

AROFLO PARTNER PROGRAM

# Referral Agreement

# AROFLO PARTNER REFERRAL AGREEMENT

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## PARTIES

This Referral Agreement (**Agreement**) is entered into between AroFlo Innovations Pty Ltd (ABN 85 638 665 362) t/a AroFlo (AroFlo) (Suite 13, 2nd Floor, 12 Maroondah Hwy, Ringwood, VIC 3134 Australia) and the entity that submitted a Referral Partner Application Form to become a party to this Agreement (**Referrer**). This Agreement comes into effect on the date that AroFlo communicates acceptance of the Referrer's application to provide Referrals in exchange for a Referral Fee in writing.

Together called "**the Parties**" and each "**a Party**".

## BACKGROUND

- A. AroFlo owns and sells the Product including but not limited to the AroFlo Software.
- B. The Referrer wishes to promote, market and advertise the Product to third parties through its website and other channels.
- C. AroFlo has agreed to permit the Referrer to promote, market and advertise the Product in accordance with this Agreement.

## OPERATIVE PARTS

### 1. Definitions and Interpretation

#### 1.1. Definitions

In this Agreement:

**AroFlo Set-Up Fee** means the upfront set-up fee payable by the Customer to AroFlo upon signing up to access and use the Software if any such fee is payable;

**Benefit** is set out on the Website;

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Victoria;

**Claim** means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Loss, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

**Commencement Date** means the date that AroFlo communicates acceptance of the Referrer's Referral Partner Application Form in writing including by online acceptance and this Agreement takes effect;

**Confidential Information** means the terms of this Agreement and all know-how, financial information, technical information and other commercially valuable or sensitive information whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to a Party including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter, which is marked as confidential or which a Party regards as confidential, proprietary or of a commercially sensitive nature but does not include information which:

- (a) is lawfully in a Party's possession prior to its disclosure to a Party by the other;
- (b) enters the public domain other than as a result of any unauthorised disclosure;

- (c) is or becomes lawfully available to a Party from a third party who has the lawful power to disclose such information to that Party on a non-confidential basis; or
- (d) is independently developed by a Party;

**Consequential Loss** means any loss of actual or anticipated profits, loss of revenue, savings, opportunity, goodwill, customer, reputation, publicity, data or use;

**Customer** means a person identified by the Referrer in accordance with the Referral Process;

**Excluded Customer** means a Customer that:

- (a) has engaged in discussions or otherwise had prior dealings with AroFlo within the 6 months period prior to the Referral Date;
- (b) has existing contractual relations or is undertaking ongoing negotiations with AroFlo;
- (c) is already registered as a Qualified Referral from another Referrer; or
- (d) is a Customer rejected by AroFlo exercising its reasonable discretion;

**Force Majeure** means any event or circumstances beyond the reasonable control of a Party including any fire, lightning strike, flood, earthquake, natural disaster, sabotage, nuclear contamination, terrorism, war or civil riot that occurs to the extent that it:

- (a) would be unreasonable to expect the affected Party to have planned for, avoided or minimised the impact of such circumstance by appropriate risk management, disaster recovery or business resumption plan; and
- (b) results in a Party being unable to perform an obligation under this Agreement on time;

**Insolvency Event** means any of the following events or any analogous event in which a Party:

- (a) disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (b) ceases, or threatens to cease, carrying on business;
- (c) is unable to pay its debts as they fall due;
- (d) makes or commences negotiations with a view to making a general re-scheduling of its indebtedness, a general assignment, scheme of arrangement or composition with its creditors;
- (e) takes any corporate action or any steps are taken or legal proceedings are started for:
- (f) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other party (which approval will not be unreasonably withheld); or
- (g) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or
- (h) seeks protection or is granted protection from its creditors, under any applicable legislation;

**Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layout rights, trade names, trade secrets and know-how;

**Loss** means any loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind;

**Marketing Material** means any materials including any brochures, instructional material, advertising literature, user manuals, videos, online tutorials, templates, tools, procedures, guides, diagrams and such other materials provided to the Referrer by AroFlo from time to time to be used in marketing the Products or otherwise to assist the Referrer accomplish the purposes of this Agreement;

**Personnel** means in relation to a Party, any employee, contractor, officer and agent of that Party;

**Privacy Laws** means the *Privacy Act 1988* (Cth), *the Spam Act 2003* (Cth) and any registered APP Code that binds a Party and any other laws, industry codes and policies relating to the handling of personal information;

**Product** means the Software and any documentation, maintenance, support, features and services supplied by AroFlo and promoted and offered by the Referrer to each Customer;

**Product IP** means all Intellectual Property Rights in the Products and any related documentation, Marketing Materials and any other documents or information provided by AroFlo in connection with the Products;

**Qualified Referral** means a Referral accepted by AroFlo;

**Referral** means a bona fide potential customer for the Products for which the Referrer is directly responsible for soliciting and referring to AroFlo through the Referral Process;

**Referral Bonus** means the fixed fee payable by AroFlo to the Referrer for each Referral in accordance with the Referral Tier;

**Referral Date** means the date of transmission of a Referral by the Referrer to AroFlo in accordance with the Referral Process;

**Referral Commission** means the fee payable by AroFlo to the Referrer for each Referral calculated as a percentage of the Subscription Fee payable by the Customer to AroFlo for the Products. The percentage used is in accordance with the Referral Tier;

**Referral Fee** means together the Referral Commission and the Referral Bonus;

**Referral Partner Application Form** means the web form as amended from time to time and available at [www.aroflo.com/partners](http://www.aroflo.com/partners);

**Referral Process** is set out on the Website;

**Referral Tier** is set out on the Website;

**Software** means the AroFlo's proprietary software, content, text, images, media and other materials derived through its technology web-based platform known as AroFlo Software, and any other technology platform developed or created by AroFlo and hosted in the manner described in the software licence;

**Software Terms** means the document entitled AroFlo Terms of Service agreed between AroFlo and the Customer as amended from time to time and such other agreement entered into between AroFlo and the Customer;

**Subscription Fee** means the fee payable on a subscription basis by the Customer to AroFlo to access and use the Software and excludes any set-up fee, fees for optional extras or other fees associated with the Product;

**Term** means the term of this Agreement and starts on the Commencement Date and continues until terminated as provided in the Agreement; and

**Website** means any website for the Product including but not limited to the web pages displayed via the domain supplied to the Customer from time to time and any web page accessible to only Referrers.

## 1.2. Interpretation

In this Agreement, unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience and do not affect the interpretation of this Agreement;

- (c) any gender includes the other gender;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (e) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (g) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;
- (h) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (i) "includes" and similar words mean includes without limitation;
- (j) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (k) a reference to a Party includes the Party's legal personal representatives, successors, assigns and persons substituted by novation;
- (l) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;
- (m) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (n) a reference to time is to local time in Victoria; and
- (o) a reference to "\$" or "dollars" refers to the currency of Australia from time to time.

## **2. Offer and Acceptance of this Agreement**

- 2.1. Submission of the Referral Partner Application Form by the Referrer communicates that Party's acceptance of the terms of this Agreement and constitutes an offer to become a Referrer for the purposes of this Agreement.
- 2.2. If, following submission of the Referral Partner Application Form but prior to written acceptance from AroFlo, a Referrer wishes to withdraw its application it must do so in writing.
- 2.3. Nothing in this Agreement is binding between the Parties until acceptance is communicated by AroFlo to the Referrer in writing including by online acceptance.
- 2.4. AroFlo reserves the right to accept or reject the Referrer's offer at its sole discretion and is under no obligation to provide any reasons, explanation or other information to the Referrer as to why its offer was accepted or rejected.

## **3. Referrals**

- 3.1. During the Term, the Referrer may:
  - (a) promote the Product;
  - (b) distribute, communicate and use the Marketing Materials; and
  - (c) earn points to obtain Benefit(s) corresponding with the applicable Referral Tier.
- 3.2. Subject to AroFlo's prior written consent (not to be unreasonably withheld), the Referrer may bundle the Product with other services provided by the Referrer including support services for the Product.
- 3.3. The Referrer shall be entitled to receive the Referral Fee provided that:
  - (a) AroFlo, in its sole discretion, deems the Referral a Qualified Referral; and
  - (b) the Customer enters into an agreement with AroFlo after the Referral Date;
  - (c) the Customer pays the AroFlo Set-up Fee, if applicable, and Subscription Fee.
- 3.4. AroFlo may at its sole discretion reject:
  - (a) any Referrals referencing any Excluded Customers; and
  - (b) any claim for redemption of points for activities which do not satisfy the conditions set out on the Website or as otherwise notified by AroFlo to the Referrer from time to time.

- 3.5. The Referrer acknowledges and agrees that:
- (a) it will undertake commercially reasonable efforts to send Referrals to AroFlo using the Referral Process;
  - (b) it will bear all costs necessary to market the Product to Customers;
  - (c) it will notify AroFlo within 30 days upon completing an activity against which points may be accrued for Referral Tiers;
  - (d) the Referrer's right to promote, market and advertise the Product is in accordance with this Agreement, and its right to use the Product is in accordance with the Software Terms; and
  - (e) any Benefits obtained as a Referrer must be used only for the Referrer's internal business purposes. The Referrer must not use the Benefits for any commercial purposes; to the benefit of or on behalf of third parties; or in conjunction with any other offers or promotions offered by AroFlo without AroFlo's prior written consent.
- 3.6. AroFlo reserves the right to upgrade the Product at its discretion and without notice to the Referrer or the Customer, and to make such upgrades available to the Customer.

#### **4. Non Exclusivity**

- 4.1. This Agreement is not a commitment by either Party to work exclusively with the other Party regarding referrals of potential new business or any other business activities.
- 4.2. If either Party becomes aware of any actual or potential conflict of interest between this Agreement and any other work it has been offered or is undertaking, it must inform the other Party in writing and take reasonable steps to resolve the conflict to its satisfaction, including ceasing any Referral work where appropriate.

#### **5. Marketing and Media**

- 5.1. On or from the Commencement Date, the Referrer may, subject to any applicable Privacy Laws, promote the Products at the Referrer's own expense, including but not limited to:
- (a) directly soliciting orders from Customers for the Products;
  - (b) promoting the Products to Customers on the Referrer's existing database;
  - (c) hosting, attending and promoting Products at trade shows; and
  - (d) assisting AroFlo plan and participate in sales, technical or promotional events, direct marketing and Customer training organised by AroFlo.
- 5.2. AroFlo may provide at its own expense, the Marketing Material and such other marketing assistance as AroFlo in its sole discretion deems appropriate.
- 5.3. The Parties may, at each Party's own expense, cooperate and jointly develop a business proposal for education, promotion, joint marketing, design opportunities, develop marketing materials or related collaterals for the Product or otherwise assist the Referrer accomplish the purpose of this Agreement. Each Party will review and agree to such joint marketing proposals as required from time to time between the Parties.
- 5.4. The Referrer must obtain prior written consent from AroFlo for any modification or enhancements to any Marketing Material before any publication or distribution (and such consent shall not be unreasonably withheld).
- 5.5. The Referrer acknowledges and agrees it will:
- (a) follow AroFlo's directions and Marketing Materials regarding the Product, and will make no new or different statements or representations about the Product, and will make no false or misleading representations about the Product (including by omission);
  - (b) in selling the Product, acknowledge AroFlo as the owner of the Product and the owner of any Product IP, and it will not represent itself as the manufacturer or owner of any Intellectual Property Rights in the Product (including by omission); and

- (c) use any AroFlo Trade Marks, logos or other branding and any Marketing Materials in accordance with AroFlo marketing guidelines as notified to the Referrer from time to time.
- 5.6. AroFlo agrees to allow the Referrer to publicly announce and publish (in print and online) news of the working relationship between the Parties for the purposes of positive public relations and new business generation for both Parties. Prior to any publication, the Referrer will provide any such material for AroFlo's approval.
- 5.7. The Referrer permits AroFlo to identify the Referrer on the Website. The Referrer acknowledges and agrees its appearance and ranking on the Website is subject to the Referrer's Referral Tier.
- 5.8. In order to be listed in the partner directory on the Website, Referrers may be required to pass testing in relation to their knowledge of AroFlo and/or the Product. Any listing will be at AroFlo's sole discretion.

## **6. Referral Fees**

- 6.1. For each Qualified Referral, AroFlo will pay to the Referrer:
  - (a) any applicable Referral Commission for a period of 36 months or as otherwise agreed on the Referral Partner Application Form commencing from the date the Customer pays the initial Subscription Fee (Payment Period); and
  - (b) any applicable Referral Bonus upon payment by the Customer of the AroFlo Set-Up Fee.
- 6.2. AroFlo will issue partner statements (i) on a monthly basis setting out the Referral Bonuses owed to the Referrer, if applicable, and (ii) on a quarterly basis setting out the Referral Commissions owed to the Referrer.
- 6.3. The Referrer will then issue a tax invoice within 30 days of receiving the relevant partner statement requesting payment by AroFlo of the applicable Referral Fees which were set out in the partner statement.
- 6.4. AroFlo will endeavour to pay the Referral Fee within 15 Business Days of receiving the Referrer's tax invoice.
- 6.5. Any payments by AroFlo of any Referral Commission with respect to a Referral is subject to that Customer's payment of the Subscription Fee during the Payment Period. If: the Customer fails to pay the applicable Subscription Fee; has their Subscription Fee reimbursed or refunded; payment of the Subscription Fee is suspended; or the contractual arrangement between AroFlo and the Customer is otherwise suspended or terminated, AroFlo will immediately cease paying to the Referrer any Referral Fee: a) until the Customer resumes payment of the Subscription Fee; or b) for the remaining duration of the Payment Period and the Referrer will not be entitled to any further payments of the Subscription Fee.
- 6.6. AroFlo is not required to pay the Referrer any Referral Commission for each Referral after the expiry of the Payment Period. If a third party makes a claim for any Referral Fee or part thereof, then the Referral Fee under this Agreement will be apportioned among the claimants as determined by AroFlo in its sole discretion. Where practicable, AroFlo will use reasonable efforts to consult with all relevant parties regarding any apportionment.

## **7. Referrer Obligations**

- 7.1. The Referrer (and its Personnel and any sub-licensees) must ensure that it:
  - (a) uses due diligence in safeguarding the interests of AroFlo and keeps AroFlo informed of its activities as well as market conditions;
  - (b) is knowledgeable in and conversant with all aspects of the Product, and market, promote and otherwise advertise the Referrer's services in association with the Product in a proper and business-like manner;
  - (c) complies with applicable laws, rules and regulations relating to advertising, promoting and marketing the Products, including obtaining any and all necessary permits and marketing authorisations at all times;
  - (d) takes reasonable steps, including maintaining service levels, to meet the demand for the Products and ensure prompt delivery of Products to Customers;

- (e) subject to this Agreement or the prior written consent of AroFlo, does not alter, modify or in any way interfere with the Product;
  - (f) promotes the Product positively and not act in any way that may adversely impact the brand or goodwill associated with AroFlo or the Product; and
  - (g) includes in all Marketing Material and on all packaging used in relation to the Products, an acknowledgement that the Products are sold under the AroFlo licence. AroFlo reserves the right to direct the Referrer to adopt a particular form of text for any notice under this clause.
- 7.2. The Referrer must at all times during this Agreement offer for sale and sell the Product according to the specifications supplied by AroFlo to the Referrer whether contained in the Marketing Materials or otherwise documentation supplied from time to time.
- 7.3. The Referrer must not make any representation or give any warranty in respect of the Product other than those contained in AroFlo's Marketing Materials and any Software Terms current at the time of the offer for sale.

## **8. Limited Warranties and Disclaimers**

- 8.1. Each Party warrants that:
- (a) it has the right, power, authority and entitlement to execute this Agreement and perform its obligations under this Agreement;
  - (b) this Agreement constitutes a legal, valid and binding obligation and is enforceable in accordance with its terms by appropriate legal remedy;
  - (c) in entering into and performing its obligations under this Agreement it has not, and will not, be in breach of any relevant law or any obligation owed to another person;
  - (d) there is no current, pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved and that will or may have an adverse effect on its ability to comply with this Agreement; and
  - (e) it has all necessary licences, approvals, permits and consents to enter into and perform its obligations under this Agreement.
- 8.2. The Referrer represents and warrants that:
- (a) there are no legal restrictions preventing it from marketing and selling the Product;
  - (b) in marketing and selling the Product, it will act with due care and skill and not engage in any unfair, deceptive or unethical business practice;
  - (c) it will comply with any reasonable directions given to it by AroFlo from time to time;
  - (d) it will act lawfully and will comply with any applicable licences, laws, regulations, industry codes of conduct, health and safety requirements and Australian standards in relation to selling the Product;
  - (e) it is not aware of any actual or potential conflict of interest in marketing or selling the Product (unless otherwise agreed in writing with AroFlo);
  - (f) it will not register or seek to register any AroFlo logos or other trademarks; and
  - (g) if applicable, it is registered for GST purposes.
- 8.3. AroFlo does not warrant that the Products will be error-free, free of any defects or will operate without interruption or that, except as set out in this Agreement and the Software Terms, the Products will perform in the manner intended by the Referrer or any Customer or the Products will meet the requirements of any Customers.
- 8.4. The Referrer acknowledges and agrees that the Products are provided "as is" and "as available" and all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability or non-infringement), whether express or implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 8.5. Except as required, permitted by or law as set out in this Agreement, the Referrer must not, and must ensure that its Related Bodies Corporate do not give or make any undertaking, representation, guarantee or warranty to any person (including any Customers), including any representations or guarantees concerning the quality, performance, fitness for purpose or other characteristics of the Product or

AroFlo without AroFlo's prior written consent.

- 8.6. Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law.

## 9. Indemnity

- 9.1. AroFlo's liability for any Loss or Claim in relation to the Products, any Marketing Materials or this Agreement will be limited to the amount of Fees paid by AroFlo to the Referrer for the Referral Fees in the calendar year that the liability arose.
- 9.2. Each Party (**Indemnifying Party**) indemnifies the other Party (**Indemnified Party**) from and against any Claim or Loss arising out of or in connection with:
- (a) any fraudulent or unlawful act or omission of the Indemnifying Party or its Personnel;
  - (b) any death or personal injury caused or contributed by any act or omission of the Indemnifying Party or its Personnel;
  - (c) any damage to or loss or destruction of real or personal property caused or contributed to by any act or omission of the Indemnifying Party or its Personnel; and
  - (d) any breach of confidentiality obligations by the Indemnifying Party or its Personnel.
- 9.3. The Referrer indemnifies and agrees to compensate AroFlo on demand and keep AroFlo and AroFlo's Personnel indemnified from and against any Loss or Claim arising out of or in connection with:
- (a) the promotion of the Product by the Referrer, including but not limited to any:
    - (i) act or omission by the Referrer in connection with the promotion of the Product; or
    - (ii) claim based on or relating to any representation or warranty made by the Referrer regarding the Product that was not specifically authorised in writing by AroFlo or was otherwise inconsistent with this Agreement, the Software Terms and any Marketing Materials;
  - (b) any payment of taxes, duties, governmental charges and other like charges payable by the Referrer for the Referral Fees;
  - (c) any loss, damage or injury suffered by a third party, caused by any negligence or deliberate act by the Referrer;
  - (d) any breach of law including but not limited to Privacy Law by the Referrer or its Personnel;
  - (e) any breach of this Agreement by the Referrer or its obligations and warranties under this Agreement by the Referrer or its Personnel;
  - (f) any failure in, defects, fault with or degradation of the Products and services provided by the Referrer to any Customers if that failure, fault or degradation is attributable to or caused by any failure of the facilities or services of the Referrer, its Personnel or Related Bodies Corporate;
  - (g) any Claim brought by a third party that the provision of any Referrer IP or any modifications and enhancements to the Product IP made by or on behalf of the Referrer under this Agreement infringe the Intellectual Property Rights of that third party; or
  - (h) the Referrer's failure to achieve a service level as a result of any act or omission of the Referrer or its Personnel.
- 9.4. In no event will a Party be liable to the other for any Consequential Loss or any other consequential, indirect, special, incidental or punitive damages, regardless of the form of action, whether in contract, tort, strict product liability or otherwise, even if advised of the possibility of such damages and even if the damages were foreseeable.

## 10. Intellectual Property Rights

- 10.1. A Party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the date of this Agreement (**Pre-Existing**

**Material**) will not be altered, transferred or assigned by virtue of this Agreement.

- 10.2. As between the Parties, AroFlo will own all Intellectual Property Rights in and to the Product IP and any other Intellectual Property Rights made available to the Referrer on or behalf of AroFlo (together **AroFlo IP**). Modifications and enhancements to the Marketing Materials are also to be treated as AroFlo IP. The Referrer assigns to AroFlo all Intellectual Property Rights in and to any modifications or enhancements to Marketing Materials made by or on behalf of the Referrer immediately from creation. Subject to clauses 10.4 and 10.6, and the Software Terms, AroFlo grants to the Referrer a non-exclusive, non-transferable, royalty free, personal licence during the Term to use the AroFlo IP solely to the extent directly necessary for the purpose of performing its obligations under this Agreement.
- 10.3. As between the Parties, the Referrer will own all Intellectual Property Rights in and to any materials made available to AroFlo by or on behalf of the Referrer (together **Referrer IP**). Modifications and enhancements to the Referrer's materials are also to be treated as Referrer IP unless assigned to AroFlo under this Agreement. The Referrer grants AroFlo a non-exclusive, perpetual, irrevocable, royalty free and worldwide licence to use, reproduce, modify, develop and otherwise exploit (and to allow AroFlo and its Related Bodies Corporate to use, reproduce, modify, develop and otherwise exploit) Referrer IP as required to receive, use and otherwise enjoy the full benefit of the Products.
- 10.4. In consideration for payment of the Fees and subject to the terms of this Agreement, depending on the Referral Tier of the Referrer, AroFlo may grant the Referrer a limited, non-exclusive, non-transferable, non-sub-licensable, revocable licence for the Product IP during the Term to:
  - (a) market, promote, advertise and distribute the Products and any Marketing Material directly to Customers;
  - (b) market, promote, advertise and perform support and maintenance services related to the Products under the Referrer's own name; and
  - (c) access and use the Product in accordance with the Software Terms as reasonably required to provide demonstrations to prospective Customers.
- 10.5. The grant of licence under this clause expires immediately on termination of this Agreement.
- 10.6. The Referrer agrees that this Agreement does not assign or otherwise transfer to the Referrer any rights including but not limited to rights in the Product IP.
- 10.7. The Product must be distributed under the relevant Trade Mark(s). AroFlo grants to the Referrer a non-exclusive, revocable, non-transferable licence to use the Trade Marks for the purpose of distributing the Product.
- 10.8. The Referrer must not, and must ensure that its affiliates and sub-licensees (where applicable) do not or do not attempt to disassemble, decompile, decrypt, reverse engineer, derive the source code, attempt to reduce to human-readable form, or determine the method of manufacture of the Products, unless such information is already lawfully in the public domain.

## 11. Confidentiality

- 11.1. Permitted Use and Disclosure
  - (a) A Party (**Recipient**) may use Confidential Information of another Party (**Discloser**):
  - (b) only to the extent that such use is necessary for compliance with its obligations under this Agreement; or
  - (c) if legally compelled to do so by any judicial or administrative body, provided that the Discloser must promptly inform the Recipient and take all reasonably available legal measures to avoid or limit the extent of such disclosure.

- 11.2. Each Recipient must in respect of Confidential Information of the Discloser ensure that the Recipient and the Recipient's Personnel will not disclose or permit the disclosure of the Discloser's Confidential Information to any person other than to the extent:
- (a) the disclosure is to a member of the Recipient's Personnel who requires the Recipient's Confidential Information for the performance of that party's obligations, or the exercise of that party's rights, under this Agreement;
  - (b) the disclosure is in accordance with the Discloser's specific and prior written consent; or
  - (c) the disclosure is required by law.
- 11.3. If the Recipient or the Recipient's Personnel is required to disclose any of the Discloser's Confidential Information in accordance with clause 11.2(c), the Recipient will:
- (a) immediately, and to the extent possible prior to the disclosure of the Discloser's Confidential Information, notify the Discloser of the requirement of the applicable law; and
  - (b) disclose only so much of the Confidential Information as the Recipient is required by law to disclose.
- 11.4. The Recipient will take all reasonable steps to ensure that the Recipient and each member of the Recipient's Personnel will keep the Discloser's Confidential Information secure including but not limited to by using the security measures and degree of care no less than those the Recipient applies to its own confidential or proprietary information.

## 12. Privacy

- 12.1. Each Party and its Personnel agrees to comply with its obligations under the Privacy Laws and any other applicable legislation or privacy guidelines as amended from time to time in relation to Personal Information (as defined in the Privacy Law) collected, used or disclosed by that Party or its Personnel in connection with the Products and this Agreement.
- 12.2. The Referrer must:
- (a) comply with all Privacy Laws in relation to Personal Information as if it were an entity regulated under those Privacy Laws;
  - (b) only collect, store, use, disclose or otherwise deal with Personal Information as directed by AroFlo or as required to supply the Products, except to the extent that compliance with the direction would cause the Referrer to breach any Privacy Laws;
  - (c) only use, or disclose Personal Information for the purposes of promoting the Product, referring the Customer to AroFlo, supplying the Referrer's services or as expressly permitted under this Agreement;
  - (d) assist AroFlo to comply with its obligations under any Privacy Law;
  - (e) take such steps as are reasonable in the circumstances to ensure that the Personal Information it uses or discloses as a Referrer is up-to-date, complete and relevant having regard to the nature of the Products;
  - (f) not do any act, engage in any practice or omit to do any act or engage in any practice that:
    - (i) would result in a breach of Privacy Law if the Privacy Law applied to those things done, engaged in or omitted to be done by the Referrer; or
    - (ii) would cause AroFlo to breach or be taken to breach a Privacy Law.

## 13. Termination

- 13.1. Either Party can terminate this Agreement by providing 10 days' written notice to the other Party.
- 13.2. A Party may terminate this Agreement immediately by giving notice in writing to the other Party in the event that the other Party (i) breaches a term of this Agreement not capable of remedy or (ii) breaches a term of this Agreement and such breach is notified to the defaulting Party and is not remedied within 20

Business Days.

## 14. Consequences of Termination

- 14.1. Upon termination of this Agreement, AroFlo will cease paying to the Referrer any Referral Fees accrued after notice of termination and the Referrer will immediately:
- (a) cease and desist from promoting or offering the Product or integrating the Product with any Referrer Intellectual Property Rights;
  - (b) cease and desist from making any representation that the Referrer is authorised to promote, market or otherwise advertise the Product;
  - (c) return to AroFlo or destroy (and certify that the Referrer has destroyed) all copies of Confidential Information, Product IP and related documentation, subject to the terms of this Agreement, in its possession that belong to AroFlo; and
  - (d) pay to AroFlo any amount owed under the Agreement, including any amount in respect of any indemnities provided under this Agreement.
- 14.2. The expiry or termination of this Agreement for any reason will be without prejudice to any rights or liabilities which have accrued prior to the date of expiry or termination of this Agreement.
- 14.3. The provisions of clauses 8, 9, 11, 12, 14, 16 and 18 will survive the expiry or termination of this Agreement.

## 15. Dispute Resolution

- 15.1. If a dispute arises out of or in relation to this Agreement, no party may commence court or arbitration proceedings (other than proceedings for urgent interlocutory relief) unless it has complied with this clause.
- 15.2. A Party to this Agreement claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other Party specifying the nature of the dispute. On receipt of that notice by the other Party, the Parties' representatives must endeavour in good faith to resolve the dispute expeditiously and failing agreement within 10 Business Days of the dispute, either Party, by giving notice to the other, may refer the dispute to the Parties' Chief Executive Officers or equivalent (or their nominees) who, each party must ensure, must cooperate in good faith to resolve the dispute within 10 Business Days of the dispute being referred to them.
- 15.3. If the Chief Executive Officers or equivalent (or their nominees) fail to resolve the dispute within 10 Business Days of the dispute being deferred to them, the Parties must, at the written request of either party and within 10 Business Days of receipt of the request, submit to mediation, expert evaluation or determination or similar techniques agreed to by them.
- 15.4. If the Parties do not agree within 10 Business Days of receipt of the notice referred to in clause 15.3 as to the dispute resolution technique and procedures to be adopted, the time table for all steps in those procedures, and the selection of compensation of the independent person required for such a technique, then the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of Victoria and the President of the Law Society of Victoria or the President's nominee will select the mediator and determine the mediator's remuneration.

## 16. Insurance

- 16.1. The Referrer (and its employees and agents) is not entitled to the benefit of any third party liability, public liability or indemnity policies of insurance or workers compensation policies that AroFlo may hold.
- 16.2. The Referrer must effect and maintain at its own expense:
- (a) Professional indemnity insurance to the value of \$20 million per claim and in annual aggregate from the Commencement Date until no less than 3 years after the termination or expiry of this Agreement;

- (b) Public liability insurance (on an occurrence basis) for not less than \$10 million per claim for the duration of the Term;
  - (c) Product liability insurance (on an occurrence basis) for not less than \$10 million per claim for the duration of the Term; and
  - (d) Workers compensation insurance in accordance with the statutory requirements of the relevant jurisdiction in which the obligations of this Agreement are carried out for the duration of the Term.
- 16.3. The Referrer will, upon request, provide to AroFlo a certificate of currency for each insurance policy referred to in this Agreement.

## 17. Sub-Contractors

- 17.1. The Referrer must not subcontract the provision of the Products or sub-license its rights under this Agreement to any person without AroFlo's prior written consent.
- 17.2. Notwithstanding the appointment of any sub-contractor, the Referrer will be liable and remain liable for the performance of all the Referrer's obligations under this Agreement.
- 17.3. AroFlo is not and will not be liable for any amounts payable to any sub-contractor.

## 18. GST

- 18.1. Taxable supply
- (a) If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.
- 18.2. Adjustment events
- (a) If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.
- 18.3. Payments
- (a) If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.
- 18.4. GST terminology
- (a) The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 19. Notices

- 19.1. Form of notice:
- A notice or other communication must be in writing in English and may be:
- (a) delivered personally;
  - (b) given by an agent of the sender;
  - (c) left at a Party's current delivery address for notices as set out in this Agreement;
  - (d) sent by prepaid mail to a Party's current postal address for notices as set out in this Agreement;
  - (e) sent by email to a Party's current email address for notices as set out in this Agreement.
- 19.2. Receipt of notice:

A notice or communication is taken as having been given:

- (a) when left at a Party's current delivery address for notices; or
- (b) if mailed within Australia to an Australian address, on the third Business Day after posting; or
- (c) if mailed outside of Australia to an Australian postal address or within Australia to an address outside of Australia on the tenth Business Day after posting; or
- (d) if sent by email, when the email is sent to the receiving party at the email address specified in this Agreement, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.
- (e) AroFlo's address for service is set out in the Party details at the start of this Agreement. The Referrer's address for service included in the Referral Partner Application Form. A Party may change its address for service of notices by written notice to the other Party.

## **20. Force Majeure**

- 20.1. AroFlo will not be liable to the Referrer for any failure to provide Products or for any other obligation under this Agreement or the Software Terms if the failure or delay is caused or contributed to by Force Majeure. If any failure to provide Products or any other obligation by AroFlo under this Agreement or the Software Terms continues for a period of thirty (30) days, AroFlo may terminate this Agreement and/or any affected Software Terms.

## **21. Costs and Expenses**

- 21.1. Each Party must pay its own costs and expenses (including legal costs and expenses) in relation to the negotiation, preparation and execution of this Agreement and any variation or replacement of this Agreement.

## **22. Variation**

- 22.1. AroFlo may vary this Agreement from time to time by giving written notice to the Referrer, which for the purpose of this clause includes publishing the variation on the Website.
- 22.2. If the Referrer objects to the variation, the Referrer may terminate this Agreement by providing written notice to AroFlo within seven (7) days of the variation.
- 22.3. If the Referrer does not object to a variation pursuant to subclause 2 above, it will be deemed to have accepted the variation and shall be bound by the Agreement as amended.

## **23. Relationship of Parties**

- 23.1. The Referrer must not describe themselves in any way as agents, contractor or employee for AroFlo. This Agreement is not intended to create a relationship between the Parties of partnership, joint venture, agency or employer-employee.
- 23.2. The Referrer has no authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of AroFlo, and AroFlo has no authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the Referrer.
- 23.3. The Referrer must not at any stage, verbally, in writing or displayed on any form of communication, including marketing material, websites or any form of electronic media, that they are more than a referrer of AroFlo.

## **24. Assignment**

- 24.1. This Agreement is personal to the Referrer. The Referrer must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of AroFlo (such consent not to be unreasonably withheld). Any purported dealings in breach of this clause is of no effect.

## **25. Waiver or Variation of Rights**

- 25.1. Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right.
- 25.2. A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

## **26. Power, Rights and Remedies**

- 26.1. Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party are cumulative and are in addition to any other power, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right or remedy that a Party may have at any time against the other Party or any other person.

## **27. Consents and Approvals**

- 27.1. Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

## **28. Further Assurance**

- 28.1. Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

## **29. Severability**

- 29.1. If any provision (or part of it) in this Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of this Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from this Agreement and the remaining provisions (and remaining part of the provision) of this Agreement are valid and enforceable.

## **30. Advice**

- 30.1. Each Party acknowledges that the party has received legal advice or has had the opportunity of obtaining legal advice in relation to this Agreement.

## **31. Cumulative Rights**

- 31.1. The rights arising out of this Agreement do not exclude any other rights of either Party.
- 31.2. Each indemnity in this Agreement is a continuing obligation that is separate and independent from the other obligations of the Parties under this Agreement.
- 31.3. A Party is not obliged to take any action, or incur any expense, before enforcing any indemnity under this Agreement.

## **32. Entire Agreement and Understanding**

- 32.1. In respect of the subject matter of this Agreement:
- (a) this Agreement contains the entire understanding between the Parties;
  - (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement; and
  - (c) each of the Parties has relied entirely on its own enquiries before entering into this Agreement.

## **33. Governing Law and Jurisdiction**

- 33.1. This Agreement is governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.

For any questions or notice, please contact AroFlo at:



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