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Flexiroam Limited
ACN 143 777 397

Performance Rights Plan

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RULES OF THE PERFORMANCE RIGHTS PLAN

1. Interpretation and Construction

1.1 Definitions

In the Plan, the following expressions have the meanings given to them:

Acceptance Period is defined in Rule 5.3.

Applicant has the meaning given in Rule 5.1.

Application has the meaning given in Rule 5.2.

ASIC means the Australian Securities and Investments Commission.

ASIC Relief means the relief from the disclosure and licensing provisions of the Corporations Act contemplated by ASIC Regulatory Guide 49 as modified from time to time and any additional relief granted by ASIC pursuant to an application made by the Company. To avoid doubt, the ASIC Relief includes the relief set out in ASIC Class Order 14/1000 and any future ASIC Class Order relating to ASIC Regulatory Guide 49.

ASX means ASX Limited ABN 98 008 624 691, and where the context requires, the Australian Securities Exchange operated by ASX Limited.

ASX Listing Rules means the Official Listing Rules of ASX.

Board means the board of Directors of the Company.

Company means Flexiroam Limited ACN 143 777 397.

Control has the meaning given in section 50AA of the Corporations Act.

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

Director means a director of the Company.

Eligible Person means a person who is a full or part-time employee of a Group Company, or such other person as the Board determines.

Expiry Date in relation to a Performance Right, means the date specified in an Invitation in respect of that Performance Right as being the final date that the Performance Right can be converted to a Share.

Group Companies means the Company and its Related Bodies Corporate.

Invitation means an invitation made to an Eligible Person in accordance with Rule 4.2.

Participant means an Eligible Person to whom a Performance Right has been granted.

Performance Right means a right granted under the Plan to a Share subject to the satisfaction of performance condition(s).

Plan means the Performance Rights Plan established in accordance with these Rules.

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act.

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Retirement means the termination of a Participant's engagement with a Group Company by reason of:

- (a) reaching the normal retirement age of the Group Company as determined by the Directors from time to time;
- (b) participation in an early retirement plan or a voluntary redundancy plan of the Group Company;
- (c) the illness or incapacity of the Participant necessitating the permanent withdrawal of the Participant from the work force; or
- (d) circumstances which the Directors consider should be treated as a Retirement for the purposes of the Plan.

Retrenchment means the compulsory termination of the engagement of a Participant with a Group Company where the termination is expressed to be on the ground that:

- (a) the engagement of the Participant is not necessary and his or her position is not to be filled;
- (b) the work for which the Participant was engaged is finished; or
- (c) the quantity of work required by the Group Company to be undertaken has diminished and has rendered a reduction in the number of staff necessary.

Rules means these rules of the Plan, as supplemented and amended from time to time.

Share means a fully paid, ordinary share in the share capital of the Company.

Terms of Issue means the terms of issue upon which a Performance Right is granted by the Company.

Vesting Date in relation to a Performance Right, means the date that Performance Right vests in a Participant as specified in the Terms of Issue in respect of that Performance Right.

1.2 Construction

- (a) Where the context so admits, any reference in the Plan:
 - (i) to the singular includes the plural and vice versa; and
 - (ii) to the masculine includes the feminine.
- (b) Any reference in the Plan to an enactment, the ASX Listing Rules or any ASIC class order includes the enactment, the ASX Listing Rules or any ASIC class order as amended or re-enacted from time to time.
- (c) The headings to the Rules are for reference purposes only and are not to affect the meaning or construction of the Rules.
- (d) "Includes", "including", "for example" or similar expressions means that expression without limitation.
- (e) The expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

1.3 Governing Law

The Plan (including any Performance Right granted under it) is governed by, and is to be construed in accordance with, the laws of Western Australia.

2. ASX and Corporations Act Requirements

2.1 General

The Board must ensure that the Plan is at all times operated in accordance with the requirements of:

- (a) the ASX Listing Rules;
- (b) the Corporations Act; and
- (c) any other applicable law.

2.2 ASX Requirements

The offer and grant of Performance Rights, and the issue of the underlying Shares, under the Plan must comply with the ASX Listing Rules, including:

- (a) ASX Listing Rules Chapter 7 and the 15% placement capacity unless the Plan has been approved by shareholders under Listing Rule 7.2 Exception 9 and that shareholder approval has not expired;
- (b) ASX Listing Rule 10.11 and the issue of (or the agreement to issue) equity securities to a related party unless the Plan been approved by shareholders under Listing Rule 10.14 together with 10.15 or 10.15A; and
- (c) where ASX Listing Rule 7.2 Exception 9 and / or ASX Listing Rule 10.14 is being relied upon by the Company, the Plan and its operation must comply with the definition of “**Employee Incentive Scheme**” in Chapter 19 of the ASX Listing Rules, being a scheme for the issue or acquisition of equity securities in the entity to be held by, or for the benefit of, participating employees or non-executive directors of the entity or a related entity, or a scheme which in ASX’s opinion is an employee incentive scheme.

2.3 Corporations Act Requirements

The Board must not invite an Eligible Person to participate under the Plan, nor offer or grant Performance Rights to an Eligible Person, unless:

- (a) the invitation or offer complies with Chapter 6D of the Corporations Act and the Company issues a disclosure document for the invitation or offer;
- (b) the invitation or offer does not need disclosure to the Eligible Person under Chapter 6D because of a disclosure document exemption in Section 708 of the Corporations Act, such as:
 - (1) an offer to a “senior manager” as defined in Section 9 of the Corporations Act and ASIC Class Order 04/899;
 - (2) an offer which complies with Section 708(8) (sophisticated investors); or
 - (3) an offer which complies with Section 708(1) to (7) (20 issues or less in 12 months with personal offers raising \$2 million or less); or
- (c) an exemption from Chapter 6D of the Corporations Act applies to the invitation or offer, and all conditions and requirements of that exemption are satisfied, such as the exemptions set out in the ASIC Relief.

2.4 Corporations Act Secondary Sale Requirements

If the Company issues the underlying Shares relating to a Performance Right and a disclosure document was not used then, provided it is legally able to do so, the Company will issue a cleansing notice under Section 708A of the Corporations Act unless the Performance Right was granted in reliance on the exemptions in the ASIC Relief.

2.5 Corporations Act and Chapter 2E

The offer and grant of Performance Rights, and the issue of the underlying Shares, under the Plan must comply with Chapter 2E of the Corporations Act regarding providing a financial benefit to a related party unless an exemption in Chapter 2E applies.

2.6 Corporations Act and Financial Product Advice

The Company will not provide financial product advice, including investment advice or recommendations, in relation to the offer or grant of Performance Rights, nor the issue of the underlying Shares, unless the Performance Right was granted in reliance on the exemptions in the ASIC Relief, in which case an exemption applies and general advice may be provided in accordance with the requirements of ASIC Relief.

3. Purpose

The purpose of the Plan is to:

- (a) attract employees, officers and other service providers of a high calibre;
- (b) reward an Eligible Person for its past performance;
- (c) provide long term incentives for participation in the Company's future growth;
- (d) motivate and generate loyalty from an Eligible Person;
- (e) assist to retain the services of a valuable Eligible Person; and
- (f) align the interests of an eligible person with those of the Company.

The Plan will be used as part of the remuneration planning for staff.

4. Eligibility and Invitations

4.1 Board to determine Eligible Person to participate in Plan

Subject to the Rules, the Board may from time to time determine that an Eligible Person may participate in the Plan and the extent of that participation.

In determining the eligibility of an Eligible Person, the Board must have regard to:

- (a) the seniority of the Eligible Person and the position the Eligible Person occupies with the Group Company;
- (b) the length of service of the Eligible Person with the Group Company;
- (c) the performance of the Eligible Person with the Group Company;
- (d) the potential contribution of the Eligible Person to the growth and profitability of the Group Company;
- (e) the extent (if any) of the existing participation of the Eligible Person (directly or indirectly) in the Plan; and

- (f) any other matters which the Board considers relevant.

4.2 Invitations

If the Board determines that an Eligible Person may participate in the Plan, then the Board may issue invitations (in such form as the Board decides from time to time) (**Invitation**) to an Eligible Person, or any one or more of them, inviting applications for a grant of Performance Rights for up to the number of Performance Rights specified in the Invitation.

The Invitation will, amongst other things, set out:

- (a) the number of Performance Rights;
- (b) any performance condition/s;
- (c) the Vesting Date;
- (d) the Expiry Date;
- (e) the exercise price (if any); and
- (f) the Acceptance Period.

Each of the matters set out in Rules 4.2(a) to (f) inclusive shall be determined by the Board in its absolute discretion.

4.3 Maximum total number of underlying Shares which can be offered under Plan

The total number of underlying Shares to be received on the vesting of the Performance Rights the subject of the offer, when aggregated with:

- (a) the number of Shares which would be issued were each outstanding offer with respect to Shares, units of Shares and options to acquire unissued Shares, under the Plan or any other employee share scheme extended only to Eligible Persons to be accepted or exercised; and
- (b) the number of Shares issued, during the previous 3 years pursuant to the Plan or any other employee share scheme extended only to Eligible Persons,

but disregarding an offer made, or option acquired or share issued by way of or as a result of:

- (c) an offer to a person situated at the time of receipt of the offer outside Australia; or
- (d) an offer that did not need disclosure to investors because of Section 708 of the Corporations Act; or
- (e) an offer that did not require the giving of a Product Disclosure Statement because of Section 1012D of the Corporations Act; or
- (f) an offer made under a disclosure document or Product Disclosure Statement,

must not exceed **5%** of the total number of issued Shares at the time of the offer.

Plan Note 1: The above maximum is the maximum prescribed by the ASIC Relief.

Plan Note 2: For the avoidance of doubt, under the ASIC Relief, an offer which does not require a disclosure document under Chapter 6D of the Corporations Act, such as:

- (a) an offer to a “senior manager” as defined in Section 9 of the Corporations Act and ASIC Class Order 04/899;
- (b) an offer which complies with Section 708(8) (sophisticated investors); or

- (c) an offer which complies with Section 708(1) to (7) (20 issues or less in 12 months with personal offers),

are not required to be included in the calculation of the maximum number of Share permitted by the exemptions set out in the ASIC Relief.

Plan Note 3: Where the offer and grant of Performance Rights, and the issue of the underlying Shares, is made under the Plan in reliance on the exemptions set out in the ASIC Relief, then an offer under the Plan and any secondary trading (on-sale) of Shares issued on vesting of Performance Rights does not require a disclosure document under Chapter 6D of the Corporations Act.

5. Applications

5.1 Application

Following receipt of an Invitation by an Eligible Person, application for the Performance Rights may be made by the Eligible Person (**Applicant**).

5.2 Number of Performance Rights applied for

The Applicant may apply for the number of Performance Rights specified in an Invitation or part thereof by sending to the Company (marked for the attention of the Company Secretary) a duly signed and completed application (in the form attached to the Invitation) (**Application**).

5.3 Acceptance Period

The Application must be received by the Company within the acceptance period specified in the Invitation, which cannot be less than 7 days after the date of the Invitation (**Acceptance Period**).

5.4 Provision of additional information

The Board may require the Applicant to provide any information that the Board may specify concerning the Applicant, and the Applicant's entitlement to lodge an Application. The Board may reject an Application if the Applicant fails to provide information requested by the Board.

6. Grant of Performance Rights

6.1 General

Upon acceptance of a duly signed and completed Application in accordance with the Rules, the Company may grant the Performance Rights applied for to the Applicant.

Notwithstanding the lodgement of a completed Application, no entitlement to Performance Rights, or, if applicable, Shares to which those Performance Rights relate, accrues to an Applicant until the date on which those Performance Rights are granted to the Applicant by the Company.

6.2 Terms of Issue of Performance Rights

When Performance Rights are granted, the Performance Rights will be granted on:

- (a) written Terms of Issue approved by the Board, which will be based on the Terms of Issue set out in **Annexure 1** with such modifications as are required by the Board in its absolute discretion; together with
- (b) the terms and conditions set out in these Rules.

If there is any inconsistency between the written Terms of Issue approved by the Board and the terms and conditions set out in these Rules, then the written Terms of Issue approved by the Board at the time of grant will prevail to the extent of that inconsistency.

6.3 Waiver of Performance Rights

A Participant may give up Performance Rights in whole or in part by deed.

7. Lapse of Performance Rights

7.1 Lapse

Subject to Rule 7.2, Performance Rights lapse on the Expiry Date.

7.2 Lapse upon ceasing to be engaged

- (a) Subject only to Rule 7.2(b) below, if prior to the occurrence of the Vesting Date in relation to Performance Rights held by a Participant the Participant ceases to be engaged by the Group Company, all such Performance Rights held by that Participant will lapse immediately or after such longer period as determined by the Board in its absolute discretion.
- (b) If a Participant ceases to be engaged by the Group Company by reason of any of the following events, the Performance Rights held by that Participant will lapse at the expiration of 6 months, or such longer period as determined by the Board at its absolute discretion, after the relevant event:
 - (i) the Retirement or Retrenchment of the Participant, or if the Participant is not a natural person, the Retirement or Retrenchment of the natural person by virtue of whom an Eligible Person holds Performance Rights;
 - (ii) the bankruptcy or commencement of winding up or deregistration procedures in respect of the Participant; or
 - (iii) the death of the Participant, or if the Participant is not a natural person, the death of the natural person by virtue of whom an Eligible Person holds Performance Rights.

8. Restriction on Transfer or Assignment

8.1 General

Subject to Rule 8.2 below, Performance Rights granted under the Plan may not be transferred or assigned.

8.2 Board consent

The Company, by the Board, may consent to the transfer or assignment of Performance Rights, upon such terms and conditions as the Company decides in its absolute discretion.

9. Takeover Bids etc

Notwithstanding anything to the contrary set out in any Invitation, if:

- (a) a takeover bid (as defined in the Corporations Act) to acquire Shares becomes, or is declared to be, unconditional, irrespective of whether or not the takeover bid extends to Shares issued and allotted after the date of the takeover bid;
- (b) a change of Control of the Company occurs; or

- (c) a merger by scheme of arrangement under the Corporations Act is approved by the court under section 411(4)(b) of the Corporations Act,

the Board may, in its absolute discretion, resolve that all Performance Rights granted under the Plan immediately vest in a Participant (to the extent they have not already vested and have not lapsed) and are converted into Shares.

10. Reorganisation of Capital and New Issues of Shares

10.1 Reorganisation

In the event of any reorganisation (including consolidation, subdivision, reduction, return or cancellation) of the issued capital of the Company, the number of Performance Rights to which each Participant is entitled, or any amount payable on vesting of the Performance Rights, or both as appropriate, will be adjusted in the manner provided for in the Listing Rules.

10.2 Bonus issues

If securities are issued by the Company pro rata to members generally by way of a bonus issue (other than an issue in lieu of dividends or by way of a dividend reinvestment), a Participant is entitled, upon vesting of a Performance Right, to receive, in addition to the Shares underlying the Performance Right and without the payment of any further consideration, the number of securities which the Participant would have received if the Performance Right had vested before the record date for the bonus issue.

10.3 Rights issues

Subject to the Board determining otherwise, a Participant does not have the right to participate in a pro rata issue of securities made by the Company or sell renounceable rights save that, if the Performance Rights have vested then the Participant may participate along with other members.

10.4 Notification of adjustments

The Board must notify each Participant of any adjustment to its Performance Rights as soon as practicable after the adjustment.

10.5 No Right to Participate in New issues

Subject to rules 10.1, 10.2 and 10.3, during the currency of any Performance Rights and prior to their vesting, Participants are not entitled to participate in any new issue of securities of the Company as a result of their holding Performance Rights.

11. General

11.1 Administration

- (a) Subject as otherwise provided in the Rules, the Board shall administer the Plan.
- (b) The Board's decision on the construction of the Rules and on any disputes arising under the Plan is final and binding on all Participants.

11.2 Notices and circulars to shareholders

The Company is not obliged to give a Participant copies of any notices, circulars and other documents sent by the Company to its shareholders until that Participant becomes a shareholder by the vesting of any or all of that Participant's Performance Rights, or on the automatic conversion of any Performance Rights when converted.

11.3 Non-Australian residents

When a Performance Right is granted under the Plan to a person who is not a resident of Australia the provisions of the Plan apply subject to such alterations or additions as the Board determines having regard to any applicable or relevant laws, matters of convenience and desirability and similar factors which may have application to the Participant or to any Group Company in relation to the Performance Right.

11.4 Tax

- (a) The Company will provide to each Participant all reports required to be delivered by the Company under applicable legislation which outline the tax treatment arising from the grant of Performance Rights to that Participant.
- (b) In no circumstances will any Group Company be liable for any tax liability of a Participant or Eligible Person in connection with the grant, issue, vesting, exercise or waiver of any Performance Rights, or any issue or disposal of any Shares issued on vesting of any Performance Rights.

11.5 Costs and Expenses

The Company will pay the cost of the preparation and operation of the Plan. It may, however, require Group Companies to share the cost on such a basis as the Board considers fair.

12. Amendment and Termination of Plan

12.1 Power of Amendment – General

Subject to the limitations in Rule 12.2, the Board may from time to time amend, vary or supplement the Plan in any respect, but, for so long as the Company remains on the official list of ASX, such amendment, variation or supplement has no effect unless it complies with the ASX Listing Rules.

12.2 Power of amendment - limitations

No amendment may be made by the Board to the provisions of the Plan which reduces the rights of Participants, other than an amendment introduced primarily:

- (a) for the purpose of complying with, or conforming to, present or future State or Commonwealth legislation governing or regulating the maintenance or operation of the Plan or like plans;
- (b) to correct any manifest error or mistake; or
- (c) to take into consideration possible adverse tax implications in respect of the Plan arising from, amongst others, adverse rulings from the Commissioner of Taxation, changes to tax legislation (including an official announcement by the Commonwealth of Australia) and/or changes in the interpretation of tax legislation by a Court of competent jurisdiction.

12.3 Notification of amendments

The Board must give written notice to all Participants of any amendment which affects their rights.

12.4 Termination

The Board may at any time terminate the Plan and in which case no further Performance Rights will be granted. In all other respects the provisions of the Plan shall remain in force.

13. Notices

13.1 To Employees and Participants

- (a) The Board or the Company may give notice to the person entitled to notice either personally or through the internal post or by sending it by post to the address supplied by him for that purpose.
- (b) Where a notice or document is sent by post to an address located in Australia, it shall be deemed to have been received on the third business day after it was put into the post. Where a notice or document is sent by post to an address located outside Australia, it shall be deemed to have been received on the seventh business day after it was put into the post.
- (c) All notices and documents sent by post will be sent at the risk of the addressee.

13.2 To the Company

An Employee or a Participant may give notice to the Company or the Board by delivering or sending it to the Company at its registered office, marked for the attention of the Company Secretary. The Board may make other arrangements for the receipt of notices.

Annexure 1

Standard Terms of Issue for Performance Rights

(Rule 6.2)

The terms of issue of the Performance Rights are as follows:

- (a) Each Performance Right entitles the holder of the Performance Right (**Holder**) to be issued one fully paid ordinary share in the Company (**Share**), with a nil share issue price, on these terms of issue including the performance condition(s) set out below.
- (b) The Performance Rights will be granted for nil issue price.
- (c) An applicant for Performance Rights may apply for the number of Performance Rights specified in an invitation sent by the Company to the Applicant, by sending to the Company (marked for the attention of the Company Secretary) a duly signed and completed application (in the form attached to or accompanying the invitation).
- (d) If the Board determines, in its sole discretion, that the performance conditions for a class of Performance Rights set out below have been satisfied prior to the relevant expiry date then that class of Performance Rights will vest and be converted into Shares on a one for one basis.

Class	Number	Performance condition	Expiry date
ordinary	5,750,000	revenue of \$6,000,000 by the expiry date	31 March 2016
ordinary	5,750,000	revenue of \$12,000,000 by the expiry date	31 March 2017

- (e) If a performance condition is not satisfied by the relevant expiry date, then the relevant class of Performance Rights will automatically lapse.
- (f) Subject to paragraph (g), Performance Rights convert to Shares on the date of vesting with no exercise price, or share issue price, being payable and the Company must issue the number of Shares, update the share register and issue and send to the Holder an updated holding statement within 5 business days after the date of vesting.
- (g) Notwithstanding any other provision of these terms and conditions or the Plan, conversion of Performance Rights into Shares will be subject to the Company obtaining all required (if any) shareholder and regulatory approvals for the purpose of issuing the Shares to the Holder. If conversion of all or part of the Performance Rights would result in any person being in contravention of section 606(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) then the conversion of each Performance Right that would cause the contravention will be deferred until such time or times that the conversion would not result in a contravention of section 606(1) of the Corporations Act. Holders must give notification to the Company in writing if they consider that the conversion of all or part of the Performance Rights may result in the contravention of section 606(1) of the Corporations Act, failing which the Company will be entitled to assume that the conversion of the Performance Rights will not result in any person being in contravention of section 606(1) of the Corporations Act.
- (h) The Performance Rights will not be quoted for trading on the ASX or any other stock exchange.
- (i) The Share issued upon vesting will rank equally in all respects with the Company's ordinary shares and the Company will apply to the ASX for official quotation of the shares after they are issued.
- (j) If the Holder elects to resign [as a director / officer / employee / other] of the Company, then all Performance Rights automatically lapse on the date of resignation, unless the Company determines otherwise in its absolute discretion.
- (k) If:

- (i) a takeover bid (as defined in the Corporations Act) to acquire Shares becomes, or is declared to be, unconditional, irrespective of whether or not the takeover bid extends to Shares issued and allotted after the date of the takeover bid;
- (ii) a change of Control of the Company occurs; or
- (iii) a merger by scheme of arrangement under the Corporations Act is approved by the court under section 411(4)(b) of the Corporations Act,

the Board may, in its absolute discretion, resolve that the Performance Rights granted but not vested immediately vest (to the extent they have not already vested or lapsed).

- (l) If the Company is required under relevant tax legislation to make withholdings on account of tax upon:

- (i) the grant of Performance Rights; or
- (ii) the conversion of Performance Rights to Shares,

then the Board may, in its absolute discretion, sell a sufficient number of the Shares which would otherwise be issued upon vesting, so that the net proceeds of sale equal the payment which the Company is required to pay to the appropriate authorities. This arrangement does not apply if the Holder makes an alternative arrangement to the satisfaction of the Company.

- (m) The Performance Rights are not transferable without the consent of the Board.
- (n) The Holder is not entitled to assign any right, interest or benefit in the Performance Rights (or any part of them), or grant an interest over or in the Performance Rights.
- (o) The Performance Rights will not confer upon the Holder the right to dividends or to vote as a shareholder of the Company until the Performance Rights have vested and the Shares have been allocated to the Holder.
- (p) In the event of any reorganisation (including consolidation, subdivision, reduction, return or cancellation) of the issued capital of the Company, the number of Performance Rights to which the Holder is entitled, or any amount payable on vesting of the Performance Rights, or both as appropriate, will be adjusted in the manner provided for in the Listing Rules.
- (q) If securities are issued by the Company pro rata to members generally by way of a bonus issue (other than an issue in lieu of dividends or by way of a dividend reinvestment), the Holder is entitled, upon vesting of a Performance Right, to receive, in addition to the Shares underlying the Performance Right and without the payment of any further consideration, the number of securities which the Participant would have received if the Performance Right had vested before the record date for the bonus issue.
- (r) Subject to the Board determining otherwise, the Holder does not have the right to participate in a pro rata issue of securities made by the Company or sell renounceable rights save that, if the Performance Rights have vested then the Holder may participate along with other members.
- (s) If the Corporations Act, the Listing Rules or the Constitution conflicts with these terms and conditions, or these terms and conditions do not comply with the Corporations Act, the Listing Rules or the Constitution, the holders authorise the Company to do anything necessary to rectify such conflict or non-compliance, including but not limited to unilaterally amending these terms and conditions.
- (t) By applying for Performance Rights, the Holder acknowledges that any Shares issued pursuant to the vesting of Performance Rights may be subject to the on-sale restrictions set out in section 707(3) of the Corporations Act. In such circumstances, the Holder must not sell or transfer any of the Shares for 12 months from the date of issue.