

Conditions of Transfer and End-User License Agreement for ARANZ Medical Limited and Silhouette® Product Suite

Effective Date: 1 July 2017

IMPORTANT – READ CAREFULLY: This Conditions of Transfer and End User License Agreement (CTEULA) constitutes a legal agreement between You and ARANZ MEDICAL LIMITED, covering (1) the sale or leasing of one or more units of **Silhouette Hardware**, and (2) the licensing of **Silhouette Software**, in the SILHOUETTE® product suite. This CTEULA also covers the circumstance in which one of more unit(s) of Silhouette Hardware is/are loaned to You for evaluation, research or other purposes.

PLEASE READ THIS CTEULA CAREFULLY BECAUSE USING THE SILHOUETTE HARDWARE OR THE SILHOUETTE SOFTWARE WILL BE DEEMED TO BE ACCEPTANCE THAT THEY ARE BEING USED ON THE FOLLOWING TERMS.

1. **Defined Terms.** As used in this CTEULA and in the Terms of Use, the following terms have the following meanings:

AML means ARANZ Medical Limited.

Image Capture Unit means an image capture device, and includes a Silhouette Device, but also includes a smart phone or tablet provided by You running SilhouetteLite or SilhouetteLite+.

Module means an add-on, option or feature, which is associated with a Silhouette Software product but is licensed for an additional license fee.

Upgrade means a subsequent release of a Silhouette Software product which AML may offer to license holders with a current paid up Support Contract at no additional license fee and may include bug fixes and new functionality.

Order Form means the contract, quotation or purchase order accepted by AML designating which unit(s) of Silhouette Hardware (if any) are being sold, leased or loaned to You and which units of Silhouette Software (if any) are being licensed to You.

Point of Care Access License means a license to SilhouetteCentral that permits specified Image Capture Units to communicate with an instance of SilhouetteCentral.

Products means, collectively, any Silhouette Device or Silhouette Accessory sold, leased or loaned to You, any Silhouette Software licensed to You, and any Support or Services purchased by You.

Services means any additional services purchased by You from AML (and/or its distributor) over and above those services included in Your **Support Contract** (see Part 4 of the Terms of Use for more detail).

Silhouette Accessory means accessory hardware produced by AML, other than the Silhouette Devices, and includes the SilhouetteLite+ Sensor.

SilhouetteCentral means the executable code version of the application software for the storage and organization of wound data, produced by AML under the SILHOUETTECENTRAL™ trademark.

SilhouetteConnect means the executable code version of the application software for wound image processing and storage on a personal computer, laptop or tablet provided by You, produced by AML under the SILHOUETTECONNECT™ trademark.

Silhouette Device means one or more image capture devices in the Silhouette product suite produced by AML, including SilhouetteStar.

Silhouette Hardware means, collectively, the Silhouette Device(s) and the Silhouette Accessory(ies).

SilhouetteLite means the executable code version of the application software for wound image and data capture and processing, produced by AML under the SILHOUETTELITE™ trademark.

SilhouetteLite EULA means the End User License Agreement that the end user agrees to when he/she/it downloads SilhouetteLite or SilhouetteLite+ from the Apple App Store.

SilhouetteLite+ means the executable code version of the application software for wound image and data capture and processing with the SilhouetteLite+ Sensor, produced by AML under the SILHOUETTELITE+™ trademark.

SilhouetteLite+ Sensor means the range finder accessory device, and associated battery charger, produced by AML under the SILHOUETTELITE+ SENSOR™ trademark.

Silhouette Software means collectively SilhouetteCentral and SilhouetteConnect, and also includes Upgrades and Modules with respect to each of same. The “Silhouette Software” also includes any documentation provided or made available to You by AML in connection with and pertaining to the Silhouette Software, whether in printed or electronic format, and any associated media or printed materials pertaining to the Silhouette Software. For clarity, as used herein, the term “Silhouette Software” does not include SilhouetteLite or SilhouetteLite+, as those products are licensed under the terms of SilhouetteLite EULA.

SilhouetteStar means the SILHOUETTESTAR™ image capture device.

Support means the support services that AML provides to license holders of the Silhouette Software who have paid for a Support Contract for the current support period (see clause 12 and the Terms of Use for more detail).

Support Contract means the contract that the holder of a license of the Silhouette Software must purchase as a precondition to receiving Support and Updates during a designated support period (see clause 12 and the Terms of Use for more detail).

Terms of Use means the ARANZ Medical Limited Silhouette® Product Suite Terms of Use, which are supplemental to and incorporated by reference into this CTEULA, as such Terms of Use may be revised from time to time.

You or Your means the person or entity that purchases, leases or borrows Silhouette Hardware and/or holds a license of the Silhouette Software.

2. **Cover:** This CTEULA applies to all Products sold, leased, loaned or licensed by AML (and/or one of AML's distributors) to You. The Order Form will designate whether and which units of Silhouette Hardware are being sold, leased or loaned. The Order Form will also designate whether and which units of Silhouette Software (including any Modules) are being licensed to You. This CTEULA incorporates the Terms of Use all of which Terms of Use shall apply between AML and You as though set forth in this CTEULA in full.
3. **Risk:** The risk of loss to the Products shall pass to You immediately upon delivery of the Silhouette Hardware unless otherwise agreed in writing.
4. **Delivery.** Delivery of the Silhouette Hardware shall occur when the Silhouette Hardware arrives and is signed for at the address shown on the Order Form.
5. **Title:** In the case of sale of one or more units of Silhouette Hardware, ownership of the Silhouette Hardware shall not pass to You, nor shall You have a license to use any Silhouette Software until You have paid for the Silhouette Hardware in full and also paid all license fees owing for the Silhouette Software. In the case of a lease or loan of one or more unit(s) of the Silhouette Hardware, ownership of the Silhouette Hardware shall at all times remain with AML (or its distributor in instances where AML's distributor has made the lease or loan), and, at the expiration or termination of the lease or loan term, You shall, at Your expense, return the Silhouette Hardware to AML (or its distributor, as the case may be) in the same condition as at the beginning of the term, reasonable wear and use excepted.
6. **Non-Payment:** Where You fail to pay when due either the purchase price for the Silhouette Hardware, or any lease payment, license fee or other amount owing to AML (and/or its distributor), AML (and/or its distributor) may charge, and You shall be liable to pay, interest on any overdue account calculated on a daily basis from the due date until actual payment at an interest rate equal to the lesser of (i) 5% above the the "U.S. Prime Rate", as adjusted from time to time, as published in the *Wall Street Journal*, or (ii) the highest rate of interest permitted by law. In addition, You agree to reimburse AML (and/or its distributor) for any costs and expenses, including legal fees, incurred by AML (and/or its distributor) in collecting any amounts You fail to pay when due to AML (and/or its distributor). Further, You agree to return the Silhouette Hardware to AML (and/or its distributor) at Your expense if requested to do so by AML (and/or its distributor) following non-payment of any amount owing by You to AML (and/or its distributor) for the purchase or lease of Silhouette Hardware and without limiting any other right AML (and/or its distributor) may have.
7. **Taxes:** All payments under this CTEULA shall be made free of deduction or withholding. In the event that You become liable to deduct or withhold an amount by way of tax or otherwise from payments due under this Agreement, You shall pay such additional amount as will be necessary to ensure that the price for the Products received by AML (and/or its distributor) equals the amount that would otherwise have been received in the absence of that deduction or withholding.
8. **License:** If the Order Form includes one or more licenses of Silhouette Software, AML grants You a non-exclusive, non-transferrable license to use the then current released version of the specified Silhouette Software Product in accordance with this CTEULA and this license shall continue for the term described in Paragraph 9, unless sooner terminated or revoked under the terms of this CTEULA. In addition to any other rights AML may have, AML may revoke the Silhouette Software licenses granted by notifying You in writing if You fail to pay when due, the purchase price for the Silhouette Hardware, or any lease payment, license fee or other amount owing to AML, or shall breach any provision of the CTEULA. Upon such revocation, or upon the expiration or termination of a Silhouette Software license, AML shall have the right to block Your access to and use of the licensed Silhouette Software or any part thereof. "Use" of the Silhouette Software means loading, installing, or running the Silhouette Software on the hardware provided by You, meeting a specification provided by AML; provided, however, in the case of a license of SilhouetteCentral with hosting by AML, "Use" means access to and use of the hosted instance.
9. **Software License Term and Renewal:** The license granted under this Agreement may be either for a Fixed Term or for a Continuous Term as follows:
 - (a) If the Order Form specifies a fixed term, then this license is for the fixed term specified on the Order Form (**Fixed Term**) commencing on the date the license is issued. In such event, the renewal of the Fixed Term will be governed by clause 10 below. If the Order Form fails to specify a Fixed Term or a Continuous Term, the license shall be deemed to be for a Fixed Term of one month commencing on the date the license is issued.
 - (b) If the Order Form specifies a Continuous Term, then this license is for a Continuous Term as specified in the Order Form (**Continuous Term**) commencing on the date the license is issued.

(c) For clarity, where more than one Silhouette Software Product is licensed to You, the Order Form may specify a different Fixed Term and/or a Continuous Term for each.

(d) Whether for a Fixed Term (or any Renewed Term thereof) or a Continuous Term, the license granted under this Agreement is subject to termination under the circumstances described in clause 8.

10. Renewal: If Your license is for a Fixed Term, then at the expiration of the Fixed Term (and any subsequent Renewed Term), AML may offer to renew Your license of the Silhouette Software for an additional term (**Renewed Term**) provided:

(a) You are not in breach of this Agreement;

(b) AML has received from You in cleared funds the then current license fee for the Renewed Term; and

(c) You agree to any variation of this Agreement specified by AML in accordance with clause 23.

AML may offer You a Renewed Term by sending You a renewal invoice for the license fee for the Renewed Term during the last ninety (90) days of the then current term of Your license. You may accept such offer by paying the renewal invoice when due and agreeing to any such variations in the manner specified by clause 23. The Renewed Term may be effected by the issue of an executable or license file over the internet. If AML does not offer a Renewed Term or if You do not accept a Renewed Term in the above manner, the license of the Silhouette Software shall terminate at the end of the initial Fixed Term or the initial Fixed Term as previously renewed.

11. Restrictions on Use: You agree not to:

(a) translate, adapt, reverse-engineer or modify the Silhouette Hardware or the Silhouette Software, or do anything to circumvent the operation of the Silhouette Hardware or the Silhouette Software, or combine or integrate the Silhouette Hardware or the Silhouette Software with any other products;

(b) separate any component of the Silhouette Software or Silhouette Hardware for use with other than the hardware for which a license has been granted;

(c) lend, rent, lease, transfer, assign or otherwise deal in the Products without the prior written consent of AML.

(d) export or extract data from the Silhouette Software, except through a product or service provided by AML.

(e) use any of the Products outside the field of human medicine or for any use or purposes for which governmental approvals have not been obtained.

Without limiting the generality of the foregoing, you agree that the Products may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Products, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons.

In addition, (1) each license of SilhouetteConnect is restricted to use only on a single unit of computer equipment used by a single person at any time, and consisting of a personal computer, laptop or tablet, and You agree not to exceed this limitation, and (2) each Point of Care Access License will specify the specific Image Capture Unit(s) which may connect to an instance of SilhouetteCentral via that Point of Care Access License, and You agree not to circumvent this restriction.

12. Upgrades and Support: AML may offer You Upgrades when they are released. In cases where new versions are offered with respect to the Silhouette Software, but are not accepted by You, AML shall have no obligation to provide Support for older versions.

The Order Form may describe Upgrades and/or Support that AML has agreed to provide You with respect to the Products. Except as otherwise provided in the Order Form, Upgrades and Support will be available to You only if offered by AML and purchased by You at AML's applicable rates. AML may offer You Modules from time to time, subject to Your payment of such additional license fees and agreement to any terms and conditions applicable to the Modules. All Upgrades and Modules will form part of the Silhouette Software and must only be used in accordance with this CTEULA.

13. Protection of Proprietary Rights: You acknowledge that all right, title and interest in the Silhouette Software and all Proprietary Rights in the Silhouette Hardware and the Silhouette Software are vested in AML or its licensors, and You agree that You will not dispute such ownership nor claim any intellectual property rights relating to the Silhouette Hardware or the Silhouette Software or any enhancements or modifications of the Silhouette Hardware or the Silhouette Software. For the purposes of this CTEULA, "**Proprietary Rights**" means all intellectual or industrial property rights in the Silhouette Hardware and the Silhouette Software and all rights to patents, trademarks, trade names, inventions, designs, trade secrets, copyright and know-how relating to the origin, manufacture, programming, operating and/or servicing of the Silhouette Hardware and the Silhouette Software and any enhancements or modifications of the Silhouette Hardware or the Silhouette Software. You must maintain all intellectual property notices appearing on the Products and must not remove the same. You must notify AML immediately if You know of any circumstances that suggest that any person may have unauthorised knowledge, possession or use of the Products.

14. Warranty - Silhouette Hardware: If You have purchased or leased one or more unit(s) of the Silhouette Hardware, the Terms of Use sets forth the Limited Warranty applicable to the Silhouette Hardware. Except as set forth in the Terms of Use, all other representations or warranties (statutory, express or implied except any which may not lawfully be excluded) with respect to the Silhouette Hardware are expressly excluded. Without prejudice to the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose are excluded.

- 15. Warranty - Software:** The Silhouette Software is licensed to You "as is" and all representations or warranties (statutory, express or implied except any which may not lawfully be excluded) are expressly excluded. Without prejudice to the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose are excluded. You acknowledge that the Silhouette Software operates in a predictive manner relative to input of which AML has no control over the collection, use or interpretation, and You accept the entire risk as to the use and the results of the use of the Silhouette Software in the terms of correctness, accuracy, reliability and performance. You also accept the entire risk as to any conflict between Silhouette Software and other software on the hardware on which the Silhouette Software is installed.
- 16. Data:** If the Order Form includes a license of SilhouetteCentral with data to be hosted by You, You will be exclusively responsible for security and integrity of data, including regular back up of data. If the Order Form includes a license of SilhouetteCentral with data hosted by AML, then upon termination of Your license of SilhouetteCentral, AML will take Your instance of SilhouetteCentral off line, but will offer You an archive of images and wound assessment records, provided You pay for AML's usual commercial charges for the cost of preparing the archive. This archive will be in the form of jpg images, an export of the wound measurement data in a CSV (comma separated value) format file, and an export of SilhouetteCentral format data. This archive will be provided on an industry standard media (such as DVD) that AML will select at the time.
- 17. Government Licenses of Software.** The Silhouette Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.
- 18. Liability:** TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL AML BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE PRODUCTS, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF AML HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall AML's total liability to You for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty US Dollars (US\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.
- 19. Compliance with Law:** You will not use the Products for any unlawful purpose or in furtherance of any illegal activity. You warrant that You will comply with all applicable federal, state and local laws, executive orders, and regulations. You further warrant that at all times when using the Products you will have obtained all consents and/or permissions as required by law to receive, transfer, use or provide any personal information, Protected Health Information, and/or other data provided, entered, transferred or received by you using the Products, and that your use of the Products will be conducted in accordance with all applicable laws, including but not limited to HIPAA.
- 20. Notice:** Any notice to be given in terms of this CTEULA must be made in writing or by email sent to the address notified by either party to the other from time to time. Any communication by email will be deemed to be received when transmitted to the correct email address of the recipient and any communication in writing will be deemed to be received when left at the specified address of the recipient.
- 21. Force Majeure:** AML will not be liable to You for any delay or failure of AML to perform its obligations hereunder if such delay or failure arises from cause or causes beyond the reasonable control of AML.
- 22. Assignment:** You may not assign or transfer this Agreement or any of the rights or obligations under this Agreement without the prior written consent of AML.
- 23. Agreement:** This Agreement constitutes the entire agreement of AML and You with respect to the subject matter hereof and supersedes any and all prior negotiations and agreements between AML and You with the exception of terms listed in the Order Form and a non-disclosure agreement that may separately be in force between AML and You. The additional terms set forth in the Order Form and in the Terms of Use are incorporated by reference in this Agreement, and You agree to abide by all of such additional terms. In the event of any conflict between the terms of the Order Form and the terms of this CTEULA, the terms of the Order Form shall govern. This Agreement and/or the Terms of Use may be revised by AML from time to time. By accepting any Renewed Term, by paying Support fees or by accepting any Update or Module offered by AML, You will be deemed to have agreed to, and will be bound by, all the terms and conditions of this Agreement and the Terms of Use in its and/or their then most current form, as posted at www.aranzmedical.com. No variation to the terms of this Agreement or the Terms of Use made by You will be binding on AML unless it is in writing and signed by both parties.
- 24. Governing Law:** This Agreement is subject to the laws of New Zealand and You agree to submit to the exclusive jurisdiction of the New Zealand courts.