DEED OF AGREEMENT 2014-18

between the

Commonwealth of Australia represented by the
Department of Agriculture
ABN 24 113 085 695

and

Horticulture Innovation Australia Limited
ACN 602 100 149
ABN 716 02100 149
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DEED OF AGREEMENT

DATED:

BETWEEN: The COMMONWEALTH OF AUSTRALIA, for the purposes of this Agreement, represented by the Department of Agriculture (ABN 24 113 085 695) (Commonwealth).

AND HORTICULTURE INNOVATION AUSTRALIA LIMITED (ABN 716 02100 149)

RECITALS

A. Horticulture Australia Limited (HAL) was declared as the industry services body and industry export control body for the Australian horticulture industry under sections 9(1) and 9(2) of the Horticulture Marketing and Research and Development Services Act 2000 (the Act) on 29 January 2001, with effect from 1 February 2001.

B. A performance review of HAL, released in May 2014, identified systemic issues with HAL’s current structure and recommended that HAL move to a grower-owned organisation, to better serve the needs of its levy payers.

C. At an Extraordinary General Meeting of HAL, held on 20 June 2014, an overwhelming majority of members agreed to transition HAL to a new industry services body the members of which would be levy payers instead of peak industry bodies.

D. On 23 October 2014 a declaration was made, pursuant to and in accordance with section 10(1) of the Act, that HAL ceased to be the industry services body and industry export control body from 4 November 2014.

E. Section 12(1) of the Act allows the Minister, on behalf of the Commonwealth, to enter into a deed of agreement (a Statutory Funding Agreement (SFA)) with HIAL.

F. The Minister, on behalf of the Commonwealth, and HIAL have agreed to enter into an initial four-year SFA for the purposes of section 12(1) of the Act.

G. On agreement to a SFA, the Minister, on behalf of the Commonwealth, is able to declare HIAL as the Industry Services Body and Industry Export Body.

H. Following a transition period, in or before November 2015, HIAL will become an industry-owned RDC in which Levy Payers are voting members.
PREAMBLE

The RDC model has operated as a partnership between the Commonwealth of Australia and the Rural Research and Development Corporations (RDCs), encompassing statutory and industry owned RDCs.

The Commonwealth has accepted that there is a need to encourage marketing and research and development services in the primary industry sector and that the provision of these services through public funding can contribute to enhancing the viability, sustainability and competitiveness of the primary industry sector and the Australian community in general.

The RDCs act on behalf of various primary industry sectors to deliver these marketing and research and development services for the benefit of industry and the broader community.

Statutory Funding Agreements (SFAs) have evolved over the past decade to put this partnership on a more robust and transparent footing.

The SFA defines the operating principles for the partnership. It is intended to provide clarity, consistency and transparency across the management and accountability frameworks applicable to all RDCs.

This framework recognises that the RDCs aim to achieve the results set out in their enabling legislation and in accordance with Commonwealth and industry priorities, as reflected in their Strategic Plan. This SFA provides for regular dialogue between HIAL and the Commonwealth and industry on progress with planned activities. At the same time it provides for concerns about performance to be discussed and, where needed, for appropriate responses to be developed.

This SFA will be renewed and updated periodically to take into account the most recent performance review of HIAL, changes in government policy and priorities and developments in stakeholder expectations.
CORE REQUIREMENTS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

‘Act’ means the enabling act, including any subordinate legislation under that Act, referred to in clause 3.2 of this Agreement.

‘Activities’ means tasks or projects, including project services, or sub-programs performed as part of HIAL’s Programs.

‘Advocacy’ means an activity that aims to influence public policy and resource allocation decisions but is not an Agri-Political Activity.

‘Agreement’ means this deed of agreement and any schedules and annexures to it.

‘Agreement Date’ is the date on which this Agreement has been signed by both parties.

‘Agri-Political Activity’ means engaging in or financing any form of external or internal political campaigning, but does not include an activity required or authorised under the Corporations Act 2001 or another law. Clause 7.5 provides examples of activities that are not Agri-Political Activity.

‘Annual Operational Plan’ means a plan prepared by HIAL in accordance with clause 13.18.

‘Annual Report’ means a report prepared by HIAL in accordance with clause 14.7.

‘Balanced Portfolio’ means a Research and Development investment portfolio determined by HIAL having regard to government, Levy Payer and other investor priorities and which balances long-term, short-term, high and low risk, and strategic and adaptive research needs and includes consideration of regional variations and needs.

‘Board’ means HIAL’s board of Directors.
‘Business Day’ means a day on which Australian banks are open for general banking business in the Australian Capital Territory, excluding Saturdays and Sundays.

‘Business Hours’ means the hours between 9.00am and 5.00pm on a Business Day.

‘Certification Report’ means a report prepared in accordance with clause 14.3.

‘Commonwealth Matching Payments’ means the amounts paid or payable to HIAL under section 16(2) of the Act.

‘Compliance Audit Report’ means a report prepared in accordance with clause 14.1.

‘Confidential Information’ means information for which all of the following requirements are satisfied:

(a) the information is given In Confidence by one party (the disclosing party) to the other party (the receiving party) for, or in connection with, this Agreement; and

(b) the information is by nature confidential; and

(c) the disclosing party informs the receiving party that the information is confidential before or when the disclosing party gives the information to the receiving party. This may be by marking a document confidential, In Confidence or otherwise advising the receiving party that the information is confidential;

but does not include information which:

(d) is or becomes public knowledge other than by breach of the Agreement or by any other unlawful means; or

(e) is in the possession of the receiving party without restriction in relation to disclosure before being given by the disclosing party; or

(f) has been independently developed or acquired by the receiving party.

‘Constitution’ means the constitution of HIAL.

‘Cost Allocation Policy’ means HIAL’s policy for allocating direct and indirect costs across its Research and Development Activities and Marketing Activities.
'Department' means:

(a) the Department of Agriculture which represents the interest of the Commonwealth of Australia in this Agreement; or

(b) if the Act is administered by a Minister of State other than the Minister for Agriculture – the Department of State administered by that Minister.

'Director' means a person who is a director, as defined in the Corporations Act 2001, of HIAL.

'Director Nomination Committee' means a committee established by HIAL to identify and/or nominate persons for appointment or election to the Board.

'Economical' relates to minimising cost.

'Effective' is the extent to which intended outcomes or results are achieved.

'Effective Date' means the date on which a declaration by the Minister under section 9(1) of the Act that HIAL is the Industry Services Body takes effect.

'Efficient' relates to the achievement of the maximum value for the resources used.

'Electronic Communication' means:

(a) a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or

(b) a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

'Eligible R&D Expenditure' means expenditure on Activities that qualify as Research and Development Activities.

'Ethical' relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour includes identifying and managing conflicts of interests, and not making improper use of an individual’s position.
‘Evaluation Framework’ means the framework to undertake rigorous and regular evaluation of Research and Development Activities and Marketing Activities as required by clause 13.6.


‘Financial Year’ means a period of 12 months starting on 1 July.

‘Fraud Control Plan’ means a plan prepared and maintained by HIAL specifying measures to minimise the risk of fraud within HIAL.

‘Funds’ means each of the following:

(a) Marketing Amounts;
(b) Research and Development Amounts;
(c) Commonwealth Matching Payments;
(d) income earned or derived by HIAL from the Marketing Amounts, Research and Development Amounts or Commonwealth Matching Payments; and
(e) the proceeds of the sale or other disposition of assets acquired with the Funds referred to in clauses (a) to (c) of this definition.

‘Guidelines’ means each of the following:

(a) the Strategic Research Priorities and Rural Research and Development Priorities;
(b) other priorities, including key national priorities, or directions communicated to HIAL by the Minister from time to time in writing;
(c) the Levy Principles and Guidelines, being the guidelines relating to the introduction of new levies or changes to existing levies published by the Commonwealth; and
(d) any other guidelines relating to the use of Funds agreed between the parties.

‘HAL’ means Horticulture Australia Limited, the body that was the previous declared Industry Services Body and Industry Export Control Body.

‘HIAL’ means Horticulture Innovation Australia Limited.
‘**Horticulture Industry**’ has the same meaning as in section 4 of the Act.

‘**In Confidence**’ means the exchange of information was explicitly or implicitly understood by the provider and the receiver to be not for distribution, except to the extent and for the purposes mutually agreed or understood.

‘**Industry Assets and Liabilities**’ means:

(a) the statutory records of HIAL, as defined in section 4 of the Act; and
(b) the assets and liabilities of HIAL that are determined in accordance with clause 11.1.

‘**Industry Export Control Body**’ has the same meaning as in section 4 of the Act. This body is also called the ‘export efficiency body’ under the *Horticulture Marketing and Research and Development Services (Export Efficiency) Regulations 2002* made under the Act.

‘**Industry Representative Body**’ means a peak industry body, or a body which undertakes similar Advocacy and/or Agri-Political Activities, including an eligible industry body prescribed under the *Primary Industries (Excise) Levies Regulations 1999* or the *Primary Industries (Customs) Charges Regulations 2000*.

‘**Industry Services Body**’ has the same meaning as in section 4 of the Act.

‘**Insolvency Event**’ means:

(a) that HIAL disposes of the whole or part of its assets, operations or business other than in the ordinary course of business; or
(b) that HIAL ceases to carry on business; or
(c) that HIAL ceases to be able to pay its debts as they become due; or
(d) any step is taken by a mortgagee to take possession or dispose of the whole or part of HIAL’s assets, operations or business; or
(e) any step is taken to enter into any compromise or arrangement between HIAL and its creditors or a class of them; or
(f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of HIAL’s assets, operations or business.
‘Intellectual Property’ means all copyright and neighbouring rights, and all rights in relation to inventions (including patents), plant varieties, registered and unregistered trademarks, registered designs, Confidential Information (including trade secrets and know how) and circuit layout designs resulting from the intellectual activity in the industrial, scientific, literary or artistic fields.

‘Intellectual Property Management Plan’ means a plan prepared and maintained by HIAL specifying the procedures for management, adoption and commercialisation of Intellectual Property created by or for HIAL.

‘Levy Payer’ means a person who is required to pay levy in accordance with the Primary Industries (Excise) Levies Act 1999 or charge in accordance with the Primary Industries (Customs) Charges Act 1999.

‘Marketing’ has the same meaning as in section 4 of the Act.

‘Marketing Activities’ means Activities procured, provided or carried out by HIAL or with its support for the purposes of Marketing. These could include Activities that:

(a) are procured or provided by HIAL for or in relation to Marketing;
(b) relate to one or more Horticultural Industries or the broader Horticulture Industry; and
(c) are for the benefit of Levy Payers, one or more Horticultural Industries or the broader Horticulture Industry and the Australian community generally.

Note: Schedule 2 provides examples of activities which may be determined to be Marketing Activities.

‘Marketing Amounts’ has the same meaning as in section 4 of the Act.

‘Minister’ means the Commonwealth Minister who, from time to time, has responsibility for the Act and includes a delegate of the Minister.

‘Performance Review’ means a review conducted in accordance with clause 15 of this Agreement.

‘Performance Review Report’ means a report prepared in accordance with clause 15 of this Agreement.
‘Program’ means a group of Activities that collectively deliver services or benefits to Levy Payers, the broader Horticulture Industry or the community in general with the aim of achieving a planned outcome.

‘Program Framework’ means the planning and budgeting framework applied by HIAL in accordance with clauses 13.2 to 13.5.

‘RD&E Framework’ means the National Primary Industries Research, Development and Extension Framework.

‘Regulated Horticultural Market’ has the same meaning as in section 4 of the Act.

‘Regulated Horticultural Product’ has the same meaning as in section 4 of the Act.

‘Research and Development’ has the same meaning as in section 4 of the Act.

‘Research and Development Activities’ means Activities procured, provided or carried out by HIAL or with its support for the purposes of Research and Development. These could include Activities that:

(a) are procured, provided or carried out by HIAL or with its support for the purposes of Research and Development; and
(b) relate to Levy Payers, one or more Horticultural Industries or the broader Horticulture Industry; and
(c) are for the benefit of Levy Payers, one or more horticultural industries or the broader Horticulture Industry and the Australian community generally.

Note: Schedule 1 provides examples of activities which may be determined to be Research and Development Activities.

‘Research and Development Amounts’ has the same meaning as in section 4 of the Act.

‘Research and Development Corporations’ means, collectively, the statutory research and development corporations incorporated by regulations made under the Primary Industries Research and Development Act 1989 and the bodies declared under industry-specific legislation as the industry services bodies.
‘Risk Management Plan’ means the plan prepared and maintained by HIAL specifying the measures to be implemented to manage its material commercial, legal and administrative risks.

‘Rural Research and Development Priorities’ means the Rural Research and Development Priorities communicated to HIAL from time to time by the Minister.

‘Secretary’ has the same meaning as in section 4 of the Act.

‘Skills Based Board’ means a board of directors which can demonstrate collective expertise against a range of relevant areas, which must include each of the following:

(a) governance, risk and compliance;
(b) finance, accounting and audit;
(c) Research and Development, innovation, technology and technology transfer, commercialisation and adoption of Research and Development;
(d) product promotion and Marketing (including communications);
(e) exports and export market development;
(f) horticulture industry knowledge, including practical growing and/or production experience; and
(g) public policy and administration.

‘Statutory Record’ has the same meaning as in section 4 of the Act.

‘Strategic Plan’ means a plan prepared by HIAL in accordance with clauses 13.9.

‘Strategic Research Priorities’ means the Strategic Research Priorities that are announced by the responsible Minister.

‘Transferred Assets’ means assets transferred from HAL to HIAL.

‘Transferred Funds’ means funds transferred from HAL to HIAL.

‘Transferred Liabilities’ means liabilities transferred from HAL to HIAL.

‘Underperformance’ means failure by HIAL to comply with its obligations under this Agreement and Act including a failure to deliver services.
‘Voluntary Contribution’ means payments from one or more persons, including investors, contributed to HIAL for the purpose of funding Marketing Activities or Research and Development Activities.

2. TERM AND OPERATION OF THIS AGREEMENT

2.1 This Agreement commences and takes effect from the Effective Date and expires on the first Business Day which is four years after the Agreement Date.

2.2 The parties must, at least six months before the expiry of this Agreement, commence negotiation in good faith with a view to renewing this Agreement, either on the same terms and conditions or on varied terms and conditions as agreed by the parties.

2.3 If the parties are unable to agree on the terms of a new Agreement to replace this Agreement within that six month period, then the parties agree that:

(a) this Agreement will continue in full force and effect for an additional six months or for such other period as the parties agree; and

(b) during that extended period the parties will continue to seek to agree on the terms of a new Agreement to replace this Agreement.

2.4 If one of the parties does not wish to extend this Agreement, it must advise the other party in writing, having given consideration to the progress made and the matters yet to be agreed.

2.5 In negotiating the renewal of this Agreement, the outcomes of the latest Performance Review will be taken into account.

2.6 HIAL must publish this Agreement on its public website.

3. LEGISLATION

3.1 HIAL must comply with the Act and the requirements of the Corporations Act 2001.

3.2 The enabling legislation for this Agreement is the Horticulture Marketing and Research and Development Services Act 2000, as amended from time to time, and includes any regulations or instruments made under this Act.

4. TRANSITION FROM HORTICULTURE AUSTRALIA LIMITED

HAL Performance Review

4.1 HIAL is required to use reasonable endeavours to address the findings and recommendations of the Better Value for Growers – A Future for HAL: Independent
Review of HAL and Horticulture Levy System report published in 2014, apart from the recommendation in relation to Marketing, to the extent that the findings and recommendations are not incompatible with the requirements of this Agreement, the Act, the Corporations Act 2001 or HIAL’s Constitution.

4.2 HIAL must report on the progress of implementing the recommendations at the six monthly meetings required under clause 17.1.

**HIAL Structure and Constitution**

4.3 HIAL must be structured and conduct its business in a way which will:

(a) allow the opportunity for all Levy Payers to become members;

(b) allow Levy Payers to be consulted on the establishment of the matters which are to be treated as Research and Development and Marketing priorities;

(c) through its operations, deliver accountability to members, Levy Payers and the Commonwealth;

(d) as far as possible, allow for direct communication with members and Levy Payers;

(e) allow for a Skills Based Board with an appropriate charter and replacement/rotation strategies;

(f) allow HIAL the independence to determine what advice it needs to inform its investments and the appropriate mechanisms through which to obtain that advice;

(g) permit continued funding (if desired) of HAL’s existing portfolio of Marketing and Research and Development Programs, subject to the conditions of this Agreement; and

(h) meet the governance, reporting and other requirements of this Agreement, including the creation of relevant policies and charters.

4.4 HIAL must consult with the Commonwealth on proposed changes to its Constitution, as outlined in clause 5.6.

**Establishment of a Levy Payer register**

4.5 HIAL must establish a register of Levy Payers prior to its first annual general meeting in November 2015, which will be used as the basis for forming a member register.
4.6 HIAL must commence establishing the register as soon as practicable after the Agreement Date.

4.7 HIAL must report to the Commonwealth quarterly on progress made in establishing the register.

**Plans**

4.8 HIAL must seek the agreement of the Minister to an interim Strategic Plan within four months of the Agreement Date, setting out HIAL’s interim funding strategy pending the development, approval and adoption of the first Strategic Plan. The interim Strategic Plan will expire on the commencement of the first Strategic Plan.

4.9 HIAL must seek the agreement of the Minister to its first Strategic Plan within 12 months of the Agreement Date.

4.10 HIAL must agree with the Commonwealth, within four months of the Agreement Date, an interim Annual Operational Plan to cover the remainder of the first Financial Year from the Agreement Date to 30 June 2015.

4.11 HIAL must develop, and provide copies to the Commonwealth of, the plans referred to in clause 13.22 within nine months of the Agreement Date.

**Transfer of Statutory Records**

4.12 The Statutory Records, which have been transferred to the Commonwealth in accordance with the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Regulations 2014*, will be automatically transferred, without the need for any action by either party, to HIAL by virtue of this Agreement upon the completion of the following events:

(a) HIAL is declared the Industry Services Body; and

(b) the Minister has made a declaration under section 11(1) of the Act.

**Commonwealth Matching Payments**

4.13 In accordance with section 16(5)(b) of the Act, Commonwealth Matching Payments will not be paid to HIAL for prior expenditure by HAL in respect of which HAL has already claimed and received Commonwealth Matching Payments in accordance with the Act.
Management of Transferred Assets, Transferred Liabilities and Transferred Funds

4.14 HIAL must establish such accounting systems, procedures and controls as are necessary to ensure:

(a) the Transferred Assets, Transferred Liabilities and Transferred Funds are used only in accordance with this Agreement;
(b) all dealings with the Transferred Assets, Transferred Liabilities and Transferred Funds are properly authorised, conducted and accounted for; and
(c) an auditor is able to readily verify that the Transferred Assets, Transferred Liabilities and Transferred Funds have been used only in accordance with this Agreement.

4.15 HIAL shall not destroy or otherwise dispose of Statutory Records or records which are part of the Transferred Assets, Transferred Liabilities and Transferred Funds without the prior written approval of the Commonwealth.

4.16 HIAL may apply Transferred Funds or Transferred Assets in the same manner as the Funds.

4.17 Without limiting clause 4.16, Transferred Assets and Transferred Funds may be applied by HIAL to:

(a) meet liabilities transferred to HIAL; and
(b) meet reasonable costs incurred by HIAL or HAL in connection with the wind up of HAL and transition to HIAL.

Transferred Contracts and Agreements

4.18 Existing contracts and agreements between HAL and third parties transferred from HAL to HIAL are not immediately subject to the requirements of this Agreement, and may continue to be funded by HIAL in accordance with the terms of such contracts or agreements, notwithstanding any non-compliance or ineligibility under the terms of this Agreement. HIAL must identify and report to the Commonwealth transferred contracts and, in respect of any which do not meet the terms of this Agreement, advise on options for termination or variation to ensure, to the extent reasonably practicable in accordance with the law, that the terms of this Agreement will be met within 12 months of the Agreement Date.
4.19 Any contract or agreement entered into by HIAL after the Agreement Date must meet the requirements of this Agreement.

**Financial Performance**

4.20 During the first 12 months of operation HIAL must, within one month after the end of each six month period ending 30 June and 31 December, provide the Commonwealth with the following financial information for that period:

(a) a statement of HIAL's financial performance; and

(b) a statement of HIAL’s financial position.

4.21 The financial information referred to in clause 4.20 can be certified as being complete and accurate by the Chief Executive Officer, Chief Financial Officer or equivalent officer of HIAL.

**HIAL Corporate Governance and Board Performance**

4.22 Within the first 12 months of operation, HIAL must provide the Commonwealth with copies of its policy and guidance documents that establish good corporate governance practice in managing and investing the Funds, including but not limited to the Cost Allocation Policy, board and committee charters, code of conduct, procurement guidelines and grants assessment and management guidelines.

**Final reporting of HAL**

4.23 HIAL must ensure the final Annual Report, Compliance Audit Report and Certification Report of HAL are prepared in accordance with the Deed of Agreement 2010-14 between HAL and the Commonwealth. For the avoidance of doubt, the relevant provisions of the Deed of Agreement 2010-14 between HAL and the Commonwealth are incorporated into this Agreement and are obligations on HIAL.

5. **HIAL CORPORATE GOVERNANCE AND BOARD PERFORMANCE**

5.1 HIAL must implement a framework of good corporate governance practice in managing and investing the Funds. The framework should draw on better practice guides as appropriate, including the *ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations, Third Edition, March 2014* as amended from time to time.
5.2 HIAL must report on measures taken to enhance corporate governance at the six-monthly meeting held under clause 17.1.

5.3 The Board shall be an independent Skills Based Board, to the extent that it comprises Directors nominated by the Director Nomination Committee.

5.4 The Board must ensure that any Board or Director Nomination Committee charter prepared for the purposes of clause 4.22 requires the Director Nomination Committee to have regard to a board skills matrix, as set out in the Constitution, for the purposes of establishing an independent Skills Based Board.

5.5 HIAL must, within 12 months of the Agreement Date, have in place processes for evaluating the performance of the Board and its committees.

5.6 HIAL must:
   (a) consult with the Commonwealth on changes to the Constitution to ensure that it will remain appropriate to a body performing the functions of the declared Industry Services Body and Industry Export Control Body; and
   (b) give the Commonwealth a copy of each notice of a motion to modify the Constitution, at the same time as it gives notice of the motion to its members; and
   (c) as soon as practicable after any modification of the Constitution is made, give the Commonwealth a notice setting out the modification and explaining its effect.

5.7 HIAL must do all things necessary to ensure that it effectively represents and reflects the interests of its members and the Marketing and Research and Development interests of Levy Payers and the broader Horticulture Industry in carrying out its objects as specified in the Constitution.

5.8 HIAL must use reasonable endeavours to ensure that:
   (a) Levy Payers who are not members of HIAL are advised of their entitlement to become, and how they may become, members of HIAL; and
   (b) a substantial proportion of Levy Payers comprise members of HIAL.

5.9 HIAL must ensure that up-to-date information on the following is available on its public website:
   (a) the Strategic Plan, including information relating to its development and any changes;
   (b) the priorities used by HIAL to determine which Activities it will fund;
   (c) an overview of HIAL's key Activities; and
(d) key Research and Development, extension and Marketing Activities which HIAL is funding.

5.10 The information to be published under the preceding subclause shall not include information of the following kinds:

(a) personal information as defined in the Privacy Act 1988, if it would be unreasonable to publish that information; or
(b) information about the business, commercial, financial or professional affairs of any person if it would be unreasonable to publish that information, such as Confidential Information; or
(c) information which would, or could reasonably be expected to damage:
   (i) HIAL; or
   (ii) a horticultural industry; or
   (iii) the broader Horticulture Industry; or
   (iv) the national interest.

6. PAYMENT OF FUNDS

6.1 In consideration for HIAL undertaking Activities as specified in this Agreement, and subject to this Agreement, the Commonwealth must pay to HIAL:
   (a) the Marketing Amounts;
   (b) the Research and Development Amounts; and
   (c) Commonwealth Matching Payments.

6.2 For Voluntary Contributions, Commonwealth Matching Payments will only be made subject to, and in accordance with, the requirements of any applicable government policy relating to matching of Voluntary Contributions.

6.3 Nothing in this Agreement obliges the Commonwealth to make a payment to HIAL unless:
   (a) a declaration of HIAL as the Industry Services Body under the Act is in force at the time the payment is to be made; and
   (b) this Agreement has not expired or been terminated.

6.4 Notwithstanding any other provision of this Agreement for the purposes of section 17 of the Act:
   (a) the Commonwealth may either:
      (i) invoice HIAL for; or
(ii) deduct from Marketing Amounts or Research and Development Amounts to be paid to HIAL;

amounts equal to the costs incurred by the Commonwealth in relation to collecting, recovering and administering provisions relating to payments as referred in the Act and consistent with the Department’s cost recovery policy and guidelines;

(b) HIAL must pay any amount so invoiced to the Commonwealth within 30 days of receipt of the invoice; and

(c) an amount to be deducted by the Commonwealth or paid by HIAL under this clause must be deducted or paid:

(i) from the Marketing Amounts, to the extent that the amount relates to the Marketing Amounts; or

(ii) from the Research and Development Amounts, to the extent that the amount relates to the Research and Development Amounts.

6.5 The Commonwealth must give HIAL, in accordance with an agreed process, an indicative, non-binding, estimate of the amount of the costs and amounts referred to in clause 6.4 for the Financial Year.

**Timing and manner of making payments**

6.6 The Commonwealth must pay the Research and Development Amounts and Marketing Amounts to HIAL as soon as reasonably practicable after the Commonwealth receives the Research and Development Amounts and Marketing Amounts in cleared funds.

6.7 Subject to the applicable limits, the Commonwealth must use its reasonable endeavours to pay the Commonwealth Matching Payments to HIAL as soon as practicable (and, in any event, within 30 working days) after receiving from HIAL:

(a) a correctly rendered claim for payment or tax invoice; and

(b) evidence reasonably satisfactory to the Commonwealth that HIAL has already spent the amount that forms the basis of the claim on Research and Development Activities.

6.8 For the purposes of clause 6.7(b), a certificate signed by the Chief Executive Officer (or equivalent) and the Chief Financial Officer (or equivalent) of HIAL, certifying
that HIAL has spent a particular amount on Research and Development Activities, is reasonably satisfactory evidence, in the absence of any evidence to the contrary.

6.9 The final claim for a Financial Year must be supported by an independent audit report which includes verification that claims for Commonwealth Matching Payments are consistent with the Eligible R&D Expenditure for that Financial Year.

6.10 Payment may be by direct deposit or cheque or other method agreed between the parties.

**Matching payments – amounts not payable**

6.11 In accordance with section 16(5) of the Act, Commonwealth Matching Payments will not be paid to HIAL if making the payment will cause any of the following conditions to be satisfied:

(a) the cumulative sum of Commonwealth Matching Payments paid to HIAL will exceed one-half of the cumulative sum of HIAL’s Eligible Research and Development Expenditure; or

(b) the amount of Commonwealth Matching Payments paid to HIAL for a Financial Year will exceed the effective cap in section 16(7A) of the Act minus 0.5% of the amount of the gross value of production of ginger; or

(c) the cumulative sum of Commonwealth Matching Payments paid to HIAL will exceed the cumulative sum of Research and Development Amounts and Voluntary Contributions received by HIAL including any such amounts transferred to HIAL pursuant to the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities)* Regulation 2014.

**Matching payments – unmatched R & D excess**

6.12 Eligible Research and Development Expenditure that is not matched with Commonwealth Matching Payments for one Financial Year because of the limits in clause 6.11 (b) or (c) can be carried forward into later years.

7. **APPLICATION OF THE FUNDS**

7.1 HIAL must spend the Funds:

(a) only in accordance with the Act and this Agreement; and

(b) in a manner that is consistent with:
(i) the current Strategic Plan;
(ii) the current Annual Operational Plan;
(iii) the Guidelines to the extent they are applicable to this Agreement; and

(c) in a manner that is Efficient, Effective and Economically and Ethically sound.

Research and Development Amounts, Marketing Amounts and Commonwealth Matching Payments

7.2 Research and Development Amounts and Commonwealth Matching Payments are to be applied by HIAL for, or in relation to, Research and Development Activities. Marketing Amounts are only to be applied to Marketing Activities.

7.3 For the purposes of sections 17(1) and 17(2) of the Act, HIAL may also apply the relevant Funds to meet administrative expenses which are reasonably necessary in carrying on functions of the Industry Export Control Body.

7.4 HIAL must not use the Funds to engage in Agri-Political Activity. For example, HIAL must not apply the Funds to encourage or support a campaign for the election of a candidate, person or party for public office.

7.5 Agri-Political Activity does not include any of the following:

(a) HIAL, or an officer of HIAL, recommending a candidate for election to the board of HIAL; or

(b) HIAL making statements or providing information to Levy Payers or the broader Horticulture Industry on matters related to HIAL’s objects in the proper performance of HIAL’s functions and the proper furtherance of its objects; or

(c) use by another person, for Agri-Political Activities, of a report or other publication prepared or financed by HIAL in accordance with this Agreement; or

(d) the use by an officer of HIAL, or an employee of HIAL of his or her own funds to conduct a campaign for election to the board of HIAL or of any entity engaging in Agri-Political Activity; or

(e) the cost of consultation with an Industry Representative Body.
7.6 Subject to clause 7.7 HIAL must not spend the Funds on making payments to:

(a) bodies which are established for the purpose of or substantially engaged in Advocacy and/or Agri-Political Activity; and

(b) Industry Representative Bodies.

7.7 Clause 7.6 does not preclude, in respect of bodies specified in that clause, HIAL from making:

(a) payments by way of membership fees if that membership contributes to HIAL pursuing its objects; or

(b) payments to procure goods or services in accordance with HIAL’s procurement policy, and when all of the following conditions are met:

(i) the procurement process is open, transparent and, when appropriate, competitive;

(ii) if a competitive process is not undertaken, HIAL has documented in writing why such a process was not utilised;

(iii) the conditions of the transaction between HIAL and the relevant body are the same as they would be for a transaction with any arbitrary third party providing those goods or services; and

(iv) the arrangement for goods and services incorporates appropriate measures to demonstrate the performance of the relevant body undertaking the task. This assessment must be provided to the Commonwealth on request.

7.8 HIAL must not delegate or outsource the responsibility for the management, allocation, or investment of Funds to third parties, including to Industry Representative Bodies.

7.9 HIAL may, at any time, seek consultations with the Commonwealth in relation to any matter connected with this Agreement, including whether:

(a) a proposed expenditure would amount to engaging in Advocacy and/or Agri-Political Activity using the Funds; or

(b) a proposed Activity is an eligible Research and Development or Marketing Activity.

7.10 HIAL must determine an appropriate Balanced Portfolio and report on this Balanced Portfolio in the Strategic Plan, the Annual Operational Plan and the Annual Report.
7.11 HIAL must contribute to the implementation of relevant Horticulture Industry sector and cross-sectoral strategies under the RD&E Framework, as appropriate and consistent with the Strategic Plan.

7.12 HIAL must provide appropriate feedback on the outcomes of funding applications to all grant applicants.

7.13 HIAL must not act as an Industry Representative Body or reference or provide information which implies to stakeholders that HIAL is an Industry Representative Body. This includes, but is not limited to, undertaking Advocacy activities.

8. MANAGEMENT OF THE FUNDS

8.1 HIAL must establish necessary accounting systems, procedures and controls, including a Cost Allocation Policy, to ensure:

(a) the Funds are spent only in accordance with this Agreement and the Act; and

(b) all dealings with the Funds are properly authorised, conducted and accounted for; and

(c) an auditor is able to readily verify that the Funds have been used only in accordance with this Agreement and the Act.

8.2 The accounting systems, processes and controls to manage the Funds established in accordance with clause 8.1 are required to take into account the Risk Management Plan, the Fraud Control Plan and the Cost Allocation Policy.

8.3 HIAL must provide the Commonwealth with details of the systems, procedures and controls established in accordance with clause 8.1 on request.

8.4 HIAL must:

(a) keep complete and detailed accounts and records of receipt, use and expenditure of the Funds in accordance with good accounting practice including all applicable Australian accounting standards;

(b) keep separate accounts and records referred to in clause 8.4(a) for Marketing Amounts, Research and Development Amounts and Voluntary Contributions; and

(c) keep accounts and records referred to in clause 8.4(a) to enable disclosure of the full costs of Research and Development Activities and Marketing Activities under clause 14.
8.5 Any additional systems, processes and controls necessary to meet the requirements of this Agreement must be implemented during the term of this Agreement, within a timeframe agreed to by the Commonwealth.

9. **SUSPENSION OR TERMINATION OF THE AGREEMENT**

9.1 Without limiting any other rights or remedies the Commonwealth may have against HIAL arising out of or in connection with this Agreement, the Commonwealth may terminate this Agreement effective immediately, by giving notice to HIAL, if:

(a) an Insolvency Event occurs; or

(b) HIAL ceases to be the Industry Services Body and/or the Industry Export Control Body under the Act; or

(c) there has been a material breach by HIAL or its officers or its Directors of this Agreement or the Act or another law.

9.2 If:

(a) there has been a breach by HIAL or its officers or its Directors of this Agreement or the Act or another law; and/or

(b) there has been a change to HIAL’s Constitution which the Commonwealth considers to be in conflict with this Agreement or the Act; and/or

(c) there has been a change in Commonwealth policy relating to raising or spending of the Funds;

then, subject to clause 9.3, the Commonwealth may:

(d) direct HIAL to deal with all or any of the Funds in a certain way; and/or

(e) reduce the amount of payment of the Funds that would otherwise be made; and/or

(f) suspend payment of any or all of the Funds.

9.3 Prior to taking action outlined in clause 9.2, the Commonwealth must:

(a) issue a written notice to HIAL that includes:

(i) the circumstances from clause 9.2 that give rise to the notice; and

(ii) a reasonable time by which HIAL must:

   A. provide a satisfactory report or explanation for circumstances outlined in the notice; and/or

   B. rectify any breach outlined in the notice; and/or
C. otherwise take action in relation to the circumstances outlined in the notice, as directed by the Commonwealth; and

(iii) the consequences of non-compliance with the notice; and

(b) be satisfied that HIAL has not satisfactorily complied with the notice.

9.4 If an event outlined in clause 9.2(a)–(c) occurs, then the Commonwealth may terminate this Agreement by undertaking the following steps in order:

(a) first, the Commonwealth must provide an explanation to HIAL of its intention to terminate and must consult with HIAL in relation to that explanation;

(b) second, the Commonwealth must issue a notice to HIAL advising HIAL it has no less than three months to respond to the explanation provided in clause 9.3(a);

(c) third, the Commonwealth must have regard to any matters raised by HIAL in response (including, but not limited to, matters related to any long term commitments of HIAL); and

(d) fourth, subject to meeting the requirements of the preceding subclauses, the Commonwealth may issue a notice of termination, specifying the date on which such termination shall be effective, provided that such date is not earlier than six months after the issue of the notice.

9.5 Where a termination notice has been issued by the Commonwealth to HIAL in accordance with the process set out in clause 9.4, HIAL must prepare a plan for cessation of operations of HIAL as the Industry Services Body and/or Industry Export Control Body, including arrangements for:

(a) the repayment or transfer of the Funds to, or as directed by, the Commonwealth; and

(b) the payment of employee entitlements and other commitments and expenses;

by the termination date that is specified in that notice, or within such other period as the parties agree, with such agreement not to be unreasonably withheld.

9.6 Any dispute in relation to the suspension or termination of this Agreement will be dealt with in accordance with clause 25.
10. **REPAYMENT OF FUNDS**

10.1 If HIAL spends the Funds other than in accordance with this Agreement or the Act, the Commonwealth may provide written notice to HIAL requiring HIAL to provide an explanation.

10.2 If, after HIAL provides an explanation as required by clause 10.1 above, the Commonwealth determines that HIAL has spent the Funds other than in accordance with this Agreement or the Act, the Commonwealth may, by written notice to HIAL, require HIAL to repay those Funds within the timeframe specified in the notice. Any dispute in relation to the repayment of Funds will be dealt with in accordance with clause 25.

10.3 If this Agreement is terminated, the Commonwealth may, by notice to HIAL, require HIAL to repay to the Commonwealth, by the time specified in the notice, all or any part of the Funds held by HIAL, excluding those Funds required by HIAL to meet liabilities properly incurred in accordance with this Agreement or the Act.

10.4 Amounts payable by HIAL in accordance with clauses 10.1 or 10.3 are a debt due to the Commonwealth.

11. **INDUSTRY ASSETS AND LIABILITIES**

11.1 Industry Assets and Liabilities are to be determined in accordance with the following process:

(a) on notice from the Commonwealth, HIAL must prepare (or have a suitably qualified accountant prepare) and submit a list of its assets and liabilities to the Commonwealth;

(b) the Commonwealth will review the list and identify those assets and liabilities it considers Industry Assets and Liabilities; and

(c) through consultation, the parties will finalise and agree to a list of Industry Assets and Liabilities.

11.2 The final list agreed in the manner set out in subparagraph (c) will constitute the Industry Assets and Liabilities of HIAL for the purposes of this Agreement and the Act.
12. EXTENSION OF RESEARCH & DEVELOPMENT

12.1 HIAL must consider the dissemination, adoption and potential commercialisation of the results of Research and Development Activities. To ensure this HIAL must:
   (a) include in the Strategic Plan how HIAL plans to address extension, technology transfer and commercialisation of R&D;
   (b) demonstrate that the pathways to extension and adoption are incorporated into its planning and approval processes; and
   (c) as part of the Annual Report, report on HIAL’s extension activities.

13. PLANNING

13.1 HIAL must ensure that systems, processes and controls are progressively put in place to enable it to deliver planned outcomes and meet its planning obligations under this clause 13 and its reporting obligations under clause 14.

Program Framework

13.2 HIAL must develop and maintain a Program Framework within 12 months of the Agreement Date.

13.3 The Program Framework must facilitate proper planning, performance monitoring and reporting and ensure that expenditure can be accurately reported in the Annual Report and if otherwise requested by the Commonwealth.

13.4 The Program Framework should be supported by a structured Cost Allocation Policy and should clearly separate Research and Development and Marketing Amounts. The Strategic Plan should inform the development of the Program Framework. The Strategic Plan and the Program Framework should inform the development of the Annual Operational Plans.

13.5 A Program Framework must include specification of:
   (a) planned outcomes—results, consequences and impacts—from the investment of Funds. An outcome statement should:
      (i) be specific, focused and easily interpreted;
      (ii) identify the intended outcomes, with the level of achievement against the intended outcomes being measurable;
      (iii) specify the target groups (where these groups can be identified) for the outcomes;
(iv) specify the Activities to be undertaken that contribute to the achievement of the intended outcomes; and
(v) be agreed by key stakeholders and the Commonwealth as part of developing the Strategic Plan;

(b) the Programs being funded to advance the planned outcomes. Sub programs can be used to differentiate contributions of distinct elements within a Program to more clearly articulate the different types of Activities which contribute to the broader Program;

(c) for each Program, key deliverables to help achieve the planned outcomes;
(d) for each Program, key performance indicators that provide an accurate and succinct story of performance. Key performance indicators should:
   (i) in the Strategic Plan, be strategic in nature and linked to the planned outcomes;
   (ii) in the Annual Operational Plan, link to the deliverables;
   (iii) in the Annual Report, bring the key performance indicators under (i) and (ii) above together and demonstrate how the deliverables funded advanced the outcomes; and
   (iv) be clear, unambiguous and measurable with appropriate timeframes for achievement;

(e) the expected total cost (direct and indirect) of Activities and resources attributable to the delivery, development and associated costs of each Program; and

(f) an Evaluation Framework designed in accordance with clause 13.6.

**Evaluation Framework**

13.6 The Evaluation Framework must:

(a) support the Program Framework;
(b) ensure that key performance related information is generated by the Program Framework and is routinely collected and monitored;
(c) include a structured plan for the systematic evaluation of the Efficiency, Effectiveness and impact of HIAL’s key investments; and
(d) include a means of publishing and disseminating relevant Research and Development outcomes and outcomes of evaluations undertaken under subclause 13.6(c).
13.7 HIAL must:
   (a) consult with the Commonwealth in preparing the Evaluation Framework;
   (b) participate in any evaluation project relevant to HIAL’s operations which is
        established for all RDCs; and
   (c) demonstrate HIAL’s commitment to provide adequate expenditure for this
        purpose.

13.8 The Evaluation Framework must be published on HIAL’s public website within
   30 days of being adopted by HIAL.

Strategic Plan

13.9 HIAL must create, implement and maintain a Strategic Plan for its entire portfolio
   covering the four-year period of this Agreement and must:
   (a) review and, if necessary, update the Strategic Plan at least once every year;
   (b) ensure the Strategic Plan and Program Framework are consistent with each
        other;
   (c) consult with the Commonwealth during the term of this Agreement to
        ensure that its Strategic Plan has regard to the Guidelines;
   (d) obtain the Commonwealth’s endorsement of each new or amended draft
        Strategic Plan;
   (e) provide the Commonwealth with a copy of a new or amended Strategic
        Plan, as appropriate, within 30 days of approval by the Board; and
   (f) publish the Strategic Plan, and any new or amended Strategic Plan, on its
        public website within 30 days of approval by the Board.

13.10 The Commonwealth must take all reasonable efforts to ensure endorsement is
   provided within 30 days of any new or amended Strategic Plan being submitted to it.
   The parties agree that until such time as the Commonwealth’s views on the final draft
   Strategic Plan are known, once the current plan has expired, HIAL may act in
   accordance with the new or amended draft Strategic Plan notwithstanding that it has
   not received Commonwealth endorsement.

13.11 The Strategic Plan must be prepared in accordance with good planning practice and
   must cover matters including, but not limited to, the following:
   (a) HIAL’s vision or mission;
(b) an assessment of HIAL’s operating environment including its strengths, weaknesses, opportunities and threats, and including current and future trends and implications;

(c) collaboration with other Research and Development Corporations on priority Research and Development issues;

(d) a broad overview of the priorities and outcomes from stakeholder consultation, as more fully described in the stakeholder consultation plan required under clause 13.12;

(e) an explanation of the extent to which the priorities of Levy Payers are reflected in the Strategic Plan;

(f) a broad investment plan and funding model for whole of Horticulture Industry Research and Development Activities and Marketing Activities;

(g) key investment priorities and outcomes planned for the period of the Strategic Plan;

(h) the Research and Development Activities and Marketing Activities that HIAL intends to fund to achieve the planned outcomes;

(i) key deliverables which contribute to achieving the planned outcomes;

(j) performance indicators that enable progress being made towards achieving planned outcomes to be monitored and reported upon;

(k) how the Research and Development Activities and Marketing Activities to be funded align with, and give effect to, the Guidelines;

(l) how HIAL addresses extension, technology transfer, and commercialisation of Research and Development and demonstrate that extension and adoption are incorporated into the planning and approval process;

(m) estimates of income and expenditure, including broad estimates of allocation and expenditure separately for each of the key Research and Development Activities and Marketing Activities, for the life of the Strategic Plan;

(n) an explanatory statement of HIAL’s approach to ensuring a Balanced Portfolio appropriate to the broader Horticulture Industry;

(o) a corporate governance statement noting the Commonwealth’s expectation that HIAL implement good corporate governance practice in managing and investing the Funds; and
(p) HIAL’s roles and responsibilities as the declared Industry Services Body and Industry Export Control Body under the Act including HIAL’s:

(i) mutual obligations as partner with the Commonwealth in delivering services to members and Levy Payers; and

(ii) responsibilities for the custody and investment of the Funds.

13.12 In developing, reviewing and amending the Strategic Plan, HIAL must develop a consultation plan including the proposed approach to consultations with:

(a) the Commonwealth;

(b) Levy Payers;

(c) Industry Representative Bodies;

(d) other Research and Development Corporations, as appropriate; and

(e) other stakeholders, as appropriate.

13.13 Consistent with clause 7.9, HIAL may, at any time, seek consultations with the Commonwealth in relation to any matter connected with clause 13.12, including the required content of the consultation plan.

13.14 For minor amendments to an existing Strategic Plan, HIAL may request approval from the Commonwealth not to prepare a consultation plan as set out in clause 13.12.

13.15 The consultation plan must be published on HIAL’s public website and include provision for online and electronic submissions to be made from the parties listed in paragraphs (a) to (e) above.

13.16 The consultation plan must be agreed with the Commonwealth before consultation commences.

13.17 The Commonwealth must treat the Strategic Plan, each amendment of the Strategic Plan, and the consultation plan as Confidential Information until such information is publicly released by HIAL.

**Annual Operational Plan**

13.18 HIAL must, prior to 1 July each year, provide to the Commonwealth an Annual Operational Plan to implement the Strategic Plan setting out:

(a) the intended operations of HIAL for the next Financial Year;

(b) the key Research and Development and Marketing Activities to be funded during the Financial Year under each of the Research and Development Programs and Marketing Programs of HIAL;
(c) how Research and Development and Marketing Activities to be funded align with, and give effect to, the Guidelines;
(d) key deliverables arising during the Financial Year from the Research and Development and Marketing Activities planned;
(e) performance indicators and timetables relating to HIAL’s proposed Research and Development and Marketing Activities and expenditure which enable the progress being made towards achieving the planned outcomes to be monitored and reported upon;
(f) estimates of income and expenditure for the Financial Year which include:
   (i) the amounts to be received by HIAL, separately, in respect of Marketing Amounts, Research and Development Amounts, Commonwealth Matching Payments, Voluntary Contributions and any other form of income; and
   (ii) expenditure by HIAL on Research and Development Activities and Marketing Activities respectively;
(g) collaboration with other Research and Development Corporations on priority Research and Development issues;
(h) a statement on how HIAL intends to implement and operationalise a Balanced Portfolio appropriate to the Horticulture Industry for the next Financial Year; and
(i) any other matters the Directors consider should be set out in the Annual Operational Plan.

13.19 In developing its Annual Operational Plan HIAL must consider:
(a) any directions given by the Minister under this Agreement or the Guidelines;
(b) community, member and Levy Payer expectations when setting HIAL senior executive and Board remuneration packages; and
(c) investments to support the development and implementation of the RD&E Framework where applicable.

13.20 HIAL must submit the Annual Operational Plan developed in accordance with clause 13.18, and all material variations or updates, to the Commonwealth within 30 days of the Annual Operational Plan or variations being adopted by HIAL.
13.21 The Commonwealth must treat an Annual Operational Plan or an amended Annual Operational Plan provided to it as Confidential Information until it is publicly released by HIAL.

**Other Plans**

13.22 HIAL must develop, maintain and implement the following plans:
   (a) a Risk Management Plan;
   (b) a Fraud Control Plan; and
   (c) an Intellectual Property Management Plan.

13.23 HIAL must review the plans listed in paragraphs 13.22(a) to (c) above at intervals of no more than three years.

13.24 HIAL must provide the Commonwealth with a copy of the plans listed in paragraphs 13.22(a) to (c) above, or amendments to the plans, within 30 days of their approval by the Board.

13.25 The Commonwealth must treat a plan or an amended plan as Confidential Information until it is publicly released by HIAL.

14. **REPORTS**

**Compliance Audit Report**

14.1 HIAL must, within five months after the end of each Financial Year, give the Commonwealth a Compliance Audit Report, which provides an independent opinion on whether HIAL has complied with its obligations under clauses 7 and 8 during the Financial Year. A Compliance Audit Report must:
   (a) be prepared in accordance with relevant Australian Auditing and Assurance Standards and this Agreement;
   (b) include a review of the efficacy of the accounting systems processes and controls required under clause 8.1;
   (c) include a review of the amounts spent on Marketing Activities and Research and Development Activities and verify the claims made for Commonwealth Matching Payments under clause 6.7 are consistent with the amount of Eligible R&D Expenditure;
   (d) state any qualifications to which the Compliance Audit Report is subject;
(e) subject to clause 14.2, include an opinion whether HIAL has complied with its obligations under clauses 7 and 8 during the Financial Year;
(f) indicate any incidences of non-compliance and assess and report on the impact of those incidences of non-compliance; and
(g) include a statement that the Compliance Audit Report has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgement that the Compliance Audit Report will be relied upon by the Commonwealth.

14.2 A Compliance Audit Report need not include an opinion on whether the Funds have been:

(a) applied for the benefit of Levy Payers and the broader Horticulture Industry; or
(b) spent Efficiently, Effectively, Economically and Ethically; or
(c) spent on Agri-Political or Advocacy Activities.

Certification Report

14.3 HIAL must, within five months after the end of each Financial Year, give the Commonwealth a Certification Report from the Board, signed by the Chairperson of the Board and the Chief Executive Officer of HIAL:

(a) certifying that, HIAL has complied in all material respects with its obligations under the Act and this Agreement during the Financial Year;
(b) certifying the claims for Commonwealth Matching Payments under clause 6.7 are consistent with the amount of Eligible R&D Expenditure;
(c) stating whether any incidences of non-compliance have come to their attention;
(d) assessing and reporting on the impact of those incidences of non-compliance; and
(e) including a statement that the Certification Report has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgement that the Certification Report will be relied upon by the Commonwealth.
Other Audit Reports

14.4 If, in the opinion of the Commonwealth, HIAL is, or may be, in breach of this Agreement or the Act, the Commonwealth may request an audit report or opinion on any matter relevant to HIAL's compliance with this Agreement and/or the Act.

14.5 If the Commonwealth requests an audit report or opinion under clause 14.4, HIAL must at its own expense:
   (a) obtain the audit report or opinion from HIAL's auditor; or
   (b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by HIAL's auditor, engage another auditor to conduct an audit and give the audit report or opinion; and
   (c) give a copy of the audit report or opinion to the Commonwealth within 14 days of HIAL receiving it.

Annual Reports

14.6 HIAL must provide four copies of its Annual Report, prepared in accordance with clauses 14.7 and 14.8, to the Commonwealth at the time the Corporations Act 2001 requires an Annual Report to be given to members.

14.7 HIAL must prepare an Annual Report that complies with the financial reporting and other reporting requirements of the Corporations Act 2001 as appropriate. Additional information beyond the requirements of the Corporations Act 2001 required to meet the requirements of this Agreement can be provided to the Commonwealth separately.

14.8 The Annual Report should include, in respect of the relevant Financial Year:
   (a) sources of income allowing for separate identification of Marketing Amounts, Research and Development Amounts, Commonwealth Matching Payments and Voluntary Contributions;
   (b) significant Activities and transactions undertaken in the year in the conduct of HIAL’s functions as the Industry Services Body and the Industry Export Control Body;
   (c) the full cost of the Research and Development Activities and Marketing Activities, with costs being allocated in accordance with the Cost Allocation Policy;
(d) progress made in implementing the Strategic Plan and Annual Operational Plan including progress against key performance indicators specified in those plans;

(e) key Research and Development and Marketing deliverables and associated outcomes achieved;

(f) collaboration with Levy Payers, a horticulture industry, the broader Horticulture Industry and research providers;

(g) collaboration with other Research and Development Corporations to fund Research and Development Activities to address the Strategic Research Priorities and Rural Research and Development Priorities;

(h) collaboration with other Research and Development Corporations to deliver Research and Development or Marketing services in a more Efficient and Effective manner;

(i) expenditure on evaluations and outcomes of evaluations undertaken;

(j) an assessment of the Efficiency and Effectiveness of HIAL’s investments;

(k) how HIAL has addressed extension, technology transfer and commercialisation of Research and Development and Marketing Activities;

(l) Intellectual Property creation and protection, including management of Intellectual Property arising from Research and Development Activities or acquired with Funds;

(m) subsidiaries and joint ventures formed;

(n) material changes to HIAL’s membership;

(o) how HIAL responded to any directions given by the Minister under the Agreement or the Guidelines;

(p) consultation with Levy Payers and Industry Representative Bodies on:

   (i) HIAL’s Strategic Plan and Annual Operational Plan; and

   (ii) Research and Development and Marketing Activities and extension activities;

(q) HIAL’s contributions to relevant Horticulture Industry sectoral and cross-sectoral strategies, including the strategies under the RD&E Framework;

(r) details of senior executive and Board remuneration (any changes to Australian Government disclosure requirements will be advised by the Commonwealth in the lead up to preparation of each Annual Report);
(s) Research and Development and Marketing agreements entered into by HIAL with third parties;
(t) corporate governance practices in place during the Financial Year;
(u) the rationale for the mix of projects included in the Balanced Portfolio; and
(v) other matters notified to HIAL by the Commonwealth.

Other Reports

14.9 HIAL must report to the Commonwealth any significant matters that have come to HIAL’s attention that will or may affect HIAL’s ability to achieve the outcomes stated in its Strategic Plan or comply with its obligations under this Agreement or the Act within 30 days of becoming aware of that matter.

14.10 In addition to the reports required under clauses 14.6 and 14.9, on notice HIAL must give the Commonwealth, within such period as the Commonwealth reasonably specifies after consultation with HIAL, any other report or explanation relating to management and expenditure of the Funds.

14.11 When giving the reports or explanations referred to in clause 14.10, HIAL must consult with the Commonwealth as to the nature of any action required and must take that action within a timeframe agreed with the Commonwealth.

14.12 HIAL will report its contribution to the implementation of relevant Horticulture Industry sector and cross-sectoral strategies under the RD&E Framework.

15. REVIEW OF PERFORMANCE

15.1 HIAL must complete a Performance Review six months before the expiry of this Agreement and must:

(a) engage an independent organisation to undertake the Performance Review and prepare a report on the Performance Review (the Performance Review Report);
(b) agree the terms of reference six months before the Performance Review commences with the Commonwealth to ensure that the Performance Review will meet the requirements of this Agreement;
(c) provide the Commonwealth with a copy of the draft Performance Review Report at the same time the Board receives a copy;
(d) provide the final Performance Review Report to the Commonwealth within 14 days of it being provided to the Board;
(e) develop a response to the final Performance Review Report and a proposed implementation plan, including dates and milestones, for the implementation of recommendations within three months of the Board’s receipt of the final Performance Review Report;
(f) provide the Commonwealth with the response developed under clause 15.1(e) within 30 days of the Board accepting the response;
(g) report to the Commonwealth in the meetings required under clause 17.1 on progress implementing the Performance Review Report recommendations; and
(h) publish the Performance Review Report and HIAL’s response to the Performance Review Report recommendations on HIAL’s public website.

15.2 The independent organisation engaged to carry out the Performance Review must be an organisation that has not, within the previous four years, carried out any corporate governance activity or reviews, performance audit or similar reviews of HIAL.

15.3 The Performance Review must take into account:
(a) the performance of HIAL in meeting its obligations under this Agreement and the Act;
(b) HIAL’s development and implementation of its Strategic, Annual Operational, Risk Management, Fraud Control and Intellectual Property Management Plans and HIAL’s effectiveness in meeting the priorities, targets and budgets set out in those plans;
(c) the Efficiency with which HIAL carried out those plans;
(d) the Efficiency and Effectiveness of HIAL’s investments;
(e) the delivery of benefits to members, Levy Payers and the broader community foreshadowed by those plans, including an assessment of the degree to which HIAL’s investments have met the needs of members, Levy Payers and the broader community; and
(f) any other matters related to HIAL’s functions under the Act or performance of this Agreement required to be covered by the Minister and any other issues relevant to the Horticulture Industry that may require specific attention.
16. PERFORMANCE MANAGEMENT

16.1 If, in the opinion of the Commonwealth, HIAL is underperforming, the Commonwealth will first consult with HIAL to determine the accuracy of such opinions, including the existence and the nature of the Underperformance.

16.2 To support the parties clarify the existence and/or nature of the Underperformance and to develop appropriate responses the Commonwealth may:

(a) request that additional reports, including audit reports related to the Underperformance, be provided by HIAL; and

(b) in consultation with HIAL use its best endeavours to develop and agree a work plan for HIAL to resolve the Underperformance; and

(c) give HIAL a direction.

16.3 Any disputes relating to the existence, nature or means of addressing Underperformance will be dealt with in accordance with clause 25.

17. CONSULTATIONS AND DIRECTIONS

Consultation with the Commonwealth

17.1 The Chairperson of HIAL, or in their absence, their Board nominee, must meet with the Commonwealth at not more than six-monthly intervals from the Agreement Date, or at any other time requested by the Commonwealth on reasonable notice, to brief the Commonwealth on HIAL’s performance of its functions as the Industry Services Body or Industry Export Control Body including:

(a) progress on implementing HIAL’s Annual Operational Plan and Strategic Plan, including HIAL’s financial position;

(b) progress on the implementation of the relevant sectoral and cross-sectoral strategies under the RD&E Framework;

(c) consultation with other Research and Development Corporations and Industry Representative Bodies;

(d) measures taken to enhance corporate governance in accordance with clause 5;

(e) progress in developing and implementing the Evaluation Framework;

(f) progress on implementing the recommendations from the most recent Performance Review; and
(g) the development and implementation of additional systems, processes and controls necessary to meet the requirements of this Agreement required by clause 8.5 of this Agreement.

**Consultation with Levy Payers and the broader Horticulture Industry**

17.2 HIAL must, as far as possible, communicate directly with Levy Payers and members to:
   
   (a) review priorities for Research and Development and Marketing investments, including any regional equity considerations; and
   
   (b) report on HIAL’s performance against the Strategic Plan and the Annual Operational Plan.

17.3 HIAL must collaborate with other Research and Development Corporations and other bodies (for example, Plant Health Australia) to identify opportunities for collaboration and minimise duplication of Research and Development and Marketing Activities.

**Changes to the Guidelines & Ministerial directions**

17.4 The Commonwealth may provide guidance to HIAL on export market development issues, including on the identification of export market priorities and on functions of the Office of Horticultural Market Access (OHMA).

17.5 Subject to clause 17.6, the Commonwealth may vary the Guidelines provided that the Commonwealth:
   
   (a) consults with HIAL prior to the variation; and
   
   (b) gives HIAL a period to implement the variation,

17.6 If the Department becomes aware that the Minister proposes to issue a direction under section 29 of the Act:
   
   (a) the Department agrees to use reasonable endeavours to inform HIAL of the proposal as soon as practical;
   
   (b) if the Directors are of the opinion that the proposed direction may require the Directors to act, or omit to act, in a manner that is likely to breach the duties owed by the Directors to members or be in contravention of any law, HIAL’s Constitution or other binding obligations the Directors must notify the Department; and
(c) the Department and HIAL must engage in discussion about the relevant issue including to consider whether there is a mutually acceptable resolution.

17.7 Any disputes relating to directions will be resolved in accordance with clause 25.

18. INDUSTRY EXPORT CONTROL BODY

18.1 In administering its responsibilities as the Industry Export Control Body, HIAL must act in accordance with the *Horticulture Marketing and Research and Development Services (Export Efficiency) Regulations 2002*, made under the Act.

18.2 For the purposes of the Act, the processes to be followed before the Secretary may make or revoke an order specifying a Regulated Horticultural Product and a Regulated Horticultural Market in respect of that product is are as set out in Schedule 3.

18.3 All parts of this Agreement that relate to HIAL’s function as the Industry Export Control Body will cease from 1 November 2015. For the avoidance of doubt, this means that there will be no deed of agreement in place with an Industry Export Control Body for the purposes of the Act.

18.4 Following 1 November 2015, the Secretary will exercise the Export Efficiency Powers.

18.5 HIAL must, in consultation with the Department, prepare a plan for the cessation of operations as the Industry Export Control Body three months prior to the cessation date. The plan must include arrangements for the:

(a) transfer of relevant funds, including licence fees, to the Department;
(b) transfer of all records in relation to the Export Efficiency Powers;
(c) provision for the payment of any relevant commitments and expenses; and
(d) any other matters.

18.6 Following 1 November 2015, where any matter in relation to the Export Efficiency Powers arises and HIAL or HAL were the Industry Export Control Body at the relevant time, HIAL must, on notice from the Department, provide all reasonable assistance requested in relation to that matter.
19. ACCESS TO RECORDS AND USE OF INFORMATION

19.1 The Commonwealth, the Auditor-General and any duly authorised representative of
the Commonwealth who, in the case of a person who is not a Commonwealth officer
bound by the Public Service Act 1999, has signed an appropriate confidentiality deed,
may, for the purpose of monitoring compliance by HIAL with this Agreement and the
Act, have access to:

(a) premises occupied by or under the control of HIAL; and
(b) data, records, accounts and other financial material and any property of the
Commonwealth in the possession or under the control of HIAL.

19.2 HIAL must grant this access, on request:

(a) during Business Hours – at any time on notice in writing; or
(b) outside Business Hours – on 48 hours’ notice given to HIAL and marked
for the attention of the Chief Executive Officer or equivalent of HIAL.

19.3 HIAL must provide access to all its accounts and records relating to this Agreement
and the Act (other than any legally privileged material) and otherwise co-operate fully
with the Commonwealth, the Auditor-General or any duly authorised representative
for the purposes of clause 19.1.

19.4 Without limiting clause 19.3, HIAL must, as appropriate, make available relevant
HIAL personnel to provide information or answer questions on any matter that relates
to HIAL’s obligations under this Agreement or the Act.

19.5 Each party must, in respect of Confidential Information given by the other
party:

(a) use that Confidential Information only for the purposes of administering or
enforcing this Agreement or the Act; and
(b) not disclose that Confidential Information to any person without the prior
approval in writing from the other party and subject to any conditions or
restrictions imposed by the other party in giving approval.

19.6 A party will not be in breach of this clause to the extent that it is legally obliged to
make a particular use or disclosure of Confidential Information.

19.7 The Commonwealth will not be in breach of clause 19.5 in respect of Confidential
Information given by HIAL and held by the Commonwealth where a request is made
by Parliament (including a committee of Parliament) for that information to be given
to Parliament, provided that the Commonwealth notifies Parliament of the
confidential nature of the information and requests Parliament hold and deal with that information on an in camera basis.

19.8 Subject to clause 19.9, HIAL grants to, or will use reasonable efforts to procure for, the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to grant sublicences) to use, reproduce, communicate and adapt the Intellectual Property rights in any material provided to the Commonwealth under this Agreement for the purposes for which it is provided.

19.9 HIAL must make reasonable efforts to obtain all necessary Intellectual Property rights and permissions from third parties for the purposes of clause 19.8. HIAL must inform the Commonwealth, in writing, if it is unable to obtain the necessary permissions in relation to the relevant third party material and provide sufficient information to enable the Commonwealth to avoid breaching the third party’s Intellectual Property rights.

20. INDEMNITY

20.1 Subject to clauses 20.2 and 20.6 to 20.10 HIAL indemnifies the Commonwealth, its officers and agents from and against any loss or liability, including:

(a) loss of, or damage to, property of the Commonwealth;
(b) claims by any person in respect of personal injury or death;
(c) claims by any person in respect of loss of, or damage to, any property; and
(d) loss or expense reasonably incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses;

arising out of or as a consequence of:

(e) an infringement, or an alleged infringement, of the Intellectual Property rights (including moral rights) of any person, which occurred by reason of an act done by the Commonwealth in relation to any part of this Agreement;
(f) any actual, likely or threatened breach of HIAL’s obligations relating to Confidential Information or personal information; or
(g) without limiting the preceding paragraphs, any breach of this Agreement by HIAL, or negligence on the part of HIAL, its personnel or subcontractors or wrongful or unlawful act or omission on the part of HIAL, its personnel or subcontractors.
20.2 The amount payable under the indemnity in clause 20.1 will be reduced proportionally to the extent that any:
   (a) act or omission which is negligent, wrongful, unlawful, malicious, fraudulent, wilful, illegal or reckless; or
   (b) breach of this Agreement;

by the Commonwealth or its officers, employees, contractors or agents contributed to the loss, liability, expense or cost.

20.3 HIAL agrees that a person indemnified under clause 20.1 may recover a payment under an indemnity in this Agreement before the person makes the payment in respect of which the indemnity is given if:
   (a) the amount is a liquidated sum; and
   (b) the Commonwealth has complied with its obligations in clauses 20.7 to 20.10.

20.4 The indemnities in this Agreement are irrevocable and survive the termination of this Agreement.

20.5 HIAL agrees that the Commonwealth holds the benefit of an indemnity under clause 20.1 in favour of an officer or agent of the Commonwealth in trust for the officer or agent.

20.6 The liability of HIAL under the indemnity in clause 20.1 is limited to $20,000,000, on a per event and yearly aggregate basis, provided that the limit on liability will not apply in respect of:
   (a) personal injury or death;
   (b) loss of or damage to Commonwealth property;
   (c) breach of Intellectual Property rights or obligations of confidentiality; or
   (d) conduct by HIAL or its officers, employees, contractors or agents which is malicious, fraudulent, wilful, illegal or reckless.

20.7 The Commonwealth must notify HIAL in writing as soon as it becomes aware of any action, claim, dispute, suit or proceedings (Proceedings) threatened or brought against the Commonwealth or its officers or agents in respect of which the Commonwealth may seek indemnification under clause 20.1.

20.8 If HIAL agrees to comply at all times with Commonwealth policy relevant to the conduct of the Proceedings, including the Legal Services Directions in force from
time to time issued in accordance with the *Judiciary Act 1903* (Cth) (LSDs), and the Commonwealth is granted leave to withdraw from the Proceedings:

(a) the Commonwealth may withdraw from the Proceedings; and

(b) HIAL may, in its own name and at its own expense, conduct the Proceedings.

20.9 For Proceedings from which the Commonwealth is not granted leave to withdraw, if HIAL admits its obligations under the indemnity in clause 20.1 and upon request lodges security in a reasonable amount with the Commonwealth, the Commonwealth:

(a) must keep HIAL informed of all developments in the Proceedings; and

(b) may defend, arbitrate, appeal, settle or otherwise conduct the Proceedings.

20.10 The Commonwealth must consult with HIAL prior to agreeing to a settlement of a matter for which it seeks indemnification under these provisions.

21. **ACKNOWLEDGEMENT OF FUNDING**

21.1 Unless otherwise agreed with the Commonwealth, HIAL must ensure that all significant publications and publicity by HIAL in relation to matters on which Commonwealth Matching Payments are expended acknowledge the provision of the Matching Payments by the Commonwealth.

22. **AUTHORISATION OF PERSONS TO ACT**

22.1 The rights, functions and powers of the Commonwealth under this Agreement may be exercised and performed on behalf of the Commonwealth by the Minister, or a delegate of the Minister.

22.2 Performance of an obligation of the Commonwealth under this Agreement by the Minister, or a delegate of the Minister, is taken to be performance of the obligation by the Commonwealth.

23. **RELATIONSHIP**

23.1 This Agreement does not create a relationship of employment, agency or partnership between the parties.
24. FURTHER ACTION

24.1 Each party must use its best efforts to do all things necessary to give full effect to this Agreement, including the execution of any document requested by either party.

25. RESOLUTION OF DISPUTES

25.1 Except where a party seeks urgent interlocutory relief, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement which cannot be resolved by informal discussion ("Dispute") until the procedures set out in this clause 25 have been followed.

25.2 The parties agree that any Dispute arising during the course of this Agreement will be dealt with as follows:
   (a) the party claiming that there is a Dispute will send the other party a written notice setting out the nature of the Dispute and requesting a meeting between the parties to discuss that Dispute; and
   (b) the parties will have 20 Business Days (or such longer period as may be agreed to in writing by the parties to the Dispute) from the date of service of the notice within which to hold a meeting of one duly authorised representative of each party, and those representatives must use reasonable efforts to resolve the Dispute.

25.3 If the Dispute is not resolved by the parties at the meeting referred to in subclause 25.2(b), the parties must refer the Dispute to mediation, which must be conducted in Canberra (or elsewhere as agreed in writing between the parties), in accordance with the Institute of Arbitrators and Mediators of Australia Rules for the Mediation of Commercial Disputes (in operation from time to time), except to the extent that such Rules conflict with this clause 25, in which case this clause 25 shall prevail to the extent of the inconsistency.

25.4 If the parties have not agreed upon the mediator and the mediator’s remuneration within 5 Business Days after the Dispute is referred to mediation in accordance with subclause 25.3:
   (a) the mediator is the person appointed by; and
   (b) the remuneration of the mediator is the amount or rate determined by;
the Chairman of the Institute of Arbitrators and Mediators Australia (Chairman), or the Chairman’s nominee.
25.5 The mediator's remuneration must be paid by the parties in equal proportions.

25.6 The mediation is confidential and the parties each acknowledge and agree that:
   (a) written statements prepared by the mediator or the parties; and
   (b) any discussions between the participants to the mediation, before or during
       the mediation, cannot be used or relied upon by either party in any
       subsequent legal proceedings.

25.7 Despite the existence of a Dispute, both parties must, unless requested in writing by
    the other party not to do so, continue to perform their respective obligations under this
    Agreement.

25.8 If there is no resolution of the Dispute within 20 Business Days of the commencement
    of the mediation (or such extended time as the parties may agree in writing before the
    expiration of that period), then either party may commence legal proceedings in
    respect of the Dispute.

26. ASSIGNMENT

26.1 HIAL must not assign or novate this Agreement or any right or obligation under this
    Agreement unless HIAL:
       (a) is not in breach of this Agreement;
       (b) obtains the prior written consent of the Commonwealth; and
       (c) ensures that the assignee agrees to be bound by all of HIAL’s obligations
           under this Agreement.

27. ENTIRE AGREEMENT

27.1 This Agreement:
       (a) constitutes the entire agreement between the parties as to its subject matter;
       and
       (b) in relation to that subject matter, supersedes any prior understanding or
           agreement between the parties and any prior condition, warranty, indemnity
           or representation imposed, given or made by a party.

28. VARIATION

28.1 This Agreement may only be varied in accordance with section 13 of the Act.
29. **WAIVER**

29.1 Waiver of any provision of or right under this Agreement:

(a) must be in writing signed by the party entitled to the benefit of that provision or right; and

(b) is effective only to the extent set out in any written waiver.

30. **SEVERABILITY**

30.1 Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

31. **GOVERNING LAW AND JURISDICTION**

31.1 This Agreement is governed by the law applicable in the Australian Capital Territory.

31.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in relation to matters arising in connection with this Agreement.

32. **NOTICE**

32.1 A party giving notice or notifying under this Agreement must do so in writing or by Electronic Communication:

(a) directed to the recipient’s address specified in this clause, as varied by any notice; or

(b) hand delivered or sent by prepaid post or facsimile or Electronic Communication to that address.

32.2 The parties’ addresses are:

<table>
<thead>
<tr>
<th>Commonwealth</th>
<th>The Assistant Secretary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Research &amp; Innovation Branch</td>
</tr>
<tr>
<td></td>
<td>Department of Agriculture</td>
</tr>
<tr>
<td></td>
<td>GPO Box 858</td>
</tr>
<tr>
<td></td>
<td>CANBERRA ACT 2601</td>
</tr>
</tbody>
</table>
32.3 A notice given in accordance with clause 32.1 is taken to be received:

(a) if hand delivered—on delivery; or

(b) if sent by prepaid post—3 days after the date of posting; or

(c) if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within one Business Day after that transmission, the recipient informs the sender that it has not received the entire notice; or

(d) if sent by Electronic Communication, at the time that would be the time of receipt under the Electronic Transactions Act 1999.

33. INTERPRETATION

33.1 In this Agreement, unless the contrary intention appears:

(a) the words “includes” and “including” are not words of limitation;

(b) headings are for ease of reference only and do not affect the meaning of this Agreement;

(c) the singular includes the plural and vice versa and words importing a gender include other genders;

(d) other grammatical forms of defined words or expressions have corresponding meanings;
(e) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;

(f) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, varied or replaced from time to time;

(g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;

(h) a reference to a party includes its executors, administrators, successors and permitted assigns;

(i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;

(j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901; and

(k) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

33.2 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

33.3 Where a provision of this Agreement requires a thing to be done on a day which is a Saturday, Sunday or public holiday in the place at which the thing is to be done, that provision shall be taken to require the thing to be done on the next day which is not a Saturday, Sunday or public holiday at that place.

33.4 The Schedules are provisions of this Agreement, but notes and headings are not provisions of this Agreement.
SCHEDULE 1– RESEARCH AND DEVELOPMENT ACTIVITIES

Examples of activities which may be determined to be Research and Development Activities include:

(a) the development of workforce skills, education and the training of people to undertake Research and Development and apply the outcomes;

(b) the building of strong Research and Development leadership capacity and encouraging diversity of Levy Payers and the broader Horticulture Industry;

(c) the investigation and evaluation of the requirements for Research and Development and, on the basis of such investigation and evaluation, the preparation, reviewing and revising of Research and Development plans;

(d) the carrying out, and the coordination and funding of the carrying out, of Research and Development;

(e) the monitoring, evaluating and the reporting to the Commonwealth, Levy Payers and the broader Horticulture Industry on Research and Development funded by HIAL;

(f) facilitating the dissemination, adoption and commercialisation of the results of Research and Development or of practices or technological developments that have been designed or adapted to improve the operation or efficiency of the Levy Payers and the broader Horticulture Industry;

(g) the dissemination of information related to any aspect of Research and Development whether electronically, by print or by any other means;

(h) improving the accountability for expenditure on Research and Development Activities in relation to Levy Payers and the broader Horticulture Industry;

(i) the development in the Horticulture Industry of an awareness of the contribution that can be made by Research and Development in improving its efficiency and competitiveness;

(j) the collection and interpretation of statistical information on the Horticulture Industry;

(k) such other Activities as may be approved by the Commonwealth in writing from time to time;

(l) engaging Directors, employees, consultants and agents of HIAL and in meeting administration, operating or capital expenses (including, but not limited to, lease costs and legal and other professional expenses) reasonably
necessary or appropriate to be incurred by HIAL to support its Research and Development Activities;

(m) paying remuneration and allowances to Directors, employees, consultants and agents of HIAL and in meeting administrative, operating and capital expenses reasonably necessary or appropriate to be incurred by HIAL to support its Research and Development Activities;

(n) technical market access research to inform development of market access priorities (products and markets), including functions of the Office of Horticultural Market Access (OHMA);

(o) any activity incidental but considered important to its Research and Development Activities; and

(p) maintaining a membership register and holding general meetings.

HIAL must ensure that there is a clear distinction between expenditure on Research and Development Activities and Marketing Activities.
SCHEDULE 2 – MARKETING ACTIVITIES

For the purposes of this Agreement, activities which may be determined to be Marketing Activities are:

(a) making payments for, or in relation to Marketing Activities or promotion for the benefit of Levy Payers and the broader Horticulture Industry, including, without limitation:
   (i) for the investigation and evaluation of the requirements for domestic and export Marketing; and/or
   (ii) on the basis of such investigations and evaluations, for the preparation, review and revision of Marketing plans; and/or
   (iii) the carrying out, and the co-ordination and funding of the carrying out of Marketing Activities; and/or
   (iv) the monitoring, evaluating and reporting to the Commonwealth, Levy Payers and the broader Horticulture Industry on Marketing Activities undertaken by HIAL;
(b) maintaining a membership register and holding general meetings of HIAL;
(c) making payments to the Commonwealth and otherwise complying with obligations imposed on HIAL under this Agreement or the Act;
(d) making any other payment HIAL is authorised or required to make by law in accordance with this Agreement and the Act; and
(e) paying remuneration and allowances to Directors, employees, consultants and agents of HIAL and meeting administrative, operating and capital expenses reasonably necessary or appropriate to be incurred by HIAL to support its Marketing Activities.
SCHEDULE 3 – PROCESS FOR DECLARATION AND REVOCATION OF ORDERS RELATING TO REGULATED HORTICULTURAL PRODUCTS AND MARKETS (INDUSTRY EXPORT CONTROL BODY)

The Act provides for the Secretary to make orders that a horticultural product or market is to be regulated. These arrangements are referred to as the Export Efficiency Powers.

HIAL, while declared the Industry Export Control Body, administers the arrangements as determined by the orders.

Making an order

For the purposes of subsection 19(4)(a) of the Act, the process to be followed before the Secretary may make an order in relation to a specified horticultural product or market is:

1. Application and consultation

   Applications that do not comply with the Australian Government’s Regulatory Impact Statement requirements and Australia’s World Trade Organisation obligations will not be approved. Applicants should engage with the Department before developing an application.

   The affected segment of the Horticulture Industry needs to develop a case for regulation and submit that case to HIAL’s Board for consideration. An application for regulation of a horticultural product must include:

   (a) a description of the regulation being sought;
   (b) a description of justifying market circumstances;
   (c) a description of net public benefit of regulation to Australia;
   (d) a marketing plan (if applicable);
   (e) a quota administration method (if applicable);
   (f) a report on consultation processes and outcomes undertaken in developing the application; and
   (g) an estimate of the number of exporters and other industry participants who or which would be directly or indirectly affected by the regulation.
Consultation

All members of the affected segment of the Horticulture Industry should be alerted to the proposal for regulation and be provided with an opportunity to respond. The following conditions should be met as part of the consultation process:

(a) sufficient information on the proposal, including the developed case for regulation, the proposed instrument for regulation and the expected benefits of regulation must be made available;
(b) a minimum 30 day period for public comment should be allowed for;
(c) submissions in response to the proposal should be public documents; and
(d) final consultation reports provided with the application must note both assenting and dissenting arguments.

2. Board review

Once received, HIAL’s Board will review the completed application. If the Board is satisfied the application demonstrates a net public benefit, it will finalise the application and pass its recommendation and supporting documentation to the Department.

If required, HIAL’s Board may conduct its own research relating to the proposal, including the estimated costs of administering the regulation and potential impact on licence fees.

If an application is not supported, the Board will advise the applicant with reasons.

3. Departmental approval

The Departmental clearance process includes:

(a) the preparation of a Regulation Impact Statement which assesses the effect of the proposed regulation on consumers and the economy and examines alternative measures that could achieve similar objectives;
(b) determining that the order is legally sound;
(c) assuring compliance with trade practices legislation and requirements with the Australian Competition and Consumer Commission (ACCC);
(d) assuring compliance with international and treaty obligations with the Department of Foreign Affairs and Trade (DFAT).

The Secretary will then make an order or refuse the application with reasons.
**Revoking an order**

For the purposes of section 20(1) of the Act, the Secretary may revoke an order in relation to a specified horticultural product or market following a performance review where the Regulation Impact Statement prepared at the conclusion of the review concludes that the imposition of export controls is no longer providing net public benefit.
SIGNING PAGE

EXECUTED as a deed

SIGNED, SEALED AND DELIVERED for and on behalf of the COMMONWEALTH OF AUSTRALIA by the Hon. Barnaby Joyce MP Minister for Agriculture in the presence of

[Signature of witness]

Name of witness

SIGNED, SEALED AND DELIVERED for and on behalf of HORTICULTURE INNOVATION AUSTRALIA LIMITED by

[Signature]

Name of signatory

CHAIRMAN Position of signatory

in the presence of

[Signature]

Name of witness

BARBARA MARY SNELL

Name of witness

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