Department of Agriculture and Water Resources

Deed of Variation

Commonwealth of Australia (Commonwealth)
Horticulture Innovation Australia Limited (HIAL)
Details

Date  
17 / NOVEMBER / 2015

Parties

Name  
The Commonwealth of Australia as represented by the Department of Agriculture and Water Resources

ABN  
24 113 085 695

Short form name  
Commonwealth

Address details

Name  
Horticulture Innovation Australia Limited

ABN  
71 602 100 149

Short form name  
HIAL

Address details

(collectively ‘the parties’)

Background

A  On 18 November 2014:

(i)  The Minister declared HIAL to be the Industry Services Body and the Industry Export Control Body under section 9(1) and 9(2) of the Horticulture Marketing and Research and Development Services Act 2000 (the Act) respectively, effective from 25 November 2014; and

(ii)  the Minister entered into a Deed of Agreement (Principal Agreement) on behalf of the Commonwealth with HIAL pursuant to subsections 12(1) and 12(2) of the Act and for the purposes of HIAL’s provision of services as the Industry Services Body and Industry Export Control Body.

B  On 1 November 2015, HIAL ceased to be the Industry Export Control Body following a declaration made by the Minister on 18 August 2015 to this effect.

C  In accordance with clause 18.3 of the Principal Agreement, all parts of the Agreement that relate to HIAL’s function as the Industry Export Control Body ceased from 1 November 2015.

D  Notwithstanding items B and C above, the parties now wish to amend the Principal Agreement to:

(i)  extend the timeframe for the provision of HIAL’s first Strategic Plan and its Program Framework to 30 April 2016;

(ii)  insert a new provision into the Principal Agreement regarding committee and panel member’s disclosure of pecuniary interests; and
(iii) make some minor consequential changes to support the above amendments.

E Clause 28 of the Principal Agreement only permits the Principal Agreement to be varied in accordance with section 13 of the Act.

F Section 13 of the Act allows the Minister and HIAL to vary the Principal Agreement by written agreement and requires any such variation to the Principal Agreement to be in writing.

G The Commonwealth and HIAL have agreed to vary the terms of the Principal Agreement for the purpose outlined above and in accordance with the Act and this Deed of Variation.
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Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Deed, unless the contrary intention appears:

(a) a word or expression defined or referred to in the Principal Agreement has the meaning given to it in the Principal Agreement;

(b) Principal Agreement means the deed of agreement described in paragraph A of the Background to this Deed;

(c) Deed means this deed, including all annexures and schedules to it; and

(d) Effective Date means the day after this Deed is executed by both parties, and where this Deed is executed by the parties on different dates, the day after the latter of those dates.

2. Variation to Principal Agreement

On and with effect from the Effective Date, the Principal Agreement is varied as set out in Schedule 1 to this Deed.

3. Affirmation of Principal Agreement

(a) The parties affirm in all other respects the covenants and conditions in the Principal Agreement as varied by this Deed.

(b) The Principal Agreement, as varied by this Deed, comprises the entire agreement between the parties.

(c) The parties acknowledge and agree that the Principal Agreement as varied by this Deed is and continues to be in full force and effect.

4. Costs and GST

(a) Each party must meet or pay its own costs and expenses in respect of the preparation, negotiation, execution and completion of this Deed.

(b) If GST is payable on any supply made under or in connection with this Deed, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply provided that the supplier has given the recipient a tax invoice for the supply.

(c) HIAL must pay any stamp duties and registration or other fees (including fines, penalties and interest relating to such duties and fees) which are payable or are assessed by a relevant government body or other person to be payable in relation to this document or any transaction contemplated by it.

5. Miscellaneous

5.1 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.
5.2 Governing law and jurisdiction

This Deed is governed by the law of the Australian Capital Territory and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.
EXECUTED as a deed.

Signed for and on behalf of the Commonwealth of Australia as represented by the Department of Agriculture and Water Resources by Senator the Hon. Anne Ruston, Parliamentary Secretary to the Minister for Agriculture and Water Resources in the presence of

_________________________________  __________________________________________
Signature of witness                                      Signature

______________________________________________
Name of witness (print)

Date

Executed by Horticulture Innovation Australia Limited in accordance with Section 127 of the Corporations Act 2001 in the presence of

__________________________________________  __________________________
Signature of witness                                      Signature

SALLY HOLMES.
Name (print)
COMPANY SECRETARY.

17 NOVEMBER 2015
Date
Schedule 1 – Variation to Principal Agreement

The Principal Agreement is amended as follows:

1.1 At clause 1 of the Agreement, delete the definitions of ‘Program Framework’ and ‘Strategic Plan’ in their entirety and replace respectively with the following new definitions:

‘Program Framework’ means the planning and budgeting framework which HIAL is required to develop, maintain and apply in accordance with this Agreement, including clauses 13.2 to 13.5.

‘Strategic Plan’ means the plan created, implemented and maintained by HIAL in accordance with this Agreement, including clauses 13.9 to 13.17 and includes the first Strategic Plan developed under clause 4.9.

1.2 Delete clause 4.9 of the Principal Agreement in its entirety and replace with the following:

‘4.9 HIAL must, by 30 April 2016, seek the agreement of the Minister to its first Strategic Plan which it is required by this Agreement to create, implement and maintain.

4.9A Where HIAL satisfies the requirements of clause 4.9, HIAL will:

(a) also be taken to have satisfied its obligation under clause 13.9(d) and 13.9(e) of the Principal Agreement for the purposes of its first Strategic Plan; and

(b) still need to satisfy the remaining requirements in this Agreement in relation to the first Strategic Plan, including clause 13.9(f).’

1.3 Immediately after clause 5.10 of the Principal Agreement, insert a new clause 5.11, as follows:

‘Committee and panel member’s disclosure of pecuniary interests

5.11 If a person appointed as a member of a HIAL committee or panel concerned with the selection and funding of Research and Development Activities and/or Marketing Activities and has a pecuniary interest that relates to the affairs under consideration by the committee or panel, that person must disclose that interest in accordance with any instructions given by HIAL.’

1.4 Delete clause 13.2 of the Principal Agreement in its entirety and replace with the following:

‘13.2 HIAL must, by 30 April 2016, develop and maintain a Program Framework in accordance with the requirements of this Agreement and apply this framework for the duration of the Agreement.’
Department of Agriculture and Water Resources

Deed of Variation

Commonwealth of Australia (Commonwealth)
Horticulture Innovation Australia Limited (HIAL)
Details

Date

/ / 

day month year

Parties

Name The Commonwealth of Australia as represented by the Department of Agriculture and Water Resources

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Short form name Commonwealth

Address details

Name Horticulture Innovation Australia Limited

ABN 71 602 100 149

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Signed for and on behalf of the Commonwealth of Australia as represented by the Department of Agriculture and Water Resources by Senator the Hon. Anne Ruston, Parliamentary Secretary to the Minister for Agriculture and Water Resources in the presence of

[Signature]

Name of witness (print)

[Signature]

Date 13/11/2015

Executed by Horticulture Innovation Australia Limited in accordance with Section 127 of the Corporations Act 2001 in the presence of

[Signature]

Name (print)

Date
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4.9A  Where HIAL satisfies the requirements of clause 4.9, HIAL will:

(a) also be taken to have satisfied its obligation under clause 13.9(d) and 13.9(e) of the Principal Agreement for the purposes of its first Strategic Plan; and

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1.4  Delete clause 13.2 of the Principal Agreement in its entirety and replace with the following:

‘13.2  HIAL must, by 30 April 2016, develop and maintain a Program Framework in accordance with the requirements of this Agreement and apply this framework for the duration of the Agreement.’