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26 October 2022

FOR IMMEDIATE RELEASE

Market Announcements Office
ASX Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

By e-lodgement

Dear Sir / Madam,

Form 603 (Notice of initial substantial holder) in relation to ELMO Software Limited (ACN 102 455 087) (ASX: ELO).

We act for K1 Investment Management (**K1**).

On behalf of K1, please see **attached** a Form 603 (*Notice of initial substantial holder*) in relation to ELMO Software Limited (ACN 102 455 087) (ASX: ELO).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Cook'.

Peter Cook
Partner
T +61 2 9263 4774
pcook@gtlaw.com.au

A handwritten signature in blue ink, appearing to read 'Alastair Corrigan'.

Alastair Corrigan
Partner
T +61 2 9263 4170
acorrigall@gtlaw.com.au

Form 603

Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme ELMO Software Limited (ASX: ELO)

ACN/ARSN 102 455 087

1. Details of substantial holder (1)

Name Manhattan Bondi HoldCo, Inc. (File number 7097622) ("Bidder") and each person listed in Annexure "A"

ACN/ARSN (if applicable) See above and Annexure "A"

The holder became a substantial holder on 26 October 2022

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary shares	10,998,146 ordinary shares	10,998,146	11.04% (based on 99,610,986 shares on issue)

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Bidder	Relevant interest in 10,998,146 ordinary shares under sections 608(1)(b) and 608(1)(c) of the <i>Corporations Act 2001</i> (Cth) (the "Act") pursuant to the "voting and rollover agreement" dated on or around 26 October 2022 between Bidder and the Relevant Shareholders (as defined therein) (" Voting and Rollover Agreement "), a copy of which is attached to this notice as Annexure "B".	10,998,146 ordinary shares
Each person listed in Annexure "A"	Relevant interest in 10,998,146 ordinary shares under section 608(3)(a) of the Act.	10,998,146 ordinary shares

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Bidder and each of the persons listed in Annexure "A"	Danny Isaac Lessem	Danny Isaac Lessem	174,997 ordinary shares
Bidder and each of the persons listed in Annexure "A"	Lessem Trading Pty Ltd (ACN 079 408 594) as trustee for the Lessem Trading Trust	Lessem Trading Pty Ltd (ACN 079 408 594) as trustee for the Lessem Trading Trust	10,823,149 ordinary shares

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
Bidder and each person listed in Annexure "A"	26 October 2022	N/A	N/A – relevant interest arose by virtue of the Voting and Rollover Agreement	10,998,146 ordinary shares

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Bidder, Danny Isaac Lessem and Lessem Trading Pty Ltd (ACN 079 408 594) as trustee for the Lessem Trading Trust	Associates of one another upon entry into the Voting and Rollover Agreement

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Bidder and each of the persons listed in Annexure "A"	875 Manhattan Beach Blvd, Manhattan Beach, CA 90266, United States of America
Danny Isaac Lessem	31 Wallangra Road, Dover Heights, NSW 2030, Australia
Lessem Trading Pty Ltd (ACN 079 408 594) as trustee for the Lessem Trading Trust	Level 11, 1 York Street, Sydney, NSW 2000, Australia

Signature

print name **Jordan Wappler (Vice President and Secretary)**

capacity authorised signatory

for and on behalf of substantial holders named in 1 above

DocuSigned by:

 sign here

date 26 October 2022

DIRECTIONS

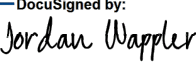
- (1) If there are a number of substantial holders with similar or related relevant interests (eg a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

- (8) If the substantial holder is unable to determine the identity of the person (eg if the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

ANNEXURE "A"

This is Annexure "A" of 1 page referred to in Form 603 (*Notice of initial substantial holder*) signed by me and dated 26 October 2022.

DocuSigned by:

Signature of **Jordan Wappler**

Name	Address
K1 Investment Management, LLC (File number 4886518)	875 Manhattan Beach Blvd, Manhattan Beach, CA 90266, United States of America
K4 Private Investors, LP (File number 6682119)	875 Manhattan Beach Blvd, Manhattan Beach, CA 90266, United States of America
Manhattan Bondi Holdings, LLC (File number 7097627)	875 Manhattan Beach Blvd, Manhattan Beach, CA 90266, United States of America

ANNEXURE "B"

This is Annexure "B" of 20 pages referred to in Form 603 (Notice of initial substantial holder) signed by me and dated 26 October 2022.

DocuSigned by:
Jordan Wappler
891D6DC3CF9347B
Signature of Jordan Wappler

Voting and rollover agreement (with respect to shares in ELMO Software Limited)

Manhattan Bondi HoldCo, Inc. (**Bidder**)

Lessem Trading Pty Ltd as trustee for The Lessem Trading Trust (**Lessem Entity**)

Danny Isaac Lessem (and together with the Lessem Entity, the **Relevant Shareholders**)

Execution version

Parties

- 1 **Manhattan Bondi HoldCo, Inc. (file number 7097622)** of 1209 Orange Street, City of Wilmington, Delaware 19801, United States of America (**Bidder**)
- 2 **Lessem Trading Pty Ltd (ACN 079 408 594)** as trustee for The Lessem Trading Trust of Level 11, 1 York Street, Sydney, NSW 2000, Australia (**Lessem Entity**)
- 3 **Danny Isaac Lessem** of 31 Wallangra Road, Dover Heights, NSW 2030, Australia (and together with the Lessem Entity, the **Relevant Shareholders**)

The parties agree in consideration of the mutual promises in this agreement:

1 Definitions and interpretation

- (a) A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 (*Dictionary*) has the meaning given to it in the dictionary.
 - (b) Capitalised terms not otherwise defined in this agreement have the meaning given to those terms in the Scheme Implementation Deed.
 - (c) The interpretation clause in Schedule 1 (*Dictionary*) sets out rules of interpretation for this agreement.
-

2 Proposed Transaction

- (a) The Relevant Shareholders are the legal and beneficial owners of 10,998,146 ELMO Shares, representing approximately 11.04% of all ELMO Shares.
- (b) The parties agree to work together on an exclusive basis to implement the Transaction on the terms of this agreement.
- (c) This agreement governs the relationship between the parties for the purposes of making, pursuing, and implementing the Transaction.
- (d) The Bidder must procure that the Scrip Consideration to be offered under the Scheme complies in all material respects with the terms for such securities as set out in the Rollover Term Sheet.
- (e) Danny Lessem is a director and CEO of ELMO. Notwithstanding anything to the contrary in this agreement, Danny Lessem is not prohibited from taking or not taking any action under clauses 3 or 4 in his capacity as a director, officer, or executive of ELMO or any ELMO Group entity if he has obtained written advice from his external Australian legal advisers that compliance with the relevant clause would constitute a breach of any of the fiduciary or statutory duties owed by Danny Lessem in that capacity. This limitation applies despite the terms of any other provision in this agreement.

3 Exclusivity

3.1 No-shop in relation to Relevant Shares

During the term of this agreement, the Relevant Shareholders must not, and must ensure that each of their Related Bodies Corporate, Representatives and Associates (but for the avoidance of doubt excluding ELMO, any ELMO Group Member, and their respective Representatives) (together, **Relevant Persons**) (alone or acting in concert with any Third Party) do not, directly or indirectly:

- (a) propose, encourage, initiate, solicit or invite any Competing Proposal to or from any Third Party in relation to or including the Relevant Shares;
- (b) solicit, invite, initiate, or encourage any enquiries, expressions of interest, proposals, discussions, or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal in relation to or including the Relevant Shares; or
- (c) communicate to any person any willingness or intention to do any of the things referred to in clauses (a) or (b) of this clause 3.1.

3.2 No-talk in relation to Relevant Shares

During the term of this agreement, the Relevant Shareholders must not, and must ensure that each of their Relevant Persons (alone or acting in concert with any Third Party) do not directly or indirectly:

- (a) participate in, or continue, any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal in relation to or including the Relevant Shares or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal in relation to or including the Relevant Shares;
- (b) negotiate, accept, or enter into, or offer or agree to negotiate, accept, or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal in relation to or including the Relevant Shares;
- (c) disclose or otherwise provide any non-public Information about the business or affairs of the ELMO Group to a Third Party (other than a Government Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal in relation to or including the Relevant Shares (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the ELMO Group), provided that nothing in this clause 3.2(c) shall prevent or prohibit Danny Isaac Lessem from performing his role as director or employee of ELMO; or
- (d) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 3.2.

3.3 Notification of approaches in relation to Relevant Shares

- (a) During the term of this agreement, the Relevant Shareholders must notify the Bidder in writing as soon as practicable but in any event within 24 hours:

- (i) if a Relevant Shareholder or any of its Relevant Persons is approached by any person in relation to an actual or potential Competing Proposal in relation to or including their Relevant Shares, with such notice to set out reasonable details of the approach; or
- (ii) of any request made by a Third Party for any information in relation to the ELMO Group or any member of the ELMO Group, or any of their respective businesses or operations, that the Relevant Shareholder has reasonable grounds to suspect may be in connection with such Third Party formulating, developing or finalising, or assisting in the formulation of a Competing Proposal in relation to or including their Relevant Shares,

(each, a **Notifiable Proposal**) and provided that nothing in this clause 3.3(a) requires Danny Isaac Lessem to provide any notification or information if that notification or disclosure would result in a breach of his directors' duties to ELMO and/or his employment agreement with ELMO.

- (b) The notice referred to above in clause 3.3(a) must set out the material terms of the Notifiable Proposal, including (as the case may be):
- (i) the identity of the Third Party that made the Notifiable Proposal; and
- (ii) the material terms and conditions (including price, conditions precedent, timetable, and any break fee) of any Competing Proposal or any proposed Competing Proposal in relation to or including the Relevant Shares.

4 Standstill and other dealings

4.1 Standstill

- (a) Subject to clause 4.1(b), during the term of this agreement the Relevant Shareholders must not, and must ensure that each of their Relevant Persons (alone or acting in concert with any Third Party) do not:
- (i) directly or indirectly sell or otherwise dispose of their Relevant Interests in any ELMO Shares;
- (ii) acquire a Relevant Interest in any ELMO Shares after the date of this agreement (other than in connection with the vesting of any options or performance rights already held by Danny Isaac Lessem);
- (iii) enter into any derivative, swap or synthetic agreement, deed or other arrangement under which payments may be made that are referable (in whole or part) to the trading price, or the economic value, of ELMO Shares which would require disclosure under the Australian Takeovers Panel's Guidance Note 20: Equity Derivatives; or
- (iv) aid, abet, counsel, assist, facilitate or induce any other person in doing, or publicly announce that it will do, any of the things mentioned in this clause 4.1.
- (b) For the avoidance of doubt, nothing in clause 4.1(a) prevents:
- (i) a Relevant Shareholder (or any of its Relevant Persons) from taking any steps to implement the Transaction;

- (ii) a Relevant Shareholder (or any of its Relevant Persons) acquiring or disposing of a Relevant Interest in ELMO Shares as a result of:
- (A) implementation of the Transaction; or
 - (B) the terms of this agreement; or
- (iii) any action taken with the prior written consent of the Bidder.

4.2 Exceptions

- (a) Nothing in clauses 3 (*Exclusivity*) and 4.1 (*Standstill*) shall in any way restrict or prohibit any activities of the Relevant Shareholders or their Relevant Persons, or require the Relevant Shareholders or their Relevant Persons to take any action (including procuring any restriction on any person in connection with):
- (i) where the investment is in an index fund (or other similar investment) which invests in a broad basket of securities;
 - (ii) where the investment is made on the Relevant Shareholder's (or Relevant Person's) behalf by Third Party investment managers with discretionary authority, or made by investment funds or other pooled investment vehicles in which the Relevant Shareholder (or such Relevant Person) has invested as a passive investor with no power to direct the investments of such passive investments, and such investments are managed by Third Parties, provided that the individuals or entities performing such activities are not in possession of material non-public information regarding ELMO or ELMO Shares and the performing of such activities shall not result from the breach by the party of this agreement; or
 - (iii) where the decision to acquire or dispose of any interest in ELMO Shares on the Relevant Shareholder's (or Relevant Person's) behalf is undertaken by an individual in the ordinary course of business of that person as a market-maker, broker or provider of trustee or nominee services, who are themselves not in possession of material non-public information regarding ELMO or ELMO Shares.

5 Relevant Shareholders voting commitment

- (a) The Relevant Shareholders agree that they will, with respect to their Relevant Shares:
- (i) consent to the Board of ELMO making an announcement in the form of Attachment A (*Announcement*) on the date the Transaction is announced to the market;
 - (ii) vote in favour of the Scheme to effect the Transaction as part of the class of Shareholders who are offered Scrip Consideration; and
 - (iii) elect to receive, pursuant to the Scheme:
 - (A) the Scrip Consideration in respect of such percentage of their Relevant Shares as represents \$37,000,000 in value (in aggregate between the Relevant Shareholders); and

- (B) the Cash Consideration in respect of the remainder of their Relevant Shares,

and not revoke such election.

- (b) Subject to clause 4.2 (*Exceptions*), during the term of this agreement, the Relevant Shareholders must not, and must ensure that each of their Relevant Persons (alone or acting in concert with any Third Party) do not directly or indirectly, except with the prior written consent of the Bidder:
 - (i) become involved in a Competing Proposal, including, but not limited to, entering into any agreement, arrangement or understanding (including, but not limited to, participating in any consortium, joint bidding structure and other structure), whether or not binding or enforceable, in relation to an actual, proposed or potential Competing Proposal;
 - (ii) accept or vote in favour of a Competing Proposal;
 - (iii) sell, or agree to sell, any Relevant Shares to a Third Party proposing or making a Competing Proposal; or
 - (iv) make any public announcement that it will accept or propose to accept, vote in favour of, or otherwise support, a Competing Proposal.

6 Withdrawal and termination

6.1 Termination

- (a) This agreement terminates on the earlier of:
 - (i) the date on which all of the parties have each agreed in writing to cease to pursue the Transaction, or the Bidder publicly announces that it does not intend to pursue the Transaction;
 - (ii) termination of the Scheme Implementation Deed;
 - (iii) the Implementation Date; and
 - (iv) the date that is 9 months from the date of this agreement,unless otherwise agreed in writing between all the parties to this agreement.
- (b) On termination of this agreement, this agreement will become void and of no further effect, other than as set out in clause 6.2 (*Rights and obligations surviving termination*).

6.2 Rights and obligations surviving termination

The following rights and obligations survive the termination or withdrawal of this agreement under clause 6.1(a):

- (a) any claim that a party has against another party or its Relevant Persons at the time of termination; and
- (b) any rights or obligations that have accrued at the time of termination.

7 Warranties

Each party represents and warrants to the other that, as at the date of this agreement:

- (a) it is duly incorporated under the laws of the place of its incorporation;
- (b) it has the power and authority to sign this agreement and perform and observe all its terms;
- (c) this agreement has been duly executed and is a legal valid and binding agreement enforceable against it in accordance with its terms;
- (d) it is not bound by any contract which may restrict its right or ability to enter into or perform this agreement; and
- (e) it and its Related Bodies Corporate and, in the case of the Relevant Shareholders, their Associates do not hold any ELMO Shares, rights to acquire ELMO Shares (other than any options or performance rights already held by Danny Isaac Lessem) or any economic interest in ELMO Shares (through a cash settled equity swap, derivative or otherwise) which would require disclosure under the Australian Takeovers Panel's Guidance Note 20: Equity Derivatives, other than the Relevant Shareholders, who together own 10,998,146 ELMO Shares.

8 General

8.1 Notices

How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (i) if to Bidder:

Address: 875 Manhattan Beach Blvd.
Manhattan Beach, CA 90266
United States of America

Email: rliao@k1im.com, jwappler@k1im.com and
legal@k1im.com

For the attention of: Roy Liao (Principal) and Jordan Wappler (Senior Vice President)

with a copy to (which will not constitute notice) to:

Address: L35, Tower Two, International Towers Sydney
200 Barangaroo Avenue
Barangaroo, NSW 2000
Australia

Attention: Peter Cook

Position: Partner, Gilbert + Tobin
Email: pcook@gtlaw.com.au

(ii) if to the Relevant Shareholders:

Address: Level 11, 1 York Street
Sydney, NSW 2000
Australia
Email: danny.lessem@elmosoftware.com.au
For the attention of: Danny Isaac Lessem

with a copy to (which will not constitute notice) to:

Address: Level 42, Australia Square
264 George Street
Sydney, NSW 2000
Australia
Attention: Cristin McCoy and Guy Sanderson
Position: Partner, Hamilton Locke
Email: cristin.mccoy@hamiltonlocke.com.au and
guy.sanderson@hamiltonlocke.com.au

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (d) must be delivered by hand or sent by email to the address, in accordance with clause 8.1(b).

When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (e) (in the case of email),
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; and
- (f) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

8.2 Governing law

This agreement is governed by and must be construed according to the laws applying in New South Wales, Australia.

8.3 Amendments

Any amendment or variation of this agreement must be agreed in writing by all parties.

8.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

8.5 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

8.6 Consents

Consents required under this agreement must not be unreasonably withheld.

8.7 Specific performance

The parties acknowledge that damages will not be a sufficient remedy for breach of this agreement. Specific performance or injunctive relief is available as a remedy for a breach or threatened breach of this agreement by any party.

8.8 Counterparts

This agreement may be executed in a number of counterparts and signatures on behalf of a party may be on different counterparts. All counterparts together will be taken to constitute one instrument.

1 Dictionary

In this agreement:

Adviser means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to the Bidder or the Relevant Shareholders.

Associate has the meaning given to that term in section 12 of the Corporations Act.

Business Day is a day that banks are open for business in Sydney, Australia.

Corporations Act means the *Corporations Act 2001* (Cth).

ELMO means ELMO Software Limited (ACN 102 455 087) (ASX: ELO) of Level 12, 680 George Street, Sydney, NSW 2000, Australia.

ELMO Group means ELMO and each of its Related Bodies Corporate, and an **ELMO Group Member** means any one of them.

ELMO Shareholders means each person who is registered in the Share Register as the holder of fully paid ordinary shares in the capital of ELMO.

Related Bodies Corporate has the meaning given in the Corporations Act, but with any necessary modifications for entities established or incorporated outside Australia and provided that references to Related Bodies Corporate shall not include a party's or a party's Related Bodies Corporate's operating or portfolio entities, investment funds or investee entities.

Relevant Interest has the meaning given to it in the Corporations Act.

Relevant Person has the meaning given to it in clause 3.1.

Relevant Shares means the ELMO Shares held by the Relevant Shareholders from time to time, being as at the date of this agreement 10,998,146 ELMO Shares.

Representatives means in relation to a party:

- (a) the directors, officers, employees, contractors, or agents of that party and its Related Bodies Corporate; and
- (b) an Adviser (including a director, officer, or employee of an Adviser) of the person and its Related Bodies Corporate but only to the extent acting in that capacity and on the instruction of that party (or Related Bodies Corporate) in accordance with its engagement terms, in connection with the Transaction (other than common consortium advisers or agents engaged by the parties in connection with the Transaction).

Rollover Term Sheet means the document with that title signed on behalf of the Relevant Shareholders and K1 Investment Management LLC contemporaneously with this agreement.

Scheme Implementation Deed means the scheme implementation agreement or deed (as the case may be) between ELMO and the Bidder (and / or one or more nominated entities) dated on or about the date of this agreement pursuant to which ELMO will be acquired by way of a scheme of arrangement (or two parallel and interconditional schemes of arrangement) pursuant to part 5.1 of the Corporations Act.

Scrip Consideration has the meaning given to it in the Scheme Implementation Deed.

Share Register means the register of members of ELMO maintained in accordance with the Corporations Act.

Third Party means a person other than a party or any of its Relevant Persons.

Transaction means the proposal made by the Bidder under which the Bidder will acquire ELMO by way of a scheme of arrangement (or two parallel and interconditional schemes of arrangement) pursuant to part 5.1 of the Corporations Act.

2 Interpretation

In this agreement headings and words in bold are for convenience only and do not affect the interpretation of this agreement and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (b) the word "including" or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a "person" or "entity" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust, other bodies corporate and bodies politic, substitutes (including, without limitation, persons taking by novation) and permitted assigns, and whether or not being a separate legal entity;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, paragraph, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (j) a reference to a time is to that time in Sydney, Australia;

- For personal use only
- (k) a reference to a statute includes any regulations or other instruments made under it and a reference to a statute or any regulation or other instrument made under it or a provision of any such statute, regulation or instrument includes consolidations, amendments, re-enactments and replacements;
 - (l) a reference to a "liability" incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person;
 - (m) a reference to a "loss" incurred by any person includes any loss, liability, damage, cost, charge, expense which the person pays, incurs or is liable for and any other diminution of value of any description which the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims;
 - (n) unless otherwise stated, a reference to "\$", "A\$" or "dollar" is to Australian currency; and
 - (o) this agreement, or a provision of this agreement, must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

Execution pages

Executed as an agreement.

Bidder

Signed for and on behalf of **MANHATTAN BONDI
HOLDCO, INC. (FILE NUMBER 7097622)** by an
authorised representative in the presence of:

DocuSigned by:

891D6DC3CE934D8...

Signature of witness

Jordan Wappler

Name of witness (print)

DocuSigned by:

2415F649C8F5414...

Signature of authorised representative

Roy Liao

Name of authorised representative (print)

Officer

Title of authorised representative (print)

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Relevant Shareholders

Lessem Entity

Signed for and on behalf of **LESSEM TRADING PTY LTD (ACN 079 408 594) as trustee for The Lessem Trading Trust** in accordance with section 127 of the *Corporations Act 2001* (Cth) by either two directors or a director and a company secretary:

DocuSigned by:

Danny Lessem

A86E18B698894EB...

Signature of director

Danny Lessem

Name of director (print)

DocuSigned by:

Romy Lessem

F1541F3FF6E6463...

Signature of director or company secretary*

*Cross out whichever is not applicable

Romy Lessem

Name of director or company secretary* (print)

*Cross out whichever is not applicable

Danny Isaac Lessem

Signed by **DANNY ISAAC LESSEM** in the presence of:

DocuSigned by:

Debbie Tran

2A3A3F2AF9AF448

Signature of witness

Debbie Tran

Name of witness (print)

DocuSigned by:

Danny Lessem

A86E18B698894EB

Signature of **Danny Isaac Lessem**

Attachment A Announcement

For personal use only



26 October 2022

ELMO Software Limited

(ASX:ELO)

Recommended proposal for the acquisition of ELMO by K1 Investment Management

Sydney, Australia 26 October 2022

- ELMO announces entry into Scheme Implementation Deed ("**SID**") with K1 Investment Management
- Under the proposed Scheme of Arrangement ("**Scheme**"), ELMO shareholders will be entitled to receive \$4.85 cash per share ("**Scheme Consideration**")
- The Scheme Consideration implies an Equity Value of \$486 million¹ and represents an attractive premium for ELMO shareholders of:
 - 100.4% premium to the last trading price of ELMO shares on 12 October 2022, being the final trading day prior to ELMO's announcement that it had received approaches expressing interest in acquiring the Company ("**Undisturbed Date**")²
 - 94.6% premium to the 1-month VWAP³ of ELMO shares to the Undisturbed Date
 - 84.4% premium to the 3-month VWAP⁴ of ELMO shares to the Undisturbed Date
- The ELMO Independent Board Committee ("**IBC**") unanimously recommends that ELMO shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of ELMO shareholders
- Two of ELMO's largest shareholders, JLAB Investments (No. 2) Pty Ltd and the Garber Family Trust⁵, who in aggregate hold or control 23.4% of ELMO's ordinary shares outstanding as at the date of this announcement, have confirmed that they intend to vote all ELMO shares held or controlled by them in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of ELMO shareholders
- The transaction is subject to Foreign Investment Review Board ("**FIRB**") approval and other customary conditions, including ELMO shareholder and Court approval, which must be satisfied before the Scheme is implemented
- ELMO shareholders do not need to take any action at the present time

ELMO Software Limited ("**ELMO**" or the "**Company**") (ASX:ELO) announces that it has entered into a Scheme Implementation Deed ("**SID**") under which K1 Investment Management, LLC⁶ ("**K1**") has agreed to acquire all of the issued shares in ELMO by way of a recommended Scheme of Arrangement ("**Scheme**").

¹ Based on fully diluted shares outstanding of 100.2m

² Based on ELMO closing price on 12 October 2022 of \$2.42 per share

³ Based on ELMO 1-month VWAP to 12 October 2022 of \$2.49 per share

⁴ Based on ELMO 3-month VWAP to 12 October 2022 of \$2.63 per share

⁵ Regiton Group Pty Ltd as the trustee of the Garber Family Trust

⁶ The relevant SID counterparty is Manhattan Bondi HoldCo, Inc., a wholly-owned subsidiary of funds advised by K1

ELMO Chairman Barry Lewin commented, *“The ELMO Independent Board Committee has carefully considered the proposal and believes the offer price of \$4.85 cash per share represents compelling value for ELMO shareholders. Whilst ELMO has achieved considerable success to date in Australia/New Zealand and the United Kingdom, the IBC has balanced this against the macroeconomic and execution risks in achieving future plans and has unanimously concluded that the Scheme is a compelling option which realises attractive value for our shareholders.”*

Overview of the Scheme

ELMO, a leading cloud-based HCM solution provider, announces that it has entered into a SID with Manhattan Bondi HoldCo, Inc. (“**BidCo**”), a wholly-owned subsidiary of funds advised by K1, a leading enterprise software-focused investment firm, under which it is proposed that K1 will acquire (via BidCo) 100% of the shares in ELMO for \$4.85 cash per share by way of a Scheme of Arrangement.

K1 is a Los Angeles-based private investment firm focused exclusively on partnering with enterprise software companies, and has closed 34 investments in the last twelve months. K1 has invested in over 200 enterprise software companies since inception, working with management to create global category leaders through a combination of inorganic and organic growth initiatives. Notable past investments in other high growth Australian-based software companies include simPRO, Cyara, AroFlo and RosterLive.

Under the terms of the Scheme, ELMO shareholders will be entitled to receive \$4.85 per share in cash, subject to applicable conditions being satisfied or waived and the Scheme being implemented.

ELMO’s CEO and Co-Founder, Danny Lessem, has agreed to work together exclusively with K1 to seek to implement the Scheme pursuant to a co-operation voting and rollover agreement (subject to his directors’ duties and employment agreement with ELMO). As part of that co-operation agreement, Danny Lessem has agreed to roll approximately 70% of his shares owned or controlled in ELMO as at the date of this announcement⁷ into the private K1 vehicle (instead of receiving cash for those shares). As part of his co-operation agreement with K1, Danny Lessem has agreed to vote in favour of the Scheme (which will occur as a separate class of shareholder) and not accept or vote in favour of any competing proposal for the duration of that agreement. As at the date of this announcement, Danny Lessem owns or controls 11.0% of ELMO’s ordinary shares outstanding.

Certain management of ELMO, to be agreed at the appropriate time with K1, will also have the option to elect to roll a portion of their respective shares⁸ owned or controlled in ELMO into the private K1 vehicle (instead of receiving cash for those shares) and would also be classified as a separate class of shareholder with respect to the Scheme.

The Scheme Consideration implies a fully diluted Equity Value of approximately \$486 million¹ for ELMO, and represents:

- 100.4% premium to the last trading price of ELMO shares on 12 October 2022, being the final trading day prior to ELMO’s announcement that it had received approaches expressing interest in acquiring the Company (“**Undisturbed Date**”)²
- 94.6% premium to the 1-month VWAP³ of ELMO shares to the Undisturbed Date
- 84.4% premium to the 3-month VWAP⁴ of ELMO shares to the Undisturbed Date

⁷ Based on the value of those shares per the Scheme Consideration.

⁸ Final amount subject to election and terms of final agreement with K1

ELMO IBC unanimously recommends the Scheme

As previously announced on Thursday 13 October 2022, ELMO confirmed that it had received approaches expressing interest in acquiring the Company and was in discussions with select parties in the context of maximising shareholder value.

As part of this process, ELMO established an Independent Board Committee (“**IBC**”) comprising Barry Lewin, Kate Hill and Leah Graeve (in their capacity as Non-Executive Directors on the Board) to consider any confidential proposals and engage with potentially interested counterparties as required.

The ELMO IBC engaged in a robust review process with the assistance of financial and legal advisers. This included an evaluation of ELMO’s strategic plan as an independent company and the various operational and execution risks inherent in achieving this strategic plan. The IBC also considered a number of other non-binding expressions of interests for ELMO.

The ELMO IBC considers that the Scheme is in the best interests of shareholders and unanimously recommends that ELMO shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of ELMO shareholders.

Subject to the same qualifications, each ELMO IBC Director intends to vote all the ELMO shares that they hold or control at the time of the Scheme meeting in favour of the Scheme.

The ELMO IBC believe that this is an attractive offer for ELMO shareholders for the following reasons:

- **Significant premium:** Scheme Consideration represents a premium of over 100% to ELMO’s closing price of \$2.42 per share on Wednesday 12 October 2022 (the Undisturbed Date) and a 95% premium to ELMO’s 1-month VWAP of \$2.49 per share to the Undisturbed Date;
- **Certainty of value:** The 100% cash consideration provides ELMO shareholders with certainty of value and the opportunity to realise their investment in full for cash; and
- **Limited conditionality:** The Scheme is subject to FIRB approval and other conditions customary for transactions of this type and is not conditional on financing or due diligence.

Major shareholder voting intentions

JLAB Investments (No. 2) Pty Ltd (which has a relevant interest in 13.7% of ELMO’s ordinary shares outstanding as at the date of this announcement) and the Garber Family Trust (who have a relevant interest in 9.7% of ELMO’s ordinary shares outstanding as at the date of this announcement) (in aggregate, representing 23.4% of ELMO’s ordinary shares outstanding as at the date of this announcement) have both confirmed that they intend to vote, or recommend the voting of, all ELMO shares held or controlled by them in favour of the Scheme in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the transaction is in the best interest of ELMO shareholders.

Conditions and other terms

ELMO and BidCo have entered into the attached SID, which contains the terms upon which ELMO and BidCo will implement the Scheme. The key conditions of the Scheme include:

- receipt of required regulatory approvals including in relation to the Foreign Investment Review Board;
- the approval of ELMO shareholders of the Scheme at the Scheme meetings by the requisite majorities, and the approval of the Court, in accordance with the Corporations Act 2001 (Cth);

- For personal use only
- expiration or early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended;
 - no ELMO material adverse change, prescribed occurrences or material breach of representations and warranties as defined in the SID;
 - an Independent Expert concluding that the Scheme is in the best interests of ELMO shareholders, and not changing or withdrawing that conclusion; and
 - other conditions customary for a transaction of this nature.

The SID also includes exclusivity provisions customary for a transaction of this nature, the payment of a mutual break fee in certain prescribed circumstances and maximum limitations of liability provisions in favour of each party.

Indicative timetable and next steps

ELMO shareholders do not need to take any action in relation to the Scheme at this stage. A Scheme Booklet containing information in relation to the Scheme, reasons for the ELMO IBC recommendation, an Independent Expert's Report and details of the Scheme will be sent to ELMO shareholders in due course. It is anticipated that the Scheme will close in the first quarter of calendar year 2023 (subject to satisfaction or waiver of the relevant conditions). These dates are indicative and subject to change.

Advisers

The ELMO IBC has engaged UBS Securities Australia Limited as its financial adviser and Arnold Bloch Leibler as its legal adviser.

Authorised by:

This announcement was authorised by the IBC of ELMO.

- ENDS

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About ELMO

Established in 2002, ELMO Software offers cloud-based solutions for small businesses and mid-market organisations to manage people, process and pay. Spanning across Australia, New Zealand and the United Kingdom, ELMO operates on a software-as-a-service ("SaaS") business model, based on recurrent subscription revenues.

About K1

K1 is a global investment firm that builds category-leading enterprise software companies. K1 partners with strong management teams of high-growth technology businesses to help them achieve successful outcomes. With over 140 professionals, K1 and its operating affiliate, K1 Operations LLC, change industry landscapes with operationally focused growth strategies designed to rapidly scale portfolio companies. Since inception of the firm, K1 has partnered with over 200 enterprise software companies including industry leaders such as accessiBe, Atera, Checkmarx, Complysci, ControlUp, Cyara, Emburse, Employ, Granicus, HR Acuity, IronScales, Onit, RethinkFirst, Reveal-Brainspace, RFPIO, simPRO, Smarsh, XTM International and Zapproved. For more information, visit k1im.com and follow on LinkedIn.