



Australian Government
**Department of Agriculture,
Water and the Environment**

DEED OF AGREEMENT 2020–2030

Parties

**The Minister for Agriculture, Drought and Emergency Management on
behalf of the Commonwealth of Australia represented by the
Department of Agriculture, Water and the Environment**

(ABN 34 190 894 983)

and

Horticulture Innovation Australia Limited (Hort Innovation)

(ABN 71 602 100 149)

Date: 24 June 2020

Contents

RECITALS 3

PART 1—GENERAL REQUIREMENTS 4

- 1. DEFINITIONS.....4
- 2. AGREEMENT AND TERM8
- 3. GOVERNING LAW AND JURISDICTION8
- 4. TERMINATION8
- 5. RESOLUTION OF DISPUTES.....10
- 6. COMMUNICATION, ACCESS AND INFORMATION10
- 7. NOTICE12

PART 2—MANAGEMENT AND GOVERNANCE OF HORT INNOVATION 13

- 8. CORPORATE GOVERNANCE.....13
- 9. ROLE OF HORT INNOVATION13
- 10. PERFORMANCE13
- 11. CONSULTATION AND GUIDELINES15
- 12. ANNUAL REPORTS16
- 13. STRATEGIC PLAN17

PART 3—ACTIVITIES AND FUNDING 18

- 14. PAYMENT OF FUNDS.....18
- 15. MANAGEMENT OF THE FUNDS.....19
- 16. APPLICATION OF THE FUNDS20
- 17. ACKNOWLEDGEMENT OF FUNDING20
- 18. INFORMATION ON ACTIVITIES21

SIGNING PAGE..... 22

AGREEMENT DATE: 24 June 2020

BETWEEN The **MINISTER FOR AGRICULTURE, DROUGHT AND EMERGENCY MANAGEMENT, ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA**, represented by the **DEPARTMENT OF AGRICULTURE, WATER AND THE ENVIRONMENT** ABN 34 190 894 983, GPO Box 858, Canberra ACT 2601 (Joanna.Stanion@awe.gov.au) (**Commonwealth**)

AND **HORTICULTURE INNOVATION AUSTRALIA LIMITED** ABN 71 602 100 149, having its registered office at Level 7, 141 Walker Street, North Sydney NSW 2060 (matt.brand@horticulture.com.au) (**Hort Innovation**).

(collectively, '**the parties**')

RECITALS

- A. Hort Innovation has been declared as the industry services body for the Australian horticultural industry under subsection 9(1) of the *Horticulture Marketing and Research and Development Services Act 2000* (Cth) (**the Act**).
- B. Following a request from Hort Innovation, by declaration of the Minister, Hort Innovation ceased to be the industry export control body, on and from 1 November 2015.
- C. Subsection 12(1) of the Act allows the Minister to enter into a deed of agreement with an industry services body, in this case, Hort Innovation.
- D. The Commonwealth has developed Performance Principles to guide Hort Innovation performance under this Agreement.
- C. In that context, the parties have agreed to enter into a deed of agreement on the terms and conditions set out in this Agreement, including applying the Performance Principles set out in this Agreement.

PART 1—GENERAL REQUIREMENTS

1. DEFINITIONS

Words not defined below will have the same meaning as given by the Act.

In this Agreement, unless the contrary intention appears:

‘Act’ means the Act identified in Recital A.

‘Agreement’ means this deed of agreement, as varied from time to time, including any schedules and annexures to it.

‘Agreement Date’ means the date on which the later of both parties have signed this Agreement.

‘Agri-Political Activity’ means activities that involve engaging in, or financing with Levy Funds or Matching Payments, any form of external or internal political campaigning, including:

- (a) encouraging or supporting a campaign for the election of a candidate, person or party for public office or for the adoption of particular policies of political parties;
- (b) promoting a particular political party’s policy over another political party’s policy;
- (c) representing the views of Industry as being those of Hort Innovation or the Australian Government; or
- (d) advocating that the Commonwealth or a State or Territory Government adopt a particular policy.

The following activities do not, on their own, constitute Agri-Political Activity:

- (a) Hort Innovation funding or commissioning research, or publishing a report relating to research in the Industry;
- (b) Hort Innovation making public statements or providing information to the Industry on matters related to Hort Innovation's objects in the proper performance of Hort Innovation's functions; and
- (c) another person, engaged in agri-political activity or advocacy, using a report or other publication prepared or financed by Hort Innovation in accordance with this Agreement.

‘Annual Performance Meeting’ means the meeting referred to in clause 11.1.

‘Annual Report’ means a report prepared by Hort Innovation in accordance with clause 12.1.

‘Australian Accounting Standards’ means the standards of that name made by the Australian Accounting Standards Board in accordance with subsection 334(1) of the Corporations Act.

‘Balanced Portfolio’ means an RD&E investment portfolio incorporating an appropriate blend of issues of national importance based on government and Levy Payer priorities that seeks to balance short, medium and long term, high and low-risk, and strategic and adaptive research needs including consideration of regional variations and needs.

‘Business Day’ means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or a public holiday in that place.

‘Chair’ means the Chair or the Chairperson of Hort Innovation.

‘Confidential Information’ means all information that the parties:

- (a) agree to treat as confidential by notice to each other after the Agreement Date; or
- (b) otherwise know, or reasonably ought to know, is confidential.

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

‘Director’ means a director of Hort Innovation appointed in accordance with the constitution of Hort Innovation.

‘Electronic Communication’ has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

‘Excess Matching Payment’ means any amount of Matching Payment in a financial year that exceeds 0.5% of the amount of the Gross Value of Production of the horticultural industry for that financial year.

‘Extension’ means facilitating the adoption of the outputs from R&D Activities by persons or organisations engaged in or with the Industry and other stakeholders by way of activities that educate and inform them about opportunities for change or that develop their capacity and/or capability to adopt changes.

‘Eligible R&D Expenditure’ means expenditure on activities that qualify as R&D Activities.

‘Financial Year’ means a period of 12 months commencing at the start of 1 July in one year and ending at the end of 30 June in the following year.

‘Funds’ means each of the following:

- (a) Levy Funds;
- (b) Matching Payments;
- (c) income earned or derived by Hort Innovation from Funds referred to in paragraphs (a) and (b); and
- (d) the proceeds of the sale or other disposition of assets acquired with the Funds referred to in paragraphs (a) to (c).

'Gross Value of Production' means the amount determined by the Secretary before 31 October next following a financial year of the gross value of production of the horticultural industry for the financial year.

'GST' has the same meaning as it has in section 195-1 of the GST Act.

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

'Guidelines' means each of the following:

- (a) the Australian Government's Science and Research Priorities;
- (b) the Australian Government's Rural Research, Development and Extension Priorities;
- (c) the National Primary Industries Research Development and Extension Framework;
- (d) the Levy Principles and Guidelines, being the guideline relating to the introduction of new levies or changes to existing levies;
- (e) the non-binding companion document to this Funding Agreement; and
- (f) other guidelines or priorities of which the Commonwealth notifies Hort Innovation in writing from time to time.

'Industry' means the horticultural industry.

'Industry Representative Organisation' means an Industry peak body or a body established for the purpose of, or substantially engaged in, Agri-Political Activity.

'Insolvency Event' means:

- (a) Hort Innovation disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) Hort Innovation ceases to carry on business;
- (c) Hort Innovation ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of Hort Innovation's assets, operations or business;
- (e) any step is taken to enter into any compromise or arrangement between Hort Innovation and its creditors or a class of them; or
- (f) any step is taken to appoint 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 Hort Innovation's assets, operations of business.

'Levy' means a levy or charge required to be paid under relevant levies and charges legislation and referred to under the Act.

'Levy Funds' means the amounts payable under the Act by the Commonwealth to Hort Innovation that are not Matching Payments.

'Levy Payer' means any person who is required to pay a Levy that is attached to Hort Innovation.

‘Marketing Activities’ means marketing, advertising or promotion of the Industry and its products, but does not include R&D Activities.

‘Matching Payments’ means the amounts by that name payable under the Act by the Commonwealth to Hort Innovation.

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

‘Performance Principles’ means the principles set out in clause 10.2.

‘Privacy Act’ means the *Privacy Act 1988* (Cth).

‘R&D’ and ‘R&D Activities’ has the meaning given to ‘research and development’ in the Act.

‘RD&E’ means R&D Activities and Extension.

‘R&D Expenditure’ has the same meaning as ‘eligible R&D expenditure’ in the Act.

‘RDC’ means a rural research and development corporation existing pursuant to the *Primary Industries Research and Development Act 1989* (Cth) or the *Wine Australia Act 2013* (Cth) or established as an industry owned corporation and governed by specific legislation.

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

‘Secretary’ means Secretary of the department.

‘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) R&D, innovation, technology and technology transfer, commercialisation and adoption of R&D;
- (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.

‘Strategic Plan’ means a plan prepared by Hort Innovation in accordance with clause 13.

‘Transition Out Plan’ has the meaning given in clause 4.4.

‘Voluntary Contributions’ means payments made to Hort Innovation for the purpose of funding R&D and Marketing Activities, excluding payments of Levy Funds and Matching Funds.

2. AGREEMENT AND TERM

- 2.1 This Agreement takes effect on the Agreement Date and, subject to clause 2.2 and 2.3, expires 10 years after the Agreement Date.
- 2.2 The parties must, not less than six months before the expiry of the Agreement, commence negotiations in good faith with a view to negotiating a new agreement either on the same terms and conditions as this Agreement or on different terms and conditions that are agreed by the parties.
- 2.3 If the parties are unable to agree the terms of a new agreement to replace this Agreement within that six month period, then the parties may extend the Agreement for a period of at least six months. The parties may agree to extend the Agreement any number of times.
- 2.4 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.
- 2.5 Any former funding agreement between the parties terminates upon the commencement of this Agreement, without prejudice to any rights or obligations of either party that have accrued prior to the date of termination.
- 2.6 The parties acknowledge and agree that:
 - (a) Hort Innovation must, at all times, perform its obligations under this Agreement in accordance with all relevant legislation in force from time to time, including the Act, the Corporations Act and the *Privacy Act 1988*; and
 - (b) this Agreement does not set out all of the statutory conditions and obligations that apply to Hort Innovation and does not in any way vary or reduce Hort Innovation's statutory conditions and obligations.

3. GOVERNING LAW AND JURISDICTION

- 3.1 This Agreement is governed by the laws applicable in the Australian Capital Territory.
- 3.2 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.

4. TERMINATION

- 4.1 Without limiting any other rights or remedies available to the Commonwealth under this Agreement, the Commonwealth may terminate this Agreement in whole or in part, effective immediately, by giving notice to Hort Innovation, if:

- (a) the Act is repealed, is no longer in force or is substantially or materially amended in a manner inconsistent with the continued operation of this Agreement in its current form; or
- (b) an Insolvency Event occurs (provided that such termination is enforceable at law); or
- (c) there has been a material breach of this Agreement, the Act or another law, by Hort Innovation; or
- (d) there has been a change in Commonwealth policy relating to the funding of RDCs.

4.2 Without limiting any other rights available to the Commonwealth, if:

- (a) Hort Innovation breaches this Agreement and fails to rectify a breach within 10 Business Days of receiving a notice from the Commonwealth requiring it to do so, or within such other period as is reasonably specified by the Commonwealth in that notice, having regard to the nature of the breach; or
- (b) an event has occurred which would entitle the Commonwealth to terminate the Agreement under clause 4.1,

the Commonwealth may, to the extent it is not inconsistent with the Act or any other law, by giving notice to Hort Innovation, direct Hort Innovation to do any one or more of the following:

- (c) in respect of a breach, rectify any breach and to provide to the Commonwealth an explanation of the circumstances giving rise to the breach;
- (d) deal with all or any of the Funds in a certain way;
- (e) provide a Transition Out Plan to the Commonwealth in accordance with clause 4.4;
- (f) comply with additional reporting requirements; and/or
- (g) take any other action, as specified in this Agreement.

4.3 Any notice the Commonwealth gives to Hort Innovation in accordance with clause 4.2 will specify:

- (a) the circumstances that gave rise to the notice;
- (b) the consequences of non-compliance with the notice; and
- (c) a reasonable time by which Hort Innovation must take the actions specified in the notice.

Transition Out Plan

4.4 The Commonwealth may request Hort Innovation to develop and submit to the Commonwealth for approval a Transition Out Plan, as soon as reasonably possible after receipt of request.

4.5 A request for a Transition Out Plan will specify what details Hort Innovation must include in the Transition Out Plan.

- 4.6 The Commonwealth may:
- (a) approve the submitted Transition Out Plan; or
 - (b) request that reasonable changes be made to the Transition Out Plan, prior to giving its approval, in which case Hort Innovation must comply with any changes requested by the Commonwealth.
- 4.7 Prior to ceasing Hort Innovation as the industry services body under the Act, the Commonwealth will endeavour to give sufficient notice to Hort Innovation to allow Hort Innovation to implement the approved Transition Out Plan, as directed by the Commonwealth.

5. RESOLUTION OF DISPUTES

- 5.1 Except when a party seeks urgent interlocutory relief, the parties must deal with a dispute arising under or in respect of this Agreement in accordance with the procedures set out in this clause 5 before they commence any legal proceedings.
- 5.2 A party claiming that there is a dispute must send the other party a written notice setting out the nature of the dispute.
- 5.3 During the 20 Business Days after a notice is given under clause 5.2 (or such longer period as may be agreed to in writing by the parties), each party must use reasonable efforts to resolve the dispute through a meeting of senior representatives of each party which are authorised to bind the party to an agreed resolution.
- 5.4 If the parties do not resolve the dispute at the meeting referred to in clause 5.3, the parties must refer the dispute to mediation, which must be conducted in Canberra (or elsewhere if agreed in writing between the parties), in accordance with the Resolution Institute's Rules for Mediation, as in operation at the relevant time.
- 5.5 Unless otherwise agreed by the parties, the mediation will be deemed to commence on the appointment of the mediator.
- 5.6 Despite the existence of a dispute, each party must, unless requested in writing by the other party not to do so, continue to perform its obligations under this Agreement.
- 5.7 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.

6. COMMUNICATION, ACCESS AND INFORMATION

Access by the Commonwealth

- 6.1 Subject to clause 6.2, the Commonwealth or its nominated representative may, for the purpose of monitoring Hort Innovation performance under the Act, the Agreement and the Guidelines:
- (a) access premises occupied by or under the control of Hort Innovation;

- (b) access data, records, accounts and other financial material and any property of the Commonwealth in the possession or under the control of Hort Innovation, its officers, employees or agents; and
 - (c) inspect any documentation, books and records, however stored, in the possession or under the control of Hort Innovation, its officers, employees, or agents.
- 6.2 The Commonwealth will:
- (a) provide reasonable notice to Hort Innovation in respect of a request to access or inspect under clause 6.1; and
 - (b) comply with Hort Innovation's reasonable safety and security requirements in undertaking that access.
- 6.3 Hort Innovation is not required to provide access to records over which it claims legal professional privilege unless Commonwealth access is required for the purposes of an audit or review by the Australian National Audit Office.
- 6.4 For the purposes of clause 6.1, Hort Innovation must:
- (a) cooperate with the Commonwealth;
 - (b) provide any necessary access or information; and
 - (c) provide all information in a data format and storage medium that is able to be accessed and used by the Commonwealth.

Confidential Information

- 6.5 Each party must, in respect of Confidential Information given to it by the other party:
- (a) use that Confidential Information only for the purposes of administering or enforcing the Act or this Agreement or for other purposes for which it is provided; and
 - (b) not disclose that Confidential Information to any person (other than employees or advisers of that party with a need to know such Confidential Information for the purposes of administering or enforcing this Agreement or the Act or other purposes for which it is provided) without the prior approval in writing from the other party and subject to complying with any reasonable conditions or restrictions imposed by the other party in giving approval.
- 6.6 A party will not be in breach of clause 6.5 if it discloses Confidential Information to the extent that the disclosure is:
- (a) required by law or by a lawful requirement of any government body; or
 - (b) made to a Commonwealth Minister or in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia, provided that the party notifies the recipient that the information is confidential.

Intellectual Property

- 6.7 Hort Innovation grants the Commonwealth a permanent, irrevocable, royalty-free worldwide non-exclusive licence to use, reproduce, modify, adapt, distribute, sublicense, communicate and publish all or part of any report, plan or other material provided to the Commonwealth under the Act or this Agreement, with the exception of:
- (a) any Confidential Information; and
 - (b) any material, including any image or text, that is identified by Hort Innovation as being material in which a third party owns all or part of the Intellectual Property Rights, and in respect of which Hort Innovation does not have the right to grant such a licence to the Commonwealth.

7. NOTICE

Service of notices

- 7.1 A party giving notice under this Agreement must do so in writing or by Electronic Communication:
- (a) directed to the recipient's address specified in the definition of the parties, as varied by any notice; or
 - (b) hand delivered or sent by prepaid post, facsimile or Electronic Communication to that address.

Effective on receipt

- 7.2 A notice given in accordance with clause 7.1 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, five (5) Business Days after the date of posting;
 - (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* (Cth),
- but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

PART 2—MANAGEMENT AND GOVERNANCE OF HORT INNOVATION

8. CORPORATE GOVERNANCE

- 8.1 Hort Innovation must maintain, implement and regularly review a framework of good corporate governance to ensure proper use and management of the Funds and the Voluntary Contributions. In maintaining the governance framework, Hort Innovation should draw on best practice guidance as appropriate.
- 8.2 Hort Innovation must maintain a Skills Based Board of Directors with the necessary skills and experience to effectively govern Hort Innovation.

9. ROLE OF HORT INNOVATION

- 9.1 The parties acknowledge that the industry services body should not engage in Agri-Political Activities.
- 9.2 Hort Innovation must not, at any time, act as an Industry Representative Organisation or reference or provide information which implies to stakeholders or trading partners that Hort Innovation is an Industry Representative Organisation.
- 9.3 Hort Innovation must, at all times, act in an apolitical and unbiased manner.
- 9.4 Hort Innovation must not engage in Agri-Political Activity.
- 9.5 Hort Innovation may seek advice from the Commonwealth on whether a particular activity would constitute an Agri-Political Activity.
- 9.6 The Commonwealth may issue a notice requiring Hort Innovation to take action to address Agri-Political Activities.

10. PERFORMANCE

Performance Principles

- 10.1 Subject to clause 2.6, Hort Innovation must at all times act in accordance with and uphold this Agreement, including the Guidelines and the Performance Principles under clause 10.2.
- 10.2 The Performance Principles are:
- (a) to engage stakeholders to identify RD&E priorities and activities that provide benefits to the Industry;
 - (b) to ensure RD&E priorities and activities (and Marketing Activities) are strategic, collaborative and targeted to improve profitability, productivity, competitiveness and preparedness for future opportunities and challenges through a Balanced Portfolio;
 - (c) to undertake strategic and sustained cross-industry and cross sectoral collaboration that addresses shared challenges and draws on experience from other sectors;

- (d) for governance arrangements and practices to fulfil legislative requirements and align with contemporary Australian best practice for open, transparent and proper use and management of Funds; and
- (e) to demonstrate positive outcomes and delivery of RD&E and marketing benefits to Levy Payers and the Australian community in general, and show continuous improvement in governance and administrative efficiency.

10.3 If, at any time, Hort Innovation identifies an inconsistency or discrepancy between the Performance Principles and its obligations under any law, regulation or government policy, it must:

- (a) notify the Commonwealth of the nature of the inconsistency or discrepancy, as soon as reasonably practicable;
- (b) continue at all times to act in accordance with the Performance Principles (to the extent this is consistent with applicable law, regulation or government policy); and
- (c) if requested by the Commonwealth, discuss possible resolutions to deal with the identified discrepancy and implement any such resolutions as may be agreed.

Review of Performance

10.4 Hort Innovation must implement appropriate processes, on an ongoing basis during each Financial Year, to:

- (a) monitor and evaluate its performance against the Performance Principles; and
- (b) demonstrate its performance against the Performance Principles to Levy Payers and other stakeholders (demonstrations could include updates by newsletter, meetings, website, email or annual report).

10.5 The Commonwealth may review Hort Innovation's performance and compliance with the Act, this Agreement, and the Guidelines at any time during the term of this Agreement.

10.6 The Commonwealth may from time to time (but no more often than once every three years) request Hort Innovation to obtain, at Hort Innovation's expense, an independent review on Hort Innovation's performance against the Performance Principles. In that case, the following process will apply:

- (a) the Commonwealth and Hort Innovation will agree on an independent external consultant to review Hort Innovation's progress and achievements against the Performance Principles and prepare an independent review.
- (b) Hort Innovation must engage, and meet the cost of, the independent external consultant who is engaged to provide an independent review.
- (c) the independent external consultant will be required to provide the independent review simultaneously to both Hort Innovation and the Commonwealth within 20 Business Days of concluding the draft independent review.

- (d) the Commonwealth and Hort Innovation will meet and discuss any areas of underperformance identified in the independent review and agree on an approach for Hort Innovation to address any such areas of underperformance.
 - (e) Hort Innovation must implement any agreed actions and comply with any reasonable directions issued by the Commonwealth in relation to addressing areas of underperformance.
- 10.7 The Commonwealth may issue a notice requiring Hort Innovation to take actions to address issues identified:
- (a) in the independent review; or
 - (b) in relation to Hort Innovation's performance against the Performance Principles, within the timeframe specified in the notice or as otherwise agreed by the parties.
- 10.8 Hort Innovation must make available to its stakeholders any information relating to performance and/or the independent review (other than Confidential Information) as soon as reasonably practicable.

11. CONSULTATION AND GUIDELINES

- 11.1 The Chair, or in the Chair's absence a Director nominated by the Chair, must arrange a meeting between the parties at least once per Financial Year (**Annual Performance Meeting**) to:
- (a) demonstrate to the Commonwealth Hort Innovation's performance and achievement of the Performance Principles;
 - (b) discuss and demonstrate implementation of measures taken to address any underperformance identified in an independent review, Annual Performance Meetings, and/or other fora;
 - (c) discuss issues relating to Hort Innovation's compliance with the Act, this Agreement and the Guidelines; and
 - (d) discuss other matters relevant to Hort Innovation or its Industry.
- 11.2 The Annual Performance Meeting may be undertaken in any format that is agreed in writing between the parties. (That may be, for example, a structured meeting, a discussion, a presentation of reports and documents, a presentation of an independent review or report, a demonstration of outcomes, an interactive site visit or another format proposed by Hort Innovation). For clarity, Hort Innovation must ensure that the Commonwealth has adequate time to ensure appropriate Commonwealth representation and to arrange any necessary travel, in advance of the Annual Performance Meeting.
- 11.3 Either party may, at any time, request additional meeting(s) with the other party to discuss matters arising under the Act, this Agreement, or the Guidelines, or otherwise related to Hort Innovation or the Industry.

Changes to the Guidelines

- 11.4 The Commonwealth may vary the Guidelines and/or impose new Guidelines from time to time.
- 11.5 The Commonwealth must provide reasonable notice of any variations to the Guidelines, or new Guidelines to Hort Innovation, and give Hort Innovation a reasonable period to implement the effects of the variation or new Guidelines.

12. ANNUAL REPORTS

- 12.1 By 31 October of each year, Hort Innovation must prepare and publish on its public website an Annual Report for the preceding financial year, that complies with the financial reporting and other reporting requirements in Chapter 2M of the Corporations Act and includes:
- (a) sources of income allowing for separate identification of Levy Funds, Matching Funds and Voluntary Contributions;
 - (b) significant R&D Activities and transactions undertaken in the year in the conduct of Hort Innovation's functions as the Industry Services Body;
 - (c) the full cost of the R&D Activities and Marketing Activities;
 - (d) progress made in implementing the Strategic Plan and Performance Principles including progress against any key performance indicators;
 - (e) key RD&E and marketing deliverables and associated outcomes achieved;
 - (f) an assessment of the efficiency and effectiveness of Hort Innovation's investments;
 - (g) material changes to Hort Innovation's membership;
 - (h) how Hort Innovation responded to any directions or Rural Research and Development Priorities given by the Minister under the Agreement or the Guidelines;
 - (i) consultation with Levy Payers and Industry Representative Bodies on:
 - a. Hort Innovation's Strategic Plan; and
 - b. RD&E and Marketing Activities;
 - (j) Hort Innovation's contributions to relevant Horticulture Industry sectoral and cross-sectoral strategies, including the strategies under the RD&E Framework;
 - (k) details of senior executive and Board remuneration in the format required by the relevant Australian Accounting Standards;
 - (l) Research and Development and marketing agreements entered into by Hort Innovation with third parties;
 - (m) corporate governance practices in place during the Financial Year;
 - (n) the rationale for the mix of projects included in the Balanced Portfolio; and
 - (o) other matters notified to Hort Innovation by the Commonwealth.

13. STRATEGIC PLAN

13.1 The Parties acknowledge that, as at the date of this Agreement, Hort Innovation has, and will maintain, an approved Strategic Plan that has regard to the Performance Principles and Guidelines.

13.2 Hort Innovation must implement and maintain a Strategic Plan for its portfolio and must:

(a) consult with the stakeholders, including the Commonwealth, during the term of this Agreement to ensure that its Strategic Plan has regard to the Principles and Guidelines; and

(b) publish the Strategic Plan (and any updates) on its public website.

13.3 The Strategic Plan may include R&D Activities for Australian horticulture products to address market access and international trade activities.

PART 3—ACTIVITIES AND FUNDING

14. PAYMENT OF FUNDS

Levy Payments

- 14.1 The Commonwealth will pay Levy Funds to Hort Innovation in accordance with the Act.
- 14.2 The Commonwealth will pay the Levy Funds soon as reasonably practicable after the Levy Funds have been received in cleared funds.

Matching Payments

- 14.3 The Commonwealth will pay Matching Payments to Hort Innovation in accordance with the Act.
- 14.4 The Commonwealth will pay the Matching Payments to Hort Innovation as soon as reasonably practicable after receiving from Hort Innovation:
- (a) a correctly rendered claim for payment identifying an amount that is one-half of Hort Innovation's Eligible R&D Expenditure; and
 - (b) satisfactory substantiation that Hort Innovation has met all the requirements set out in the Act and under this Agreement to trigger its right to receive the Matching Payments.
- 14.5 For the purposes of clause 14.3(b), a certificate stating compliance with the relevant requirements of the Act and this Agreement, signed by the Executive Director or the Chief Financial Officer (or equivalent) of Hort Innovation, is satisfactory substantiation, in the absence of any evidence to the contrary.
- 14.6 Hort Innovation's final claim for Matching Payments in respect of Eligible R&D Expenditure made in a Financial Year must be supported by an independent audit report of Hort Innovation's financial statements. (This work may be completed in accordance with the Standard on Assurance Engagements ASAE 3100.)
- 14.7 Upon request, Hort Innovation must provide a reconciliation between the total amount of R&D Expenditure on which its claim for Matching Payments for the Financial Year is based and the amounts shown in the audited financial statements.

Hort Innovation Payments

- 14.8 Hort Innovation will pay the Commonwealth:
- (a) any expense incurred by the Commonwealth in collection, recovery and administration of Levy Funds;
 - (b) any refunds paid by the Commonwealth in respect of Levy Funds; and
 - (c) any Excess Matching Payments.
- 14.9 The Commonwealth may invoice Hort Innovation from time to time for the amounts identified in clause 14.8 and the parties agree that Hort Innovation will have made a payment by either:

- (a) the Commonwealth reduces a payment of Levy Funds and/or Matching Funds by an amount equal to the payment required; or
- (b) Hort Innovation makes the payment to the Commonwealth by direct deposit or other method agreed between the parties.

Estimates and Forecasts

14.10 Upon request by the Commonwealth, Hort Innovation must provide to the Commonwealth:

- (a) an indicative estimate of the amount of the Levy Funds and Matching Payments it expects the Commonwealth to pay to it under the Act, for the current and future Financial Years as requested by the Commonwealth; and
- (b) a monthly breakdown of the estimated amount of Levy Funds and Matching Payments that it expects the Commonwealth to pay to it under the Act in the current Financial Year and the next Financial Year.

14.11 The Commonwealth may, if requested, give Hort Innovation an estimate of the amount of costs incurred by the Commonwealth in relation to the collection, recovery and administration of the Levy Funds and Matching Payments for the Financial Year.

14.12 The Commonwealth will, by 31 October in each Financial Year, advise Hort Innovation of the final costs incurred by the Commonwealth in relation to the collection, recovery and administration of the Levy Funds and Matching Payments for the previous Financial Year.

GST

14.13 The Commonwealth will pay Levy Funds and Matching Funds on a GST exclusive basis to Hort Innovation.

14.14 Unless otherwise indicated, all consideration for a supply under this Agreement is exclusive of any GST. The recipient of a taxable supply under this Agreement on receipt of a tax invoice must pay the supplier any GST imposed. No party may claim from the other an amount for which an input tax credit or decreasing adjustment can be obtained. GST and GST related terms in this clause 14 have the meaning that they have in the *A New Tax System (Goods and Services Tax) Act 1999*.

15. MANAGEMENT OF THE FUNDS

15.1 Hort Innovation must establish and maintain all necessary accounting systems and financial procedures and controls, as required by the Act, the Corporations Act and this Agreement.

15.2 Hort Innovation must notify the Commonwealth of the details of the systems, procedures and controls established in accordance with clause 15.1 on request.

15.3 Hort Innovation must not enter into any agency arrangement, subcontract or other outsourcing arrangement:

- (a) in a manner that is inconsistent with the Agreement and Guidelines;
- (b) in a manner that it is not permitted by the Act or the Corporation Act;
- (c) for the management, allocation, or investment of Levy Funds and Matching Funds with an Industry Representative Organisation other than procurement of goods and services from such organisation or sponsorship of Industry related events;
- (d) for the management, allocation, or investment of Funds in a manner which may be viewed as engaging in Agri-Political Activity).

16. APPLICATION OF THE FUNDS

16.1 Hort Innovation must only spend the Funds and Voluntary Contributions:

- (a) in accordance with the Act, the Corporations Act and this Agreement; and
- (b) in a manner that is consistent with the:
 - (i) Strategic Plan;
 - (ii) Performance Principles; and
 - (iii) Guidelines.

Other restrictions on spending the Funds

16.2 Hort Innovation must develop, implement and maintain an appropriate Balanced Portfolio.

16.3 If Hort Innovation spends the Funds other than in accordance with this Agreement or the Act, the Commonwealth may, by written notice to Hort Innovation, require Hort Innovation to repay all or a part of those misspent Funds to the Commonwealth within the timeframe specified in the notice.

16.4 Hort Innovation must contribute to the implementation of relevant Industry sector and cross-sectoral strategies under the National Primary Industries Research, Development and Extension Framework, as appropriate to its national leadership role in relevant Industry strategies and its support role in other relevant strategies and otherwise in a manner consistent with Hort Innovation's Strategic Plan.

Repayment of Funds

16.5 If this Agreement is terminated, the Commonwealth may, by notice to Hort Innovation, require Hort Innovation to repay to the Commonwealth, by the date specified in the notice, all or any part of the Funds held by Hort Innovation, excluding Voluntary Contributions and those Funds required by Hort Innovation to meet liabilities properly incurred in accordance with this Agreement and the Act.

17. ACKNOWLEDGEMENT OF FUNDING

17.1 Unless otherwise agreed with the Commonwealth, Hort Innovation must ensure that all significant publications and publicity by Hort Innovation acknowledge the provision of funding by Levy Payers and the Commonwealth, as applicable.

18. INFORMATION ON ACTIVITIES

18.1 Hort Innovation must ensure that it documents, and communicates on its public website (other than any Confidential Information, unless otherwise permitted by clauses 6.6):

- (a) any documentation required to be made public under the Act or the Corporations Act;
- (b) its plans, reports and priorities; and
- (c) key information about its R&D and Marketing Activities.

18.2 Hort Innovation must make this Agreement available on its public website.

SIGNING PAGE

EXECUTED as a deed

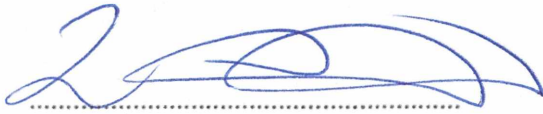
SIGNED, SEALED AND DELIVERED for and on behalf of the

COMMONWEALTH OF AUSTRALIA

by the Hon. David Littleproud

Minister for Agriculture, Drought and Emergency Management:

in the presence of:



Signature of the Minister



Signature of the witness

24.6.20

Date

Jo Hutchinson

Name of witness

SIGNED, SEALED AND DELIVERED for and on behalf of

HORTICULTURE INNOVATION AUSTRALIA LIMITED, ABN 71 602 100 149

in accordance with section 127 of the Corporations Act 2001 (Cth) on:

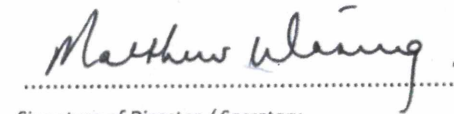
16/06/2020

Date

by:



Signature of Director



Signature of Director / Secretary

SELWYN JAMES SWENN

Name of Director

MATTHEW WARING

Name of Director / Secretary