

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

Effective Date: 1 August 2014

**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 the **Hardware**, and (2) the licensing of the **Software**, in the SILHOUETTE® product suite. This CTEULA also covers the circumstance in which Hardware is loaned by AML to you for evaluation, research or other purposes.

**PLEASE READ THIS CTEULA CAREFULLY BECAUSE USING THE HARDWARE OR 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** (also **we, us or our**) means ARANZ Medical Limited.

**Hardware** (also sometimes referred to as the **Device**) means one or more units of the SilhouetteStar device.

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

**Upgrade** means a subsequent release of a 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 units of Hardware (if any) are being sold, leased or loaned to you and which units of Software (if any) are being licensed to you.

**Products** means, collectively, any Hardware sold, leased or loaned to you and any Software licensed to you.

**SilhouetteCentral** means the executable code version of the application software for the SILHOUETTECENTRAL™ Software.

**SilhouetteConnect** means the executable code version of the application software for the SILHOUETTECONNECT™ Software.

**SilhouetteStar** means the SILHOUETTESTAR™ Device.

**Software** means collectively SilhouetteCentral and SilhouetteConnect, and also includes Upgrades and Modules with respect to each of same.

**Support** means the support services that AML provides to licence holders of the 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 annual contract that the holder of a licence of the Software must purchase as a precondition to receiving Support and Updates during a 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.

**Work Station** means an input/output device to be used by a single person at any time and consisting of personal computer hardware.

**You or your** means the person or entity that purchases, leases or borrows the Device and/or holds a license of the Software.

- 2. Cover:** This CTEULA applies to all Products sold, leased, loaned or licensed by AML to you. The Order Form will designate whether and which units of Hardware are being sold, leased or loaned. The Order Form will also designate whether and which units of Software 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 Hardware unless otherwise agreed in writing.
- 4. Delivery.** Delivery of the Hardware shall occur when the Hardware arrives and is signed for at the address shown on the Order Form.
- 5. Title:** In the case of sale of the Hardware, ownership of the Hardware shall not pass to you, nor shall you have a license to use any Software until you have paid for the Hardware in full and also paid all license fees owing for the Software. In the case of a lease or loan of the Hardware, ownership of the Hardware shall at all times remain with AML, and, at the expiration or termination of the lease or loan term, you shall, at your expense, return the Hardware to AML 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 Hardware, or any lease payment, license fee or other amount owing to AML, AML 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 for any costs and expenses, including legal fees, incurred by AML in collecting any amounts you fail to pay when due to AML. Further, you agree to return the Hardware to AML at your expense if requested to do so by AML following non-payment of any amount owing by you to AML for the purchase or lease of the Hardware and without limiting any other right AML 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 equals the amount that would otherwise have been received in the absence of that deduction or withholding.

**8. License:** If the Order Form includes a license of SilhouetteCentral, AML grants you a non-exclusive license to use the then current released version of SilhouetteCentral 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. If the Order Form includes a license of SilhouetteConnect, AML grants you a non-exclusive license to use the then current released version of SilhouetteConnect 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 licenses granted with respect to SilhouetteCentral and/or SilhouetteConnect by notifying you in writing if you fail to pay when due, the purchase price for the 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 license of SilhouetteCentral and/or SilhouetteConnect, AML shall have the right to block your access to and use of the licensed Software or any part thereof. "Use" of the Software means loading, installing, or running the Software on the hardware provided by you, meeting a specification provided by AML.

**9. SilhouetteCentral, SilhouetteConnect License Term and Renewal:** The licence granted under this Agreement may be either for a Fixed Term or for a Perpetual Term as follows:

(a) If the Order Form specifies a fixed term, then this licence is for the fixed term specified on the Order Form (**Fixed Term**) commencing on the date the licence 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 Perpetual Term, the licence shall be deemed to be for a Fixed Term of one month commencing on the date the licence is issued.

(b) If the Order Form specifies a Perpetual Term, then this licence is for a Perpetual Term as specified in the Order Form (**Perpetual Term**) commencing on the date the licence is issued.

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

**10. Renewal:** If this licence is for a Fixed Term, then at the expiration of the Fixed Term (and any subsequent renewed term), AML may offer to renew your licence of the 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 licence fee for the Renewed Term; and
- (c) You agree to any variation of this Agreement specified by AML in accordance with clause 22.

AML may offer you a Renewed Term by sending you a renewal invoice for the licence fee for the Renewed Term during the last ninety (90) days of the then current term of your licence. You may accept such offer by paying the renewal invoice when due and agreeing to any such variations in the manner specified by clause 22. The Renewed Term may be effected by the issue of an executable or licence file over the internet. If it is effected by the issue of a new Dongle, you agree to deliver the old Dongle to AML within 10 days of receiving the new Dongle from AML. If AML does not offer a Renewed Term or if you do not accept a Renewed Term in the above manner, the licence of the 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 Hardware or the Software, or do anything to circumvent the operation of the Hardware or the Software, or combine or integrate the Hardware or the Software with any other products;
- (b) separate any component of the Software or 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 Software, except through a product or service provided by AML.

In addition, each license of SilhouetteConnect is restricted to use only on a single Work Station, and you agree not to exceed this limitation.

**12. Upgrades and Support:** AML may offer you Upgrades when they are released. In cases where new versions are offered with respect to the Software, but are not accepted by you, AML shall have no obligation to support 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 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 Software and all Proprietary Rights in the Hardware and the 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 Hardware or the Software or any enhancements or modifications of the Hardware or the Software. For the purposes of this CTEULA, "Proprietary Rights" means all intellectual or industrial property rights in the Hardware and the Software and all rights to patents, trade marks, trade names, inventions, designs, trade secrets, copyright and know-how relating to the origin, manufacture, programming, operating and/or servicing of the Hardware and the Software and any enhancements or modifications of the Hardware or the 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 - Hardware:** If you have purchased or leased Hardware, the Terms of Use sets forth the Limited Warranty applicable to the 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 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 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 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 Software in the terms of correctness, accuracy, reliability and performance. You also accept the entire risk as to any conflict between SilhouetteCentral and/or SilhouetteConnect and other software on the hardware on which SilhouetteCentral or SilhouetteConnect 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.** No Government procurement regulation or contract clauses or provision will be considered a part of any transaction between the parties under this Agreement unless its inclusion is required by statute, or mutually agreed upon in writing by the parties in connection with a specific transaction. The technical data and computer software covered by this license is a "Commercial Item," as that term is defined by the FAR 2.101 (48 C.F.R. 2.101) and is "commercial computer software" and "commercial computer software documentation" as specified under FAR 12.212 (48 C.F.R. 12.212) or DFARS 227.7202 (48 C.F.R. 227.7202), as applicable. This commercial computer software and related documentation is provided to End Users for use by and on behalf of the U.S. Government, with only those rights as are granted to all other End Users under the terms and conditions in this Agreement. Use for or on behalf of the U.S. Government is permitted only if the party acquiring or using this software is properly authorized by an appropriate U.S. Government official. This use by or for the U.S. Government clause is in lieu of, and supersedes, any other FAR, DFARS, or other provision that addresses government rights in the computer software or documentation covered by this Agreement. All copyright licenses granted to the U.S. government are coextensive with the technical data and computer software licenses granted in this Agreement. The U.S. Government will only have the right to reproduce, distribute, perform, display, and prepare Derivative Works as needed to implement those rights.
- 18. Liability:** AML will not be liable under the law of tort, contract or otherwise for any direct, indirect or consequential loss or damage, including any loss of profits, however caused, arising out of the use of the Hardware or Software. If any limitation of liability in this Agreement is invalid for any reason and AML becomes liable for loss or damage that would otherwise have been excluded, such liability will be limited to the total amount actually paid by you for the Hardware and the Software.
- 19. Notice:** Any notice to be given in terms of this CTEULA must be made in writing, email or by facsimile transmission sent to the address notified by either party to the other from time to time. Any communication by email or facsimile transmission will be deemed to be received when transmitted to the correct email or facsimile transmission address of the recipient and any communication in writing will be deemed to be received when left at the specified address of the recipient.
- 20. 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.
- 21. 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.
- 22. 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. 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.
- 23. 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.