This Referral Agreement is made

Between:

ELMO SOFTWARE LTD   ABN 13 102 455 087
of Level 27, 580 George Street, Sydney, NSW, 2000 Australia

("ELMO")

and

……………….............................   **ABN** …………………………

of ……………………………………………………………….....   ("**Referrer**")

Background

A.   ELMO is a software development business that has created and owns Intellectual Property Rights in the Software.

B.   Referrer may source and refer to ELMO potential customers for the Software on the terms and conditions of this Agreement.

C.   ELMO has agreed to pay Commissions earned by Referrer in accordance with the terms and conditions of this Agreement.

Operative provisions

1.   Definitions and Interpretation

1.1   In this Agreement unless the context otherwise requires:

"**Commencement Date**" means the date of which the last of the Parties executes this document;

"**Commission**" means the payments to be paid in respect of Qualifying Software Licences by ELMO to Referrer under this Agreement on the commission basis set out in the Schedule;

"**Confidential Information**" includes information of a Party relating to:

(a)   its personnel, policies, customers, marketing and business strategies;

(b)   its know-how, Intellectual Property Rights and trade secrets;

(c)   the terms of this Agreement;

but excludes information which is at the time of the relevant disclosure already lawfully in the public domain other than as a result of a breach of this Agreement;

"**Customer**" means any person or entity who enters or has agreed to enter into a Software Licence with ELMO during the Term;

"**Customisation**" means any modification to the Software to be developed by ELMO for a Customer (including the end product of such modification);

"**GST**" means a tax payable under the GST Act;

"**GST Act**" means A New Tax System (Goods and Services Tax) Act 1999;

"**Initial Term**" means the period of 12 months from the Commencement Date;

"**Intellectual Property Rights**" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

"**Known Prospect**" means a person, entity or organisation with whom ELMO is, at the time of provision by Referrer of details of the Lead or has at any time previously been in discussions/negotiations for a Software Licence or who is a current customer of ELMO;

"**Lead**" means a prospective Customer identified by Referrer to ELMO;

"**Modification**" means any modification, enhancement or amendment to the Software but does not include an Update;

"**Net Revenue**" means gross revenue actually received by ELMO less refunds paid and any GST or sales taxes if any, and for the avoidance of doubt excludes any revenue attributable to other goods or services (not being a licence of the Software) that may be provided by ELMO or any third party to any Customer, such as professional services, support or the provision of equipment;

"**Party**" means ELMO or Referrer as the context requires;

"**Qualifying Referral**" means a Lead generated by Referrer, being a person, entity or organisation who is not a Known Prospect, or an individual within an organisation that is not a Known Prospect;

"**Qualifying Software Licence**" means a Software Licence that is entered into as a consequence of Referrer providing a Qualifying Referral during the Term, and for the avoidance of doubt excludes any Software Licence that was entered into or negotiated prior to the date of this Agreement and any other Software Licence procured other than by Referrer providing a Qualifying Referral;

"**Schedule**" means the schedule to this Agreement;

"**Software**" means any software application developed by ELMO known as "ELMO" and (unless the context requires otherwise) includes associated services, and except where the context requires otherwise, shall include any Customisation, Modification and/or Update thereto;

"**Software Licence**" means a licence or subscription between ELMO and a user entitling the user to use the Software;

"**Term**" means the Initial Term and any extension or renewal thereto that may be agreed to in writing by ELMO;

"**Trade Marks**" means "ELMO" and any stylised version owned or used by ELMO; and

"**Update**" means any "bug fix" in respect of the Software and any new release of the Software created by ELMO during the Term.

1.2 In this Agreement, unless expressed to the contrary:

(a) words importing the singular shall include the plural and vice versa;

(b) a reference to a Party to a document includes the Party's successors and permitted assigns;

(c) no provision of this Agreement will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this Agreement or that provision;

(d) any reference to an amount of money is a reference to that amount in Australian Dollars; and

(e) for the purposes of interpretation, clause headings shall be disregarded.

2. Term and appointment

2.1 ELMO appoints Referrer on a non-exclusive basis to source and refer Leads to ELMO for the Term.

2.2 For the avoidance of doubt nothing in this Agreement prevents ELMO conducting its own direct marketing and sales, nor appointing any third party to perform services to do so.

2.3 Unless either Party terminates as per clause 12, the Term will auto-renew for another 12 months after the Initial Term.

3. Referrer entitlements and obligations

3.1 Referrer is entitled and encouraged to:

(a) identify Leads;

(b) promote the Software;

(c) respond to enquiries received from Leads in respect of the Software; and

(d) refer Leads to ELMO.

3.2 Referrer must:

(a) refrain from making any commitment or representation or giving any warranty to any Customer or Lead in relation to the Software or any other goods or services provided by ELMO;

(b) endeavour to ensure that ELMO's personnel are introduced to the appropriate personnel within each proposed Customer's organisation, bearing in mind their technical competence and decision-making authority within the organisation; and

(c) in performing this Agreement comply with all applicable laws and regulations.

3.3 Referrer agrees that it is not entitled to grant or purport to grant licences of the Software directly to any person and shall not be a party to any Software Licence, which shall be

entered into by and between the Customer and ELMO only in accordance with ELMO's then standard licence terms or such other terms as ELMO determines.

4. Registering a Referral

4.1 Referrer may register a Lead by sending an email to referrals@elmosoftware.com.au with the name, contact and any other pertinent details of the Lead. Referrer must ensure that it has the Lead's permission to provide their details to ELMO.

4.2 ELMO will as soon as practicable acknowledge to Referrer its receipt of the Lead and will notify Referrer as to whether the Lead is a Known Prospect or a Qualifying Referral. If the Lead is a Known Prospect then no Commissions will apply in the event that a Software Licence is entered into by that Known Prospect. ELMO must act honestly and in good faith in performing this function.

5. Commissions

5.1 During the Term ELMO shall pay Commissions to Referrer on the basis set out in the Schedule.

5.2 Commissions shall be payable quarterly in respect of each of the periods ending each 31 March, 30 June, 30 September and 31 December, during the Term, and must be paid to Referrer within 30 days of those dates. Commissions shall be only payable once the Software Licence fees to which those Commissions pertain have been received by ELMO from the relevant Customers.

5.3 ELMO shall keep proper records of all revenue from Qualifying Software Licences and account honestly to Referrer in respect of all Commissions earned.

6. Marketing and Promoting of the Software

6.1 Referrer agrees that all advertising and promotional materials that it distributes or makes available (whether electronic or hard copy) in relation to the Software must either be that supplied directly by ELMO, or must have the prior written approval of ELMO, such approval not to be unreasonably withheld. For the avoidance of doubt, and without limitation, the Parties agree that such approval may be considered reasonably withheld where any material proposed for use by Referrer:

(a) is not in accordance with ELMO's branding and design practices (whether or not contained in a style guide or similar document);

(b) does not reflect or is contrary to ELMO 's brand and product values and image;

(c) contains misleading, inaccurate, inadequate, incomplete or otherwise damaging information; or

(d) is or is likely to be contrary to law.

6.2 Without limiting any other provision of this Agreement, Referrer agrees to comply with any reasonable directions provided by ELMO in respect of the marketing of the Software.

6.3 Referrer is not granted any licence to use the Trade Marks (whether registered or not), except in the form and manner in which, and on media on which they are supplied by ELMO to Referrer from time to time, or as otherwise agreed between the Parties in writing. Notwithstanding the foregoing:

(a)   Referrer shall comply with ELMO's reasonable directions from time to time regarding any use of the Trade Marks;

(b)   in any material or publication issued by Referrer in which the Software and the Trade Marks are referred to, Referrer shall include a legible statement as to ELMO's ownership of such rights, in such form and with such prominence as ELMO requires; and

(c)   without limiting any other provision of this Agreement, Referrer shall submit to ELMO for prior approval representative samples of all promotions, advertising, technical and other material and packaging proposed to be used by Referrer in connection with this Agreement that are different from those permitted in any trademark/name/branding manuals or guidelines provided by ELMO from time to time.

6.4   Referrer agrees not to publish or issue any statement to the media regarding the Software without ELMO's prior written consent.

6.5   Referrer must ensure that all statements and representations (including any representation by silence or omission) made to members of the public (including but not limited to Leads) in relation to ELMO and the Software are accurate, not misleading and take into account all up-to-date information.

7.   Acknowledgments

7.1   The Parties agree and acknowledge that:

(a)   a Customer's access to and use of the Software is contingent upon the Customer's entry of and ongoing compliance with a Software Licence with ELMO. Without limiting any other provision, ELMO shall not be liable to Referrer (or any related entity), its officers or employees in respect of any loss or damage arising as a result of or pursuant to the termination of a Software Licence for a Customer's breach thereof;

(b)   ELMO shall be entitled to refuse to grant (or if granted to early terminate) a Software Licence to any Lead or Customer on reasonable grounds, including ELMO's reasonable concerns with that Lead or proposed Customer's solvency, its reputation generally or ability to fully comply with the terms of any Software Licence; and

(c)   neither Party is a partner, agent or employee of the other Party and neither Party shall have the power or authority, directly or indirectly or through its servants or agents, to bind the other Party to any agreement with any third party or otherwise to contract, negotiate or enter into a binding relationship for or on behalf of ELMO, except if and as expressly provided in this Agreement.

8.   Goods and Services Tax

8.1   Except where this Agreement states otherwise an amount payable by a Party for a taxable supply made by another Party under this Agreement is expressed as a GST exclusive amount.

8.2   If this Agreement requires a Party to pay an amount in respect of an expense or liability ("Reimbursable Expense") incurred by another party ("Payee") to a third party, the reimbursable expense must be net of any input tax credit to which the Payee is entitled in respect of the Reimbursable Expense.

8.3   If a Party makes a taxable supply under this Agreement, then the Party liable to pay for the taxable supply must also pay to the supplier the GST payable in respect of the taxable supply at the time payment for the taxable supply is due.

9. Intellectual Property Rights

9.1 The parties agree and acknowledge that all Intellectual Property Rights in and to the Software, the Trade Marks and any materials provided to Referrer by ELMO in relation to the Software under this Agreement, are owned and shall be owned exclusively by ELMO and licensed to Referrer to the extent necessary and for the purpose of its performance of this Agreement only during the Term.

10. Copying and Modification of Software

10.1 Referrer shall not copy or alter or modify or in any other way interfere with the Software without the prior written permission of ELMO. Without limiting the foregoing or any other provision of this Agreement, title in any modifications to the Software including any made contrary to the obligations of the previous sentence shall immediately vest in ELMO.

10.2 Any copying, alteration, modification or other interference to which ELMO consents in writing shall be subject to such terms and conditions as ELMO may impose.

11. Confidential Information

11.1 Neither Party shall, without the prior written approval of the other, disclose or permit the disclosure of the Confidential Information except to those persons within the Party's organisation who have a need to know.

11.2 A Party shall not be in breach of clause 12.1 in circumstances where it is legally compelled to disclose any Confidential Information.

11.3 Each Party shall take all reasonable steps to ensure that its employees and agents, and any subcontractors engage for the purposes of this Agreement, do not make public or disclose the Confidential Information.

11.4 Each Party shall on demand by the other return to the other any documents or materials embodying any Confidential Information supplied in connection with this Agreement.

11.5 This clause shall survive the termination of this Agreement.

12. Termination

12.1 Without limiting the generality of any other clause in this Agreement, either Party ('**the aggrieved party'**) may terminate this Agreement immediately by notice to the other in writing if:

(a) the other Party is in breach of any term of this Agreement and such breach is material and not capable of remedy or, if capable of remedy, if such is not remedied within 14 days of sending by aggrieved party of a notice to so remedy;

(b) the other Party becomes unable to pay its debts as and when they fall due, or becomes or threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;

(c) there is a material change in control of the other Party; or

(d) the other Party ceases or threatens to cease conducting its business in the normal manner.

12.2 ELMO may terminate this agreement by giving 30 days notice to the referrer.

12.3   Termination of this Agreement pursuant to this clause will not prejudice any other rights or remedies which a Party has against the other Party.

13.   Warranties

13.1   Each Party warrants to the other that:

(a)   it is under no legal or other impediment that may prevent it fully carrying out its obligations under this Agreement;

(b)   no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement; and

(c)   it will comply with all laws and regulations in the course of performing this Agreement.

14.   Dispute Resolution

14.1   The procedure set out in this clause must be followed in relation to the resolution of a dispute concerning the interpretation of a term this Agreement or of the parties' rights or obligations pursuant to this Agreement ("**Dispute**").

14.2   Upon any Dispute arising, a Party may give written notice to the other Party that a Dispute exists ("**Dispute Notice**").

14.3   The Dispute Notice shall provide the recipient with the full particulars of the matters in Dispute.

14.4   The timetable and process for resolving a Dispute pursuant to a Dispute Notice is as follows:

(a)   within 5 working days of receipt of a Dispute Notice, the recipient shall hold discussions in good faith in an attempt to resolve the Dispute;

(b)   if the Dispute is not resolved within 20 days of the commencement of the meeting referred to in the previous sub-clause or if the meeting referred to in Clause 15.4(a) has not taken place within the 5 day period, the parties to the Dispute shall refer the matter to mediation;

(c)   within 5 working days following the expiry of the relevant period in the previous sub-clause, the parties to the Dispute must attempt to agree on the appointment of a mediator. In the absence of Agreement on the appointment of a mediator, a mediator is to be appointed by the President for the time being of the LEADR, with the costs of the mediation to be borne equally by the parties to the Dispute;

(d)   the parties to the Dispute shall use their best endeavours to ensure the mediation takes place within 30 days of a mediator being appointed; and

(e)   any mediation that takes place pursuant to the operation of this clause is to take place in Melbourne, Australia.

15.   Miscellaneous

15.1   This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

15.2 The benefit of this Agreement shall not be assigned by a Party without the written consent of the other Party. Either Party may consent to the assignment or novation of this Agreement by the other subject to such conditions as it chooses to impose.

15.3 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party. A waiver by a Party pursuant to this clause will not prejudice its rights in respect of any subsequent breach of the Agreement by the other Party.

15.4 The provisions of this Agreement, shall not be varied, except by agreement in writing signed by the parties.

15.5 The provisions of this Agreement that are capable of surviving termination, shall do so.

15.6 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

15.7 This agreement does not create any relationship of employment or agency.

15.8 The law governing this Agreement will be the law in New South Wales, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of its courts and tribunals and to the Federal Court of Australia sitting in New South Wales, Australia.

Executed as an Agreement

EXECUTED by **ELMO SOFTWARE LTD**
ABN 13 102 455 087

…………………………………………..
Authorised Representative

…………………………………………
Dated

…………………………………………
[Print full name in block letters]

EXECUTED by ………………………………..

ABN ………………

…………………………………………..
Authorised Representative Signature

…………………………………………..
Title

…………………………………………
Dated

…………………………………………
[Print full name in block letters]

Schedule

Commission basis

The greater of $1,000 or 10% of the Net Revenue actually received by ELMO from the first 12 month period from any Qualifying Software Licence during the Term, capped at a maximum of $5,000 payable in Australian Dollars (AUD) or in AUD equivalent currency.

For illustrative purposes, a deal sold in New Zealand will result in commission being paid in equivalent NZD translated at the payment date.