



25 November 2022

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

Dear Sir/Madam

Substantial shareholder Notice – ELMO Software Limited

Please see attached a substantial holder notice, as required under section 671B of the *Corporations Act 2001* (Cth) (**Corporations Act**), for ELMO Software Limited.

ELMO Software Limited (**ELO**) has aggregate voting power of 5.86% in ELO as a consequence of restrictions on the disposal of shares under various voluntary escrow arrangements, under ELO's employee share trust, and in respect of various 'restricted shares', which each give ELO a technical 'relevant interest' in its own shares under section 608(1)(c) of the Corporations Act.

ELO has no rights to acquire those shares and no right to control the voting of those shares.

Further details in respect of the escrow arrangements, ELO's employee share trust, and the 'restricted shares', are disclosed in the annexures to the substantial holder notice.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Anna Sandham'.

Anna Sandham
Company Secretary

Form 603Corporations Act 2001
Section 671B**Notice of initial substantial holder****To** Company Name/Scheme **ELMO Software Limited (ELO)**ACN/ARSN **102 455 087****1. Details of substantial holder (1)**Name **ELMO Software Limited and its related bodies corporate (as set out in Annexure A)**ACN/ARSN (if applicable) **102 455 087**The holder became a substantial holder on **08/09/2022****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)
Fully Paid Ordinary Shares	5,835,455	5,835,455	5.86%

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
ELO	<p>Restrictions on the disposal of shares under voluntary escrow arrangements giving ELO a technical "relevant interest" in its own shares under section 608(1) (c) of the Corporations Act. ELO has no right to acquire these shares or to control the voting rights attaching to these shares.</p> <p>Annexure B contains a summary of the relevant escrow arrangements.</p> <p>Annexure C contains a template escrow deed.</p>	5,745,188 fully paid ordinary shares
ELO	<p>Restrictions on the disposal of "unallocated shares" in ELO's employee share trust giving ELO a technical "relevant interest" in its own shares under section 608(1) (c) of the Corporations Act. ELO has no right to acquire these shares or to</p>	84,230 fully paid ordinary shares

	control the voting rights attaching to these shares. Annexure D contains a copy of the trust deed establishing the ELO employee share trust	
ELOo	Restrictions on the disposal of "restricted shares" which were issued under ELMO's equity plan rules and which are subject to "disposal restrictions", giving ELO a technical "relevant interest" in its own shares under section 608(1)(c) of the Corporations Act. ELO has no right to acquire these shares or to control the voting rights attaching to these shares. Annexure E contains a link to the ELMO equity plan rules.	6,037 fully paid 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
ELO	Those persons described in Annexure B	Those persons described in Annexure B	5,745,188 Fully paid ordinary shares
	Pacific Custodians Pty Ltd ACN 009 682 866	Unallocated shares held by Pacific Custodians Pty Ltd are held on an "unallocated basis" for participants generally under ELO's equity plan rules	84,230 Fully paid ordinary shares
	Pacific Custodians Pty Ltd ACN 009 682 866	Restricted Share Rights held by Pacific Custodians Pty Ltd for a participant in the NED Equity Share Plan	6,037 Fully Paid 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	
ELO	ELO has no right to acquire the shares that are described in paragraph 3 above.			

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
ELO and each of its related bodies corporate (listed in Anneuxure A)	Associates of one another as they are "related bodies corporate"

7. Addresses

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

Name	Address
ELO	Level 27, 580 George Street, Sydney NSW

Signature

print name **Anna Sandham** capacity **Company Secretary**

sign here



date 25/11/2022

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 – RELATED BODIES CORPORATE

This is Annexure A of 1 page referred to in form 603 (Notice of initial substantial holder) given by ELMO Software Limited.



Anna Sandham
Company Secretary
25 November 2022

Name	Principal place of business/ Country of incorporation	Ownership interest	
		2022 %	2021 %
ELMO Accredited Pty Limited	Australia	100	100
ELMO Talent Management Software Pty Limited	Australia	100	100
International Colleges Pty Limited	Australia	100	100
Studywell College Pty Limited	Australia	100	100
Techni Works Pty Limited	Australia	100	100
Techniworks Action Learning Pty Limited	Australia	100	100
Quintessential Marketing Consulting Pty Limited	Australia	100	100
ELMO Talent Management Software Pte Limited	Australia	100	100
ELMO Software Limited	New Zealand	100	100
ELMO New Zealand Holdings Limited	New Zealand	100	100
Pivot Remesys Group Holdings Limited	New Zealand	100	100
Pivot Remesys IP Limited	New Zealand	100	100
Pivot Remesys Pty Limited	New Zealand	100	100
HRonboard Pty Limited	Australia	100	100
Get BoxSuite Pty Limited	Australia	100	100
Vocam Limited	Australia	100	100
Rose Class Unit Trust	Australia	100	100
Safety Business Learning Limited	United Kingdom	100	100
Informed Business Outsourcing Clark, Inc	Philippines	100	100
ELMO Software UK Holdings Limited	United Kingdom	100	100
Centurion Management Systems Limited	United Kingdom	100	100
ELMO Software Limited	United Kingdom	100	100
Breathe Software Pty Limited	United Kingdom	100	100
Signifo Limited	United Kingdom	100	100
ELMO Software US Holdings Inc.	United States	100	100
Webexpenses Inc.	United States	100	100
Webexpenses Pty Limited	United States	100	100

ANNEXURE B – SUMMARY OF ESCROW ARRANGEMENTS

This is Annexure B of 2 pages referred to in form 603 (Notice of initial substantial holder) given by ELMO Software Limited.



Anna Sandham
Company Secretary
25 November 2022

Escrowed shareholder	Total number of escrowed shares
Michael Richards	5,433,690
Adam Reynolds	142,236
Andrew May	56,895
Ryan Corlett	56,895
Ashley Whiteman	17,069
Bernard Crumlish	12,801
Justin Atkins	12,801
Aqib Hussain	12,801
Total	5,745,188



Anna Sandham
Company Secretary
25 November 2022

Dated 16 December 2020

Escrow deed

Parties

ELMO Software Limited
ACN 102 455 087

The Shareholder in item 1 of the Schedule

The Controller(s) in item 4 of the Schedule (if any)

Deed dated 16 December 2020

Parties **ELMO Software Limited** ACN 102 455 087
of Level 27, 580 George Street, Sydney NSW 2000
(**Company**)

The Shareholder in item 1 of the Schedule
(**Holder**)

The Controller(s) in item 4 of the Schedule (if any)
(**Controllers, and each a Controller**)

Introduction

A The Holder and any Controller(s) have each agreed that it will not deal with the Restricted Securities except as set out in this Deed.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **Alternative Holder** has the meaning given to it in clause 2.5;
- (2) **ASX Settlement** means ASX Settlement Pty Limited;
- (3) **ASX** means ASX Limited or the Australian Securities Exchange currently operated by ASX Limited, as the context may require;
- (4) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (5) **controller interests** means the securities, substantial economic interest or other interests in the Restricted Securities and each intermediate entity through which that interest occurs, full particulars of which are set out in item 5 of the Schedule;
- (6) **CHESS** means Clearing House Electronic Sub-register System, operated in accordance with the Corporations Act;
- (7) **Completion Date** has the meaning given to it in the Share Purchase Agreement;
- (8) **Consideration Shares** has the meaning given to it in the Share Purchase Agreement;
- (9) **Constitution** means the Constitution of the Company;
- (10) **Corporations Act** means *Corporations Act 2001* (Cth);

- (11) **Deed** means this document, including any schedule or annexure to it;
- (12) **Dispose** means to:
- (a) sell, assign, transfer or otherwise dispose of, or agree to offer to sell, assign, transfer or otherwise dispose of any interest in a Restricted Security or Restricted Securities;
 - (b) enter into any option which, if exercised, enables or requires the relevant security holder to sell, assign, transfer or otherwise dispose of;
 - (c) encumber or grant a Security Interest in respect of, any Restricted Security or Restricted Securities;
 - (d) do or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of, any Restricted Security or Restricted Securities; or
 - (e) enter into an agreement that, or grant an option that if exercised (whether such exercise is subject to conditions or not), requires a person to do anything stated in sub-paragraph (a) or (c) above;
- and **Disposal** has a corresponding meaning;
- (13) **Escrow Period** means each of the:
- (a) Tranche 1 Escrow Period; and
 - (b) Tranche 2 Escrow Period;
- (14) **Issuer Sponsored Subregister** means that part of an entity's register for a class of CHESS approved securities that is administered by the entity (and not ASX Settlement) and records uncertificated holdings of securities;
- (15) **New Escrow Deed** has the meaning given to it in clause 2.5;
- (16) **Price** has the meaning given to that term in the Share Purchase Agreement.
- (17) **Proportional Takeover Bid** has the meaning given to it in section 648D of the Corporations Act;
- (18) **Related Body Corporate** has the meaning given to it in the Corporations Act;
- (19) **Restricted Securities** means each of the:
- (a) Tranche 1 Consideration Shares; and
 - (b) Tranche 2 Consideration Shares.
- (20) **Security Interest** means:
- (a) a mortgage, charge, hypothecation, assignment by way of security, pledge, lien, title retention arrangement set-off arrangement, flawed asset arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or
 - (b) any agreement to create or give rise to any interest or arrangement of the type referred to in clause 1.1(17)(a);

- (21) **Share Purchase Agreement** means the Share Purchase Agreement between the Company, ELMO Software UK Holdings Limited (England & Wales company number 12843874), ELMO Software US Holdings Inc. (Delaware file number 4307782) and the vendors of each of Signifo Limited (England & Wales company number 03922382), Webexpenses Pty Ltd and Webexpenses Inc. dated on or around the date of this Deed;
- (22) **Share Registry** means the share registry engaged by the Company to administer and manage the register of members;
- (23) **Shares** means fully paid ordinary shares in the capital of the Company;
- (24) **Subsidiary** has the meaning given to it in section 9 of the Corporations Act;
- (25) **Takeover Bid** has the meaning given to 'takeover bid' in section 9 of the Corporations Act;
- (26) **Tranche 1 Consideration Shares** has the meaning given to it in paragraph (1) of Item 3 of the Schedule;
- (27) **Tranche 2 Consideration Shares** has the meaning given to it in paragraph (2) of Item 3 of the Schedule;
- (28) **Tranche 1 Escrow Period** has the meaning given to it in in paragraph (1) of Item 2 of the Schedule;
- (29) **Tranche 2 Escrow Period** has the meaning given to it in paragraph (2) of Item 2 of the Schedule; and
- (30) **Tranche 2 Issue Date** means the date on which the Company issues the Tranche 2 Consideration Shares.

1.2 Interpretation

- (1) Reference to:
- (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a natural person, trust, fund, limited partnership, partner, body corporate or other type of entity;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a statute, regulation or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it; or made under it as amended or replaced; and
 - (f) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.

- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 **Parties**

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2 **Escrow restrictions**

2.1 Subject to clauses 2.4 and 4, during the Tranche 1 Escrow Period, the Holder must not do any of the following:

- (1) Dispose of, or agree or offer to Dispose of, the Tranche 1 Consideration Shares;
- (2) create, or agree or offer to create, any Security Interest in the Tranche 1 Consideration Shares, except as permitted under this Deed; or
- (3) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Tranche 1 Consideration Shares.

2.2 Subject to clauses 2.4 and 4, during the Tranche 2 Escrow Period, the Holder must not do any of the following:

- (1) Dispose of, or agree or offer to Dispose of, the Tranche 2 Consideration Shares;
- (2) create, or agree or offer to create, any Security Interest in the Tranche 2 Consideration Shares, except as permitted under this Deed; or
- (3) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Tranche 2 Consideration Shares.

2.3 Subject to clauses 2.4 and 4, during any Escrow Period, a Controller will not do any of the following.

- (1) Dispose of, or agree or offer to Dispose of, the controller interests;
- (2) create, or agree or offer to create, any Security Interest in the controller interests; or
- (3) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the controller interests.

- 2.4 The terms of this Deed will have no effect on any of the rights of the Holder to receive or participate in dividends, any rights issue, bonus issue or other distributions in connection with the Restricted Securities or to exercise voting rights in respect of the Restricted Securities.
- 2.5 If Tranche 2 Consideration Shares are to be issued in the name of any person different to the Holder (**Alternative Holder**), the Holder must, prior to the issue of the Tranche 2 Consideration Shares, procure that the Alternative Holder of the Tranche 2 Consideration Shares executes a deed acceding to this Deed (or executes a Deed that relates to the Tranche 2 Consideration Shares that is in substantially similar form to this Deed), agreeing to restrict the Disposal of the Tranche 2 Consideration Shares (**New Escrow Deed**). The Company is entitled to delay the issue of the Tranche 2 Consideration Shares until such time as the New Escrow Deed is executed by the Alternative Holder and the executed document has been provided to the Company.

3 Application of Holding Lock

The parties acknowledge and agree that:

- (1) each of the Restricted Securities will be registered and held by the Holder on the Issuer Sponsored Subregister;
- (2) the Company may apply a holding lock to the Restricted Securities during the relevant Escrow Period;
- (3) the Company will do all things necessary to ensure that any holding lock referred to in clause 3(2) above is released (including notifying ASX in accordance with ASX Listing Rule 3.10A and procuring release of the holding lock by the Share Registry):
 - (a) to the extent necessary to permit the Disposal of any of the Restricted Securities as permitted by this Deed; and
 - (b) in full:
 - (i) in the case of the Tranche 1 Consideration Shares, at the conclusion of the Tranche 1 Escrow Period; and
 - (ii) in the case of the Tranche 2 Consideration Shares, at the end of the Tranche 2 Escrow Period.

4 Permitted actions

4.1 Takeover Bid

- (1) If:
 - (a) a Takeover Bid is made in respect of all Shares; and
 - (b) the holders of at least 50% of the Shares that are not at that time subject to escrow have accepted the offer, or
 - (c) a Proportional Takeover Bid is made for Shares; and
 - (d) the Company in general meeting passes a resolution to approve the Proportional Takeover Bid in accordance with rule 37 of the Constitution,

then the restrictions in clause 2 do not apply to the extent necessary to allow the Holder to accept an offer made under the Takeover Bid or the Proportional Takeover Bid (as applicable) for some or all of the Restricted Securities pursuant to that Takeover Bid or Proportional Takeover Bid.

- (2) Notwithstanding clause 4.1(1) above, if the Takeover Bid or the Proportional Takeover Bid (as applicable) does not become unconditional or all conditions to the Takeover Bid or the Proportional Takeover Bid have not been satisfied or waived, the restrictions imposed by clause 2 continue to apply to the Restricted Securities issued at that time.

4.2 Merger by way of scheme of arrangement

- (1) The Holder may do anything required to enable any of the Restricted Securities to be cancelled or transferred as part of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act.
- (2) Notwithstanding clause 4.2(1) above, if the scheme of arrangement does not take effect, the restrictions imposed by clause 2 continue to apply to the Restricted Securities issued at that time.

4.3 Buy back or capital reduction

Clause 2 will cease to apply to the extent necessary to allow any of the Restricted Securities to be transferred or cancelled as part of any Share buyback or return of capital or other similar pro rata reorganisation or an acquisition of all Shares which has in any such case received all necessary approvals, including any such necessary approvals by securityholders of the Company and courts, provided that if for any reason any or all of the Restricted Securities are not transferred or cancelled in accordance with the transactions contemplated by this clause 4.3 then the Holder agrees that the restrictions imposed by clause 2 continue to apply to the Restricted Securities issued at that time.

4.4 Reorganisation

Clause 2 will cease to apply to the extent necessary to allow a Disposal of Restricted Securities to enable the Holder to undertake a reorganisation or a change of trustee of the Holder, subject to:

- (a) the prior consent of the Company in writing, acting reasonably; and
- (b) any new holder of the Restricted Securities agreeing to be bound by a deed in substantially the same terms as this Deed.

4.5 Disposal required by law

Notwithstanding any other term of this Deed, Restricted Securities may be Disposed if required by any applicable law including if required under an order of a court of competent jurisdiction. A reference in this clause to 'applicable law' includes all laws and regulations of jurisdictions applicable to the Company or any of its subsidiaries or other entities, or to the Holder or Controller, as the case may be (including the Corporations Act and any other laws and regulations of a jurisdiction outside Australia), and rules, policies, official directives, orders or requirements of any government agency, including the ASX Listing Rules, ASX Settlement Operating Rules and the applicable listing requirements of the ASX.

4.6 Request for release

During the Escrow Period the Holder may request a release of the Restricted Securities from the restrictions under this Deed by giving the Company notice in writing. The

Company may agree, at its absolute discretion, to release all, or some of the Restricted Securities, or refuse to release any Restricted Securities, upon receipt of such a request.

4.7 Other Exceptions

Clause 2 will cease to apply to the extent necessary to allow a Disposal in Restricted Securities if the Disposal constitutes a Disposal of, but not the creation of a Security Interest in, some or all of the Restricted Securities to:

- (a) a company wholly-owned by the Holder;
- (b) a new trustee of the Holder;
- (c) a trust in relation to which the Holder is the beneficiary;
- (d) a Related Body Corporate of the Holder;
- (e) a spouse, de facto spouse, parent, child, step-child or grand-child over eighteen years of age of the Holder;
- (f) an executor or beneficiary of the Holder's estate following the death of the Holder; or
- (g) a personal representative, attorney or guardian of the Holder that has been legally appointed following the Holder being certified as physically or mentally incapacitated,

(each a **Transferee**), where the Transferee also enters into an escrow arrangement with the Company in respect of those Restricted Securities on substantially the same terms as this Deed for the remainder of the relevant Escrow Period.

5 Warranties

5.1 The Holder and any Controller warrants that:

- (1) the Holder has the Controller(s) set out in item 4 with the interests identified in item 5;
- (2) the Controller(s) are the only persons with a controller interest in the Holder;
- (3) the Holder and the Controller(s) each have the power to enter into this Deed and to perform and observe all of the obligations contained in it; and
- (4) the Holder is the registered owner, or has the right to be registered as the owner, of the Restricted Securities.

6 Consequences of breaching this Deed

6.1 If the Holder or a Controller breach this Deed, each of the following applies:

- (1) the Company may take any steps it considers necessary to enforce the Deed, or to rectify the breach; and
- (2) the Company may refuse to acknowledge, deal with, accept or register any sale, assignment, transfer or conversion of any of the Restricted Securities.

This is in addition to any other rights and remedies of the Company.

7 Further assurance

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

8 Amendment

This Deed may not be changed or waived without the written consent of the Company.

9 Termination

- (1) For the avoidance of doubt, this Deed terminates with immediate effect and without the action of any party on the day after the expiry of the Tranche 2 Escrow Period.
- (2) For the avoidance of doubt:
 - (a) the Tranche 1 Consideration Shares will no longer be escrowed under the terms of this Deed at the expiration of the Tranche 1 Escrow Period; and
 - (b) the Tranche 2 Consideration Shares will no longer be escrowed under the terms of this Deed at the expiration of the Tranche 2 Escrow Period.
- (3) The Company will procure that the Share Registry releases any holding lock in respect of the Restricted Securities, as soon as possible following the end of the relevant Escrow Period. This clause 9(3) will survive termination or expiry of this Deed.

10 Notices

- 10.1 A notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing.
- 10.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid post to the address of the addressee set out in this Deed or subsequently notified;
 - (2) sent by facsimile to the facsimile number of the addressee as notified to the Company;
 - (3) sent by email to the email address of the addressee as notified to the Company; or
 - (4) delivered at the address for service of the addressee.

11 Trustee limitation of liability

- 11.1 The parties acknowledge that where the Holder or a Controller is a trustee (**Trustee**) of a trust (**Trust**) it enters into this Deed in its capacity as the Trustee of that Trust only, and in no other capacity.
- 11.2 The liability of the Trustee in respect of the obligations of the Trust at any time under or in connection with this Deed is limited to the assets of the Trust which are for the time being in the Trustee's hands as a trustee of the Trust and out of which the Trustee is actually indemnified.

12 Governing law and jurisdiction

- 12.1 This Deed is governed by the laws in force in the State of New South Wales, Australia.
- 12.2 Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the State of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed.

13 Counterparts

- 13.1 This Deed may be executed in any number of counterparts and if so executed, the counterparts taken together constitute one document.

Schedule 1

Item 1 **Holder**

[Insert name] of [Insert address]

Item 2 **Escrow Period**

Each of the following:

- (1) **Tranche 1 Escrow Period:** the period from the Completion Date and ending at 4.15pm (Sydney time) on the date that is 24 months after the Completion Date.
- (2) **Tranche 2 Escrow Period:** the period from the Tranche 2 Issue Date and ending at 4.15pm (Sydney time) on the date that is 24 months after the Tranche 2 Issue Date.

Item 3 **Restricted Securities**

Each of the following:

- (1) **Tranche 1 Consideration Shares:** [insert number].
- (2) **Tranche 2 Consideration Shares:** such number of Shares issued to the Holder by the Company under the terms of the Share Purchase Agreement in part satisfaction of the Tranche 2 Consideration (as defined in the Share Purchase Agreement).

Item 4 **Controller(s) (if any)**

None

Item 5 **Details of controller interests**

None

Executed as a deed and delivered on the date shown on the first page.

Executed by ELMO Software Limited ACN
102 455 087 in accordance with section 127
of the *Corporations Act 2001*:

Director

Name of director/company secretary
(BLOCK LETTERS)

Director

Name of director
(BLOCK LETTERS)

Where the Holder is a company/corporate trustee:

Executed by the **Holder** in accordance with
its constituent documents and all relevant
laws.

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)

Where the Holder is an individual/individual trustee:

Executed by the **Holder** in the presence of:

Witness signature

Signature of Holder

Name of witness
(BLOCK LETTERS)

Address of witness

Controller(s) (if any):

Executed by the **Controller** in the presence
of:

.....
Witness signature

.....
Signature of Controller

.....
Name of witness
(BLOCK LETTERS)

.....
Address of witness

Executed by the **Controller** in the presence
of:

.....
Witness signature

.....
Signature of Controller

.....
Name of witness
(BLOCK LETTERS)

.....
Address of witness

Executed by the **Controller** in the presence
of:

.....
Witness signature

.....
Signature of Controller

.....
Name of witness
(BLOCK LETTERS)

.....
Address of witness

**ANNEXURE D (TRUST
DEED)**



This is Annexure D of 25 pages referred to in form 603 (Notice of initial substantial holder) given by ELMO Software Limited.

A handwritten signature in black ink, appearing to read 'Anna Sandham'.

**Anna Sandham
Company Secretary
25 November 2022**

**ELMO LIMITED EMPLOYEE SHARE PLAN
TRUST DEED**

**ELMO Software Limited
ABN 13 102 455 087**

**Pacific Custodians Pty Limited
ABN 66 009 682 866**

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TRUST DEED

DATE: 11 November 2019

PARTIES:

ELMO Software Limited (ABN 13 102 455 087) of Level 27, 580 George Street, Sydney, NSW 2000 (**Company**).

Pacific Custodians Pty Limited (ABN 66 009 682 866) of Level 12, 680 George Street, Sydney, New South Wales 2000 (**Trustee**).

Anna Sandham of Level 12, 680 George Street, Sydney, NSW (**Settlor**).

RECITALS

- A. The Company has established the Equity Incentive Plan and may establish other Future Plans under which securities may be offered to Eligible Participants and outlines the terms and conditions upon which Offers will be made.
- B. The Equity Incentive Plan is designed to assist in the attraction, motivation, retention and reward of employees and other eligible participants. The Equity Plan is also designed to align the interests of employees with the interests of shareholders by providing an opportunity for the participants to receive an equity interest in the Company.
- C. The Company wishes to establish a trust for the sole purpose of obtaining Shares for the benefit of participants in the Equity Incentive Plan and any Future Plan. The Trustee may, at the direction of the Company, acquire Shares in advance of allocating those Shares to Participants. Such Shares will be registered in the name of the Trustee pursuant to this deed and may either be held on an unallocated basis or as Plan Shares on behalf of a Participant at any particular time.
- D. For the purposes of this trust arrangement, Plan Shares issued, transferred or allocated under a Plan may be subject to such conditions as the Company determines in accordance with the Plan Rules. Participants may forfeit their entitlements to Plan Shares in certain circumstances.
- E. The Trustee has agreed to act as the first Trustee of the Trust and has agreed to acquire, hold and transfer Shares and Plan Shares in relation to the Equity Incentive Plan and any Future Plan on the terms and conditions set out in the relevant Plan Rules and in accordance with this deed. The activities of the Trustee are limited to the Equity Incentive Plan and any Future Plan.
- F. The Trust has been established to be an "employee share trust" as defined in sub-section 130-85(4) of the Tax Act whose sole activities are as described in that sub-section, and complies with the requirements of the Class Order.
- G. The Settlor has agreed to establish the Trust.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following words and phrases have these meanings in this deed unless the contrary intention appears:

Account means an account in respect to Plan Shares referred to in clause 5.

Accretion means any accretion, dividend, distribution, entitlement, benefit or right of whatever kind whether cash or otherwise which is issued, declared, paid, made, arises or accrues directly or indirectly to or in respect of a Share including, without limitation, any rights issue, bonus issue, entitlements offer, or distribution from any reserve and any reduction of capital.

Auditor means any person registered as an auditor under the Corporations Act.

Board means the board of directors of the Company.

Bonus Shares means the shares in respect of the Plan Shares held by the Trustee on behalf of a Participant, issued as part of a bonus issue to security holders of the Company.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Sydney, New South Wales.

Class Order means Class Order [CO 14/1000] (Employee incentive schemes: Listed bodies) as issued by the Australian Securities & Investments Commission or any replacement class order or similar instrument.

Company Secretary means the person appointed to act as company secretary of the Company.

Corporations Act means the Corporations Act 2001 (Cth) as amended from time to time.

Director means a director of the Company.

Eligible Participant means a person who meets the eligibility requirements in the relevant Plan Rules.

Equity Incentive Plan means each of the Company's Senior Executive Equity Plan (**SEEP**), the High Performer Executive Plan (**HPEP**) and the Non-Executive Director Equity Plan (**NED Equity Plan**) (each an "**Plan**", collectively "**Plans**") or any other current or Future Plan, as the case may be, established by the Company for the benefit of Participants, subject to Plan Rules approved by the Board and amended from time to time.

Future Plan means any employee plan to be established by the Group for the benefit of Participants, subject to Plan Rules approved by the Board from time to time.

Fund means:

- (a) the Settlement Sum;
- (b) the Shares acquired or accepted by the Trustee for the purposes of the Trust;
- (c) the Plan Shares;
- (d) all other money, property and assets acquired or accepted by the Trustee which become subject to the terms and conditions of this deed; and
- (e) all income of the Trust.

Group means the Company and its related bodies corporate (as defined in the Corporations Act) and **Group Company** means each member of the Group.

Listing Rules means the official listing rules of ASX Limited (ACN 008 624 691), except to the extent of any express written waiver by ASX Limited in favour of the Company.

Net Income means, in respect of a financial year of the Trust, an amount which the Trustee determines to be the "net income" (as defined in the Tax Act) of the Trust for the Year of Income.

Notice of Withdrawal means a duly completed and executed request, for permission to withdraw a specified number of Plan Shares held by the Trustee on behalf of a Participant from the Trust and be sold or transferred to the Participant or as the Participant's directs, which is submitted by the Participant to the Board in a form approved by the Board.

Offer means an offer made by the Company or a member of the Group to an Eligible Participant under a Plan.

Participant means an Eligible Participant to whom the Company makes an award under a Plan.

Plan means an Equity Incentive Plan or any Future Plan as the case may be.

Plan Rules means the terms and conditions and other rules relating to a Plan as amended from time to time.

Plan Shares means Shares held by the Trustee on behalf of a Participant in accordance with the requirements of this deed and the relevant Plan Rules.

Restriction Period means any period under the relevant Plan Rules or relevant terms of Offer during which there are restrictions on dealing with or transferring the relevant Plan Shares.

Security Interest means a mortgage, charge, pledge, lien or other encumbrance of any nature.

Settlement Sum means A\$10.00.

Shares means fully paid ordinary shares of the Company, and for the purposes of this deed, unless the context otherwise suggests includes a "Plan Share".

Tax Act means the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth), or both as the context requires.

Trust means the trust established by this deed for the purpose of all Plans.

Trustee means initially Pacific Custodians Pty Limited (ABN 66 009 682 866) and thereafter means the trustee from time to time of the Trust.

Year of Income means a period of 12 months corresponding with the financial year of the Company and includes the period commencing on the date of this deed and terminating on the next financial year end for the Company and the period ending on the date of termination of the Trust and commencing on the start of the preceding financial year for the Company.

1.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) verbs expressed in the past tense include expressions of the present or future tense (and so verbs such as "issued" or "acquired" may mean "issue" or "acquire" or "to be issued" or "to be acquired" as the context requires);
- (c) a reference to a recital, this deed or a clause means the recital, this deed or the clause as amended from time to time in accordance with this deed;
- (d) a reference to a rule, statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to a person includes a reference to the person's legal personal representatives, executors, administrators and successors, a firm or a body corporate;
- (f) a reference to Trustee includes any replacement, substitute or additional trustee;
- (g) unless the context requires otherwise, terms used in this deed have the same meaning as in the Plan Rules; and
- (h) in the event of any ambiguity, this deed is to be interpreted to allow the Trust to meet the definition of an "employee share trust" as defined in the Tax Act.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2. ESTABLISHMENT OF TRUST

2.1 Purpose

The Trust is being established for the purpose of acquiring, holding and transferring Shares in accordance with the Plans and the terms of this deed.

2.2 Appointment

The Trustee is hereby appointed by the Company and agrees to act as trustee of the Trust on the terms of this deed.

2.3 Commencement

The Trust comes into operation on the date the Settlement Sum is paid to the Trustee by the Settlor.

2.4 Trust name

The Trust created by this deed will be known by the name "ELMO Software Limited Employee Share Plan Trust".

2.5 Trustee's acts

Despite anything else in this deed the Trustee must act in accordance with the Plan Rules, as notified by the Company from time to time.

2.6 Declaration of Trust

The Trustee declares that the Fund is held by the Trustee for and on behalf of Eligible Participants on the terms and conditions of this deed.

3. TRUSTEE

3.1 Nature, appointment and removal

The Trustee ceases to be the Trustee when one of the following occurs:

- (a) the Trustee gives no less than 40 Business Days notice in writing to the Company that it wishes to retire as Trustee;
- (b) the Company gives no less than 40 Business Days notice in writing to the Trustee that it is removed as Trustee of the Trust;
- (c) immediately, when a receiver, manager or administrator is appointed to the Trustee or the Trustee goes into liquidation or an order or resolution is made for its winding up; or
- (d) immediately, when a receiver, manager or administrator is appointed to the Company or the Company goes into liquidation or an order or resolution is made for its winding up; and

a new Trustee is appointed.

3.2 Appointment

On the retirement or removal of the Trustee, the Company may appoint such new Trustee as it thinks fit. The Company shall use its best endeavours to appoint a new Trustee as soon as possible after receipt of a notice that the existing Trustee wishes to retire.

3.3 Transfer of assets

On a change of Trustee, the retiring Trustee must execute all transfers, deeds or other documents and do all other things necessary to transfer assets into the name of the new Trustee as soon as reasonably practicable.

3.4 Powers of Trustee

Subject to this deed, the Trustee has all the powers in respect of the Trust to the maximum extent permitted by law, including but not limited to the following powers:

- (a) to enter into and execute all contracts, deeds and documents and do all acts or things which it deems expedient for the purpose of giving effect to and carrying out the trusts, powers and discretions conferred on the Trustee by this deed;
- (b) to subscribe for, purchase or otherwise acquire and to sell, transfer or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on terms and conditions, which it thinks fit;
- (c) to appoint and, at its discretion, remove or suspend custodians, trustees, managers, servants and other agents, determine the powers to be delegated to them, pay such remuneration to them as it thinks fit and any person so employed or engaged is deemed for the purpose of the deed to be employed or engaged by the Trustee;
- (d) to institute, conduct, defend, compound or abandon any legal proceeding concerning the Trust and also to settle or compromise and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Trustee in respect of the Trust;
- (e) to refer any claim or demand by or against the Trustee in respect of the Trust to arbitration and observe and perform awards arising from such arbitration;
- (f) to make and give receipts, releases and other discharges for money payable to the Trust;
- (g) to open bank accounts and to retain on current or deposit account at any bank any money which it considers proper and to make regulations for the operation of those bank accounts including the signing and endorsing of cheques;
- (h) to buy Shares, to transfer Shares or Plan Shares or sell any Shares or Plan Shares (as the case may be) and apply the proceeds of sale in accordance with this deed;

- For personal use only
- (i) to receive dividends or distributions in relation to the Shares and Plan Shares and apply those amounts in accordance with this deed;
 - (j) to rely on any document executed and provided by a Participant, the form of which has been approved by the Company;
 - (k) to take and act upon the advice or opinion of any legal practitioner (whether in relation to the interpretation of this deed, any other document or statute or as to the administration of the trusts hereof) or any other professional person and whether obtained by the Trustee or not, without being liable in respect of any act done by it in accordance with such advice or opinion;
 - (l) to determine who is entitled to sign on the Trustee's behalf receipts, acceptances, endorsements, releases, contracts and documents;
 - (m) to do anything that the Board reasonably directs or requests the Trustee to do in relation to any Plan as contemplated under this deed; and
 - (n) generally do all acts and things which the Trustee considers necessary or expedient for the administration, maintenance and preservation of the Trust and in performance of its obligations under this deed.

3.5 Trustee's obligations in relation to unallocated Shares

In respect of an unallocated Share, the Trustee:

- (a) may apply any capital receipts, dividends or other distributions received in respect of the unallocated Share to purchase further Shares to be held on trust for the purposes of this Trust only in accordance with a direction given under clause 4.1;
- (b) must hold any bonus Shares issued in respect of an unallocated Share as an unallocated Share within the Fund;
- (c) must not participate in any issue by the Company of rights (not being by way of a bonus share issue) to acquire Shares or other securities in respect of the unallocated Share without the written consent of the Company; and
- (d) must keep an account of all unallocated Shares held by the Trustee.

3.6 Instructions to Trustee

- (a) In respect to Plan Shares held by the Trustee, the Trustee is bound only to observe instructions from a Participant or anybody claiming under him or her in respect of Plan Shares as required by or pursuant to the Plan Rules.
- (b) For the purposes of this Deed, the Trustee is entitled to regard as valid an instruction, consent or other authorisation given or purported to be given by a Participant or by any attorney or agent of the Participant, whether in writing and signed, or purporting to be signed, by the Participant or in any other form approved by the Board.

- (c) The Trustee must not vote in respect of any Plan Shares on any resolution where voting occurs by show of hands.
- (d) Unless the Plan Rules or an Offer specifies otherwise, if the Trustee holds allocated Plan Shares on behalf of any Participant, then, subject to the Corporations Act, the Listing Rules and the Company's constitution, in respect of voting which occurs by way of a poll:
- (i) each Participant may direct the Trustee by notice in writing not less than 72 hours before the meeting as to how to exercise the voting rights attaching to their allocated Plan Shares, either in respect of all resolutions or a particular resolution; and
 - (ii) where a Participant gives such a direction to the Trustee, the Trustee must act in accordance with that direction by voting by way of proxy.
- (e) Notwithstanding clause 3.4, the Trustee may not, at its own discretion, exercise any voting rights attaching to any of the Plan Shares or Shares it holds on trust, including in relation to any unallocated Share.

3.7 Remuneration of Trustee

Subject to clause 9.2, the Company will pay to the Trustee from the Company's own resources such fees and reimburse such reasonable expenses incurred by the Trustee as the Company and the Trustee agree from time to time. The Trustee is entitled to retain for its own benefit any such fee or reimbursement.

Subject to clause 9.2, the Trustee is not entitled to receive any fees, commission or other remuneration in respect of its office or its performance of its obligations as trustee of the Trust, from an Account that is established or from the Trust generally.

3.8 No security

Neither the Trustee nor the Company may use as security Shares or Plan Shares held by the Trustee.

3.9 Conflict of interest

A person who is a director of the Trustee may, except where prohibited by the Corporations Act, act in that capacity notwithstanding a conflict of interest or duty.

3.10 Sole activities test

Without limiting clause 3.4, the Company and the Trustee agree that the Trust will be managed and administered so that it satisfies the definition of "employee share trust" for the purposes of subsection 130-85(4) of the Tax Act.

4. ACQUISITION, ALLOCATION AND DISPOSAL OF SHARES BY TRUSTEE

4.1 Notice from the Company

Where the terms of the relevant Plan Rules and/or relevant terms of Offer include that Plan Shares are to be held by the Trustee on behalf of Participant(s), the Board must by notice in writing instruct the Trustee to subscribe for, acquire and/or allocate a number of Shares specified in the notice, to be held by the Trustee as Plan Shares in respect of an identified Participant or Participants.

The Board may also by notice in writing instruct the Trustee to subscribe for or acquire a number of Shares as specified in a notice, to be held by the Trustee on an unallocated basis on trust for Participants generally.

The Board must in any notice referred to in this clause 4.1:

- (a) offer to the Trustee to have the Company or a member of the Group provide funds for the purpose of acquiring Shares;
- (b) request the Trustee to apply some of the capital of the Trust for the purposes of acquiring Shares; or
- (c) effect a combination of the above acts.

4.2 Acquisition of Shares by the Trustee

The Trustee must within 7 days, or in the timeframe as directed by the Company, subscribe for or acquire Shares from time to time in accordance with the instructions contained in the written notice received from the Board referred to in clause 4.1. This is subject to the Trustee receiving sufficient payment or having sufficient capital as required by that notice.

Shares subscribed for or acquired in accordance with this clause 4.2 are to be registered in the name of the Trustee on subscription or acquisition, and are considered to be general Trust property to be held subject to the terms of this deed.

In respect of Plan Shares held by the Trustee for the purposes of a Plan, the Trustee:

- (a) authorises the Company to register the Trustee as the legal owner on acquisition of those Plan Shares (whether by issue or transfer); and
- (b) agrees to be bound by the Company's constitution.

The Company does not, and no Group Company will, have and shall not have any beneficial interest, in any Shares that are subscribed for or acquired under this clause 4.2. This provision overrides any contrary provision in this deed.

4.3 Trustee to allocate Shares as Plan Shares

Upon direction from the Board, the Trustee must allocate Shares as Plan Shares to the Account established for a Participant, provided:

- For personal use only
- (a) the Trustee receives sufficient payment from the Company or a member of the Group or having sufficient capital to subscribe for or acquire the relevant Shares;
 - (b) the Trustee holds sufficient Shares on an unallocated basis in the Fund; or
 - (c) any combination of (a) and (b) above applies, as directed by the Company.

4.4 Trustee must transfer or dispose of Plan Shares

The Trustee must transfer or dispose of Plan Shares in accordance with the Plan Rules and any Offer.

4.5 Notification of Share transfer or allocation

The Trustee must, subject to the relevant Plan Rules, and as soon as reasonably practicable after the Trustee transfers or allocates Shares to a Participant under clause 4.3 or clause 4.4 (as the case may be) notify the Company of the following information:

- (a) the number of Plan Shares allocated or transferred to the Participant; and
- (b) the date on which the Plan Shares were so allocated or transferred.

4.6 Beneficial Interest and forfeited Plan Shares

Plan Shares allocated in accordance with clause 4.3 must be held on the terms of this deed by the Trustee on behalf of the relevant Participant who is the beneficial owner of the Plan Shares until such time as the Plan Shares are transferred or disposed of in accordance with this deed or forfeited by the Participant in accordance with the relevant Plan Rules.

On forfeiture of Plan Shares by a Participant in accordance with the Plan Rules, Plan Shares will cease to be Plan Shares, and those forfeited Shares will be held by the Trustee on an unallocated basis in the Fund as general Trust property. In its discretion, the Board may from time to time by notice in writing direct the Trustee to:

- (a) reallocate any of those forfeited Shares for the benefit of one or more Participants; and/or
- (b) hold the proceeds of sale of any such forfeited Shares in the Fund.

Whilst Plan Shares are held by the Trustee on behalf of a Participant, that Participant is entitled to the same rights in respect of the Plan Shares (including the right to receive dividends paid and participate in any bonus or rights issue) as other holders of Shares (unless the Plan Rules specify otherwise).

All interests and benefits to be held by the Trustee on behalf of a Participant under this deed are strictly personal to that Participant.

4.7 No Rights in Shares

Nothing in this deed confers or is intended to confer on the Company or any Group Company, any charge, lien or any other proprietary right or proprietary interest in the Shares acquired by the Trustee under this clause 4.

4.8 Restrictions on dealing with Plan Shares

During any Restriction Period, the Trustee and the Participant must not assign, transfer, sell, or grant a Security Interest in or over, or otherwise deal with, a Plan Share, without the written consent of the Board in accordance with the relevant Plan Rules.

The Company and the Trustee may enter into such arrangements as they consider necessary to enforce the restrictions in this clause 4.8, including but not limited to, applying or having applied a holding lock on the Plan Shares, and the Trustee and the Participants are deemed to agree to abide by such arrangements.

At any time after a Restriction Period (if any) ceases and subject to any administrative guidelines established by the Company, a Participant may give to the Company or the Trustee, or be deemed by the relevant Plan Rules and/or relevant terms of Offer to have given, a Notice of Withdrawal, and following any required approval by the Company of the Notice of Withdrawal, the Trustee must transfer the legal title in those Plan Shares or sell those Plan Shares in accordance with the terms of the approved Notice of Withdrawal and clause 4.9 or clause 4.10 (as applicable).

4.9 Transfer of Plan Shares to Participants

Subject to clause 4.8, the Trustee must do all things required to transfer legal title in Plan Shares to a Participant on whose behalf Plan Shares are held or to any third party as directed by the relevant Participant (and pay to the Participant any other monies held on the account for the Participant):

- (a) where required to do so by the relevant Plan Rules and/or relevant terms of Offer as soon as reasonably practicable;
- (b) if the Trust is terminated under clause 15; or
- (c) otherwise, where the Board in its discretion determines.

4.10 Transfer of Shares to Participants

The Trustee must do all things required to transfer legal title in Shares to a Participant:

- (a) where required to do so by the relevant Plan Rules and/or relevant terms of Offer as soon as reasonably practicable;
- (b) upon termination of the Trust in accordance with clause 15.2; or
- (c) otherwise, where the Board in its discretion determines.

4.11 Sale of Plan Shares

Subject to clause 4.8, if the relevant Plan Rules and/or relevant terms of Offer permit, the Trustee may at the direction of the relevant Participant, sell any of the Plan Shares to which the Participant is entitled. On sale of any such Plan Shares, subject to any Plan Rules and/or relevant terms of Offer, the Trustee will apply the proceeds of sale (and pay to the Participant any other monies held on the account for the Participant):

- (a) first, in payment of any brokerage and other costs and expenses of the sale incurred by the Trustee (including an amount sufficient to meet the tax liability (if any) incurred by the Trustee resulting from that sale); and
- (b) second, the balance (if any) in payment to the relevant Participant.

4.12 Sale of unallocated Shares

The Trustee may at the written direction of the Company sell any unallocated Shares. On the sale of any unallocated Shares, the Trustee will apply the sale proceeds in a manner consistent with clause 9.3.

4.13 Limitation

When the Company wishes to rely on the Class Order:

- (a) the Trustee must not hold more than 5 per cent of the voting shares or voting interests in the capital of the Company at any point in time where such holdings relate to employee incentive schemes of the Company in reliance on the Class Order; and
- (b) the Company is responsible for ensuring compliance with clause 4.13(a).

5. ACCOUNTS

5.1 Accounts

The Trustee must maintain appropriate records in respect of the unallocated Shares and Plan Shares it subscribes for or acquires.

Where Plan Shares are allocated to a Participant, the Trustee must open and maintain an Account in respect of that Participant in respect of those Plan Shares that are to be held by the Trustee.

5.2 Contents of Accounts

Each Account must record at least:

- (a) the number of Plan Shares which each relevant Participant has been granted or to which they are entitled, as appropriate;
- (b) the date of acquisition of Plan Shares which each relevant Participant has been granted or to which they are entitled as appropriate; and

- (c) the number of Bonus Shares (if any) to which each Participant is entitled.

6. PAYMENTS

6.1 Payment direction

Subject to the terms of this deed and the relevant Plan Rules, the Trustee may apply any income received by the Trustee (including, but not limited to, dividends and returns of capital):

- (a) in relation to any Shares or other Fund assets in accordance with the provisions of clauses 9.2 and 9.3; and
- (b) in relation to any Plan Shares it holds on behalf of a Participant in the manner directed by the Participant, or otherwise as provided in the Plan Rules.

6.2 Tax

Subject to the terms of this deed, the Trustee may deduct from any amount to be paid to a Participant an amount on account of tax payable or anticipated to become payable by the Trustee, including by the Trustee on behalf of the Participant directly or indirectly, in relation to any Plan Shares held on behalf of the Participant.

6.3 Interest

Interest earned through a bank account opened and operated by the Trustee on monies which form part of the Fund, shall be distributed in accordance with clause 9.3.

7. NOTICES

7.1 Method

Any notice to be given by the Company or the Trustee under this deed shall be deemed to have been duly given if:

- (a) delivered;
- (b) sent by electronic mail; or
- (c) sent by ordinary prepaid mail,

and shall be deemed to have been served:

- (a) if delivered to the recipient's address, on the date of delivery;
- (b) if sent by electronic mail, when electronic communication enters the relevant information system(s); or
- (c) if posted, three Business Days after the date of posting.

7.2 Address

Delivery, transmission and postage shall be to the address of any Participant as indicated on the application form or such other address as the Trustee or any Participant may notify to the other.

The address of the Company and the Trustee are as follows (or as notified from time to time):

Company

ELMO Software Limited

Address: Level 27, 580 George Street, Sydney NSW 2000
Attention: James Haslam
Email: james.haslam@elmolearning.com.au

Trustee

Pacific Custodians Pty Limited

Address: c/- Trustee Office, Level 12, 680 George Street,
Sydney, New South Wales 2000
Postal Address: PO Box 20344, World Square NSW 2002
Attention: Trustee Office
Email: ess.trustees@linkmarketservices.com.au

8. AUDIT

8.1 Accounts

The Trustee shall keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of the Trust and the matters in respect of which such receipt and expenditure takes place and of all sales and purchases of shares and of the assets and liabilities of the Trust.

8.2 Books of Accounts

The books of account of the Trust shall be maintained at the registered office of the Trustee.

An Account held for a Participant shall be available for inspection by that Participant during normal business hours free of charge upon prior written request.

8.3 Auditor

The Trustee shall appoint an Auditor of the Trust, following written approval from the Company.

8.4 Audit

Subject to clause 8.3, the Trustee shall cause the books of account to be audited annually by the Auditor of the Trust.

8.5 Access

The Trustee must ensure that any Auditor of the Trust has access to all papers, accounts and documents concerned with or relating to the Trust.

The Trustee must ensure that the books and records of the Trust are available for inspection by the Company at the Trustee's registered office during normal business hours free of charge within a reasonable time of a written request.

9. INCOME AND CAPITAL DISTRIBUTIONS

9.1 Plan Shares

Subject to clause 9.2 and the relevant Plan Rules, a Participant is presently entitled to so much of the Net Income of the Trust for a Year of Income which is attributable to:

- (a) the Plan Shares held by the Trustee on behalf of the Participant;
- (b) the proceeds of sales arising from any sale of Plan Shares by the Trustee on behalf of the Participant; and
- (c) transactions or events related to the Plan Shares or property related to or arising from Plan Shares held by the Trustee on behalf of the Participant.

9.2 Fees and charges for administering Trust

The Trustee will not levy any fees or charges for administering the Trust that are payable directly by any Eligible Participant or out of the assets of the Trust, other than reasonable disbursements including brokerage and tax levied or incurred in connection with the Trust.

9.3 Balance of Net Income

Subject to clause 9.2, the balance of the Net Income of the Trust for a Year of Income to which no Participant is presently entitled in accordance with clause 9.1 may, subject to compliance with any restrictions in the Plan Rules or applicable by statute, common law or equity or the Listing Rules, be applied, in whole or in part to meet any reasonable costs and expenses properly incurred by the Company in relation to the establishment, administration or termination of the Trust (including, but not limited to, administration, trust, financial and audit expenses).

9.4 Accretion

The balance of the Net Income of the Trust for a Year of Income to which no Participant is presently entitled in accordance with clause 9.1 and not applied in accordance with clause 9.3 may be accumulated by the Trustee as an Accretion to the Trust.

9.5 Other Application of Capital

The Trustee may on the termination of the Trust as set out in clause 15.1, if it thinks fit, apply that part of the capital of the Trust to which no Participant would

be presently entitled if the Trust was terminated at that time for the benefit of any of the following beneficiaries as the Trustee thinks fit:

- (a) all or any employees of the Group;
- (b) a Participant; or
- (c) a provident, benefit, superannuation or retirement fund established and maintained by the Company for employees or past employees of the Group.

For the avoidance of doubt, no amount of income or capital of the Trust can be applied under this clause 9, or under any other term of the Trust, for the benefit of the Company or any Group Company.

9.6 Trustee powers as to income and Net Income

Before the end of each Year of Income, the Trustee may in its absolute discretion decide in writing whether:

- (a) any amount received or held by the Trustee under each Plan is to be treated as being on income or capital account; and
- (b) any actual or deemed capital gain arising in that Year of Income under the Tax Act to be included as income of the Trust.

Unless the Trustee has made a decision under clause 15.3(a), an item is taken into account in calculating the income of the Trust if it would be taken into account in calculating the Net Income of the Trust.

The Trustee may decide that any part of a payment or distribution made under a Plan is to be from a particular class or source of income or property of that Plan.

10. AMENDMENT

10.1 Amendment by the Company

- (a) Subject to clauses 2.4 and 10.2, the Company may at any time by written instrument or by resolution of the Board, amend all or any of the provisions of this deed (including this clause 10) or waive or amend the application of any provisions of this Deed in relation to a Participant.
- (b) Any amendment to this Deed must be approved by the Trustee in writing who must not unreasonably withhold or delay consent.

10.2 No material reduction of Participant's rights

No amendment of the provisions of this deed is to materially reduce the rights of any Participant in respect of Plan Shares credited to the Account of the Participant prior to the date of the amendment, other than:

- (a) an amendment introduced primarily:
 - (i) to enable the Trustee or the Company to operate a Plan in

accordance with any changes to the Plan Rules;

- (ii) to enable the Trustee or the Company to take into account any changes to the system of taxation in Australia;
 - (iii) for the purpose of complying with or conforming to present or future State, Territory or Commonwealth legal requirements governing or regulating the maintenance or operation of a Plan;
 - (iv) to correct any manifest error or mistake;
 - (v) to enable contributions or other amounts paid by any body corporate in the Group to the Trust to qualify as income tax deductions for that body corporate or any other body corporate in the Group; or
 - (vi) to enable the Trustee, the Participant or any body corporate in the Group to reduce the amount of fringe benefits tax under the Fringe Benefit Tax Assessment Act 1986 (Cth), the amount of tax under the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth) or the amount of any other tax or impost that may otherwise be payable by the Trustee, the Participant or the body corporate in relation to the Trust; or
- (b) an amendment agreed to in writing by the Participants whose rights will be materially reduced by the proposed amendment.

10.3 Retrospectivity

Subject to the above provisions of this clause 10, any amendment to this deed made pursuant to clause 10.1 may be given such retrospective effect as is specified in the written instrument or resolution by which the amendment is made.

11. INDEMNITY OF THE TRUSTEE

11.1 Indemnification

Without derogating from the right of indemnity given by law to trustees, the Company hereby covenants with the Trustee that it will indemnify and keep indemnified the Trustee in respect of all liabilities, costs and expenses incurred by the Trustee in the execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted other than a liability or claim arising out of the Trustee's negligence, dishonesty, fraud or the Trustee wilfully or knowingly being a party to a breach of trust.

11.2 Negligence, dishonesty, fraud or wilful breach of trust

The Trustee shall not be under any liability whatsoever except for its negligence, dishonesty, fraud or wilful breach of trust or the negligence, default or wilful breach of trust committed by any of its employees or agents acting as such. For the purposes of this clause 11.2, any act that is ordinarily performed by the Trustee in its professional capacity as a trustee and which is not

executed in a manner that a reasonable person would expect from a trustee acting in a professional capacity, will be considered as negligent.

11.3 Costs and expenses

Subject to clause 11.4, nothing in clause 11.1 enables the Trustee to recover any liabilities costs and expenses from any Participant.

11.4 Tax

The Trustee is entitled to be indemnified by a Participant in respect of any tax payable by the Trustee in respect of Shares held by the trustee on behalf of Participants.

11.5 No indemnity from Participant

Except as expressly provided in this deed, the Trustee will have no right of indemnity from a Participant personally.

11.6 Exclusion of consequential losses

Notwithstanding the above, the Trustee will not be liable to the Company for any economic loss, loss of revenue, loss of profits, loss of data or other indirect or consequential loss or damage (whether at law or in equity) in respect of any matter relating to this deed, whether or not the loss or damage was foreseeable or contemplated by either party or if it was advised of the possibility of that loss or damage.

12. ADMINISTRATION OF THE PLANS

12.1 Further documentation

The Trustee and the Company may each from time to time require a Participant to complete and return such other documents as may be required by law to be completed by the Participant or such other documents which the Trustee or the Company considers should, for legal or taxation reasons, be completed by the Participant. This may include but is not limited to the Participant appointing the Trustee as the Participant's attorney to execute documents on its behalf and to act in its best interests.

12.2 Suspension or cancellation of a Plan

The Company may from time to time suspend the operation of any Plan and may at any time cancel any Plan. The suspension or cancellation of the any Plan will not prejudice the existing rights of Participants.

13. RIGHTS OF PARTICIPANTS

Except as expressly provided in this deed or any respective Plan Rules, nothing in this deed:

- (c) confers on any employee of any body corporate in the Group the right to receive any Plan Shares or Shares;

- (d) confers on any Participant the right to continue as an employee of any body corporate in the Group;
- (e) affects any rights which any body corporate in the Group may have to terminate the employment of any employee;
- (f) may be used to increase damages in any action brought against any body corporate in the Group in respect of any such termination; or
- (g) confers on an Eligible Participant any expectation to become a Participant.

14. TRUSTEE WARRANTIES

The Trustee warrants to the Company that:

- (a) it is a corporation validly existing under the laws of its place and registration;
- (b) it has the corporate power and all licences and authorisations to enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed;
- (c) it has taken all necessary corporate action to authorise its entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and to carry out the transactions contemplated by this deed; and
- (d) this deed is valid and binding on it.

15. TERMINATION OF TRUST

15.1 When Trust terminated

The Trust will terminate and be wound up as provided below upon the first to occur of the following events:

- (a) an order being made or an effective resolution being passed for external administration of the Company (other than for the purpose of amalgamation or reconstruction);
- (b) the Board determining that the Trust is to be wound up; or
- (c) the day before the 80th anniversary of the date of this deed.

15.2 Consequence of Trust termination

If the Trust is terminated, the Trustee must transfer to each Participant the Plan Shares standing to the credit of the Account of the Participant.

15.3 Balance of capital or income of Trust

If the Trust is terminated, the Trustee shall dispose of all Shares and the balance of the capital or income of the Trust to which no Participant is presently

entitled in accordance with clause 9.1 may be applied in whole or in part in accordance with clause 9.3 by the Trustee. For the purposes of this clause 15.3, the Company acknowledges that payment under clause 9.5(a) takes precedence over any other provision in clause 9.3 and that no Group Company is entitled to any part of the capital or income of the Trust.

16. GOVERNING LAW, JURISDICTION AND PROCESS

This deed will be governed by the laws of and applicable in the State of New South Wales and will be construed and take effect in accordance with those laws and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

17. COUNTERPARTS

This Deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.

18. STAMP DUTY

The Company must arrange for this this Deed to be stamped and must pay all requisite stamp duties.

))))))))

gma Sandoz

)Signature

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Edmund

Director



Print name

Print name

Signature: _____

)Director

Lise McKenna,

Secretary/Director

Print name

ANNEXURE E – ELMO EQUITY PLAN RULES

This is Annexure E of 1 page referred to in form 603 (Notice of initial substantial holder) given by ELMO Software Limited.



Anna Sandham
Company Secretary
25 November 2022

Link to ELMO Equity Plan Rules:

<https://www.asx.com.au/asxpdf/20170627/pdf/43k7287y9hzzc0.pdf>