chambers. The Parties agree to attempt to resolve their dispute at mediation. The costs of the mediator and mediation services shall be shared equally by the Parties. If the dispute is conducted in good faith and has not been resolved within forty (40) days of the first day of mediation, any Party may terminate the mediation and proceed to arbitration as set out below.
- 10.11. Subject to the mediation provisions set out above, if any dispute or controversy occurs between the Parties relating to the interpretation or implementation of any of the provisions of this Agreement, the dispute will be resolved by a mutually agreed upon arbitration process in a mutually agreed upon location, if an arbitration process cannot be agreed upon then the arbitration will be conducted in a jurisdiction that is independent of the location in which either Party has an office, such a location is to be equally burdensome for each Party to access. Any Party may serve notice of its desire to refer a dispute to arbitration. Unless agreed upon otherwise, the arbitration shall be conducted by a single arbitrator. The decision arrived at by the arbitrator(s) shall be final and binding and no appeal shall lie therefrom. Judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The costs of the arbitrator shall be divided equally between the parties.

11. ARTICLE 11 - TERM AND TERMINATION

- 11.1. This Agreement may be terminated by either Party at any time if the other Party breaches a material term of this Agreement and fails to cure the breach to the satisfaction of the other Party within thirty (30) days of receiving a notice specifying the breach.
- 11.2. The duty to protect the Confidential Information and IP, as well as the provisions outlining liability, indemnification, and dispute resolution shall survive the termination of this Agreement regardless of the reason for termination and shall be binding upon the Parties, their successors and assigns.
- 11.3. Circle may forthwith terminate this Agreement if the User:
 - 11.3.1. fails to make full payment on any non-disputed amounts due hereunder within (10) days after receiving a demand notice from Circle for payment of same;
 - 11.3.2. becomes subject to bankruptcy, insolvency, receivership, or reorganization proposal, arrangement or proceeding;
 - 11.3.3. is subject to wind-up, liquidation or dissolution; or
 - 11.3.4. suspends business, abandons, attempts to transfer or gives up possession of substantially all of the User assets.
- 11.4. Upon termination of this Agreement for any reason according to 11.3, all amounts owing become immediately payable and the User agrees to provide a certificate, signed by a signing officer, that the same has occurred and Circle may, at its sole option, require the User to forthwith either destroy or return to Circle all copies of the Software, whether legal or illegal.
- 11.5. Termination of this Agreement for any reason does not affect the accrued rights or liabilities of either Party.

SCHEDULE "A" - TAP SUPPORT CONDITIONS AND PROTOCOL

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

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

To engage the support aspect of TAP, the User agrees to file reports of perceived Defects using the web based facility(ies) accessible through Circle's web site address at www.circlecvi.com at which time the Defect becomes a Reported Defect. The User may also contact Circle Customer Support by phone at +1 (403) 338-1870 or by e-mail at support@circlecvi.com. The User agrees and acknowledges that a solution to a Reported Defect may require Circle support personnel to obtain direct access to Software on the Designated Computer.

User Key Contact

The User agrees that all correspondence between Circle and User will go through the mutually agreed upon channel(s). Any failure to communicate according to this protocol may lead to deviation from the response times set out below.

Support Protocol

STEP 1. 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.

Category 1—'Highest'

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 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:

- a) 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:

- 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—'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:

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

STEP 2. Once Circle has received the information from the 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 User;
- b) results in an agreed identification of the problem category;
- c) provides an initial assessment as to the likely method to resolve the problem; and
- d) provides a satisfactory explanation of the progress being made to resolve the problem.

Problem Category	Response Required	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

SCHEDULE "B" EXCLUDED SERVICES

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

1. Support or training on, any Software not supplied by Circle;
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 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 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;
7. Disaster Recovery services of any kind.
8. Support or training related to the failure or malfunction of system hardware;
9. Technical support or training related to the addition of peripherals, device integration, import formats, setting up new users and nightly back-ups. This can be available upon request but will be charged by Circle to User on a time and materials basis;
10. Support or training required by personnel other than User's named liaisons. This can be available upon request but will be charged by Circle to User on a time and materials basis;
11. Support requests outside the Hours of TAP;
12. Performing any or all system management tasks that are associated with managing the application, managing the transfer of data between systems, when or if an upgrade has been undertaken. This can be available upon request but will be charged by Circle to User on a time and materials basis;
13. Remote application migration assistance by Circle support specialist. This can be available upon request but will be charged by Circle to User on a time and materials basis; or
14. Administrative and technical training on the Software. This can be available upon request but will be charged by Circle to User on a time and materials basis; or
15. Except as otherwise expressly provided in this Agreement, retraining the User's personnel whether in person or by telephone.

SCHEDULE "C" NOTICES

Any notice contemplated to be given to either Party under this Agreement must be in writing and may be delivered personally or sent by fax, e-mail, 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.
Email: info@circlecvi.com
Attention: Finance
Suite 1100, 800 5th Avenue SW
Calgary, AB T2P 3T6
CANADA

USER

Azienda Ospedaliera Brotzu
Cagliari, Italy

Notices will be deemed to be received:

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