



**Australian Government**  
**Department of Agriculture,  
Fisheries and Forestry**

## **STATUTORY FUNDING AGREEMENT 2025–2034**

Parties

**The Assistant Minister for Agriculture, Fisheries and Forestry on behalf of  
the Commonwealth of Australia represented by the  
Department of Agriculture, Fisheries and Forestry  
(ABN 34 190 894 983)**

and

**Horticulture Innovation Australia Limited  
(ABN 71 602 100 149)**

Date: 3/12 / 2024

**Contents**

**RECITALS ..... 3**

**PART 1—GENERAL REQUIREMENTS ..... 5**

1. DEFINITIONS.....5

2. AGREEMENT AND TERM .....8

3. STATUS OF FORMER FUNDING AGREEMENT.....9

4. GOVERNING LAW AND JURISDICTION .....10

5. TERMINATION .....10

6. RESOLUTION OF DISPUTES.....12

7. COMMUNICATION, ACCESS AND INFORMATION .....12

8. NOTICE .....14

**PART 2—MANAGEMENT AND GOVERNANCE OF HORT INNOVATION ..... 15**

9. CORPORATE GOVERNANCE.....15

10. ROLE OF HORT INNOVATION .....15

11. PERFORMANCE .....15

12. CONSULTATION AND GUIDELINES .....17

13. ANNUAL REPORTS.....18

14. STRATEGIC PLAN .....19

**PART 3—ACTIVITIES AND FUNDING ..... 20**

15. PAYMENT OF FUNDS.....20

16. MANAGEMENT OF THE FUNDS, VOLUNTARY CONTRIBUTIONS AND OTHER MONEY .....21

17. APPLICATION OF THE FUNDS AND VOLUNTARY CONTRIBUTIONS .....22

18. ACKNOWLEDGEMENT OF FUNDING .....23

19. INFORMATION ON ACTIVITIES .....23

**SIGNING PAGE..... 24**

**ATTACHMENT A: GUIDELINES..... 25**

**AGREEMENT DATE:**

**BETWEEN** The **ASSISTANT MINISTER FOR AGRICULTURE, FISHERIES AND FORESTRY, ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA**, represented by the **DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY** ABN 34 190 894 983, 70 Northbourne Avenue, Canberra, ACT 2601 (Joanna.Stanion@aff.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 (Brett.Fifield@horticulture.com.au) (**Hort Innovation**).

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

**RECITALS**

- A. The agricultural levy system is a long-standing partnership between industry and the Australian Government. Levies and Charges are collected from farmers, producers, processors, and exporters and invested by research and development corporations (**RDCs**) in research and development and marketing. The agricultural levy system is underpinned by the agricultural levies legislative framework. The legislative framework provides for the imposition, collection and disbursement of Levies and Charges and Matching Payments. RDCs are referred to as Recipient Bodies under the legislative framework.
- B. Requirements in relation to the making of Levy or Charge Payments and Matching Payments and the spending of those payments by RDCs are provided for in the *Primary Industries Levies and Charges Disbursement Act 2024 (Cth)* (**Disbursement Act**) and the *Primary Industries Levies and Charges Disbursement Rules 2024 (Cth)* (**Disbursement Rules**). This may include spending requirements in the Disbursement Rules that provide for additional matters that RDCs can spend certain components of Levy or Charge on.
- C. The Disbursement Act allows the Minister to, subject to prescribed conditions, enter into a funding agreement with a body and subsequently declare that body to be a Recipient Body. Such a body will constitute a Declared Recipient Body (**DRB**) under the Disbursement Act.
- D. With effect from 1 January 2025, the disbursement of Levy or Charge Payments to DRBs will be authorised by the Disbursement Act. Matching Payments will also be disbursed to DRBs under the Disbursement Act from 1 July 2025. The *Primary Industries (Consequential Amendments and Transitional Provisions) Act 2024 (Cth)* (**C&T Act**) provides for the old disbursement law, as defined in the C&T Act, to continue to apply in relation to matching of expenditure by Hort Innovation before 1

July 2025. This Agreement reflects the operation of the C&T Act and provides for transition from the Former Funding Agreement.

- E. This Agreement is entered into pursuant to section 38 of the Disbursement Act.
- F. The Commonwealth has developed Performance Principles to guide the performance of DRBs under funding agreements.
- G. In that context, the Commonwealth and Hort Innovation have agreed to enter into a funding 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 Disbursement Act.

In this Agreement:

**'Agreement'** means this funding 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 any form of political influencing, 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:

- (e) Hort Innovation funding or commissioning research, or publishing a report relating to research in the Industry;
- (f) Hort Innovation making public statements or providing information to Industry or the government or parliament of the Commonwealth or a State or Territory on matters related to Hort Innovation's objects in the proper performance of Hort Innovation's functions;
- (g) 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 12.1.

**'Annual Report'** means a report prepared by Hort Innovation in accordance with clause 13.1.

**'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 a Research and Development Activity investment portfolio incorporating an appropriate blend of issues of national importance based on government and Levy Payer and Charge 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.

**'Charge'** has the meaning given in section 4 of the Disbursement Act.

**'Charge Payer'** means any person who has paid, or is liable to pay, a charge that includes a component based on which an amount is payable to Hort Innovation.

**'Confidential Information'** means all information, whether owned by the parties or any third party, 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).

**'Declared Recipient Body'** has the meaning given in section 4 of the Disbursement Act.

**'Director'** means a director of Hort Innovation appointed in accordance with the Constitution of Hort Innovation.

**'Disbursement Act'** means the *Primary Industries Levies and Charges Disbursement Act 2024* (Cth).

**'Disbursement Rules'** means the *Primary Industries Levies and Charges Disbursement Rules 2024* (Cth).

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

**'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.

**'Former Funding Agreement'** means the funding agreement entered into on 24 June 2020 between the Commonwealth of Australia and Horticulture Innovation Australia Limited under subsection 12(1) of the *Horticulture Marketing and Research and Development Services Act 2000* (Cth).

**'Funds'** means each of the following:

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

**'GST'** and GST related terms have the same meaning that they have in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**'Guidelines'** means the most recent of either (1) the documents listed in **Attachment A** to this Agreement, or (2) such updated or replaced documents as provided to RDCs with advice that they will replace **Attachment A**.

**'Horticultural Industry Body'** means the body declared by the Minister under subsection 39(1) of the Disbursement Act to be the horticultural industry body.

**'Industry'** means the horticultural industry (within the meaning given by the Disbursement Rules).

**'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 disposing of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) Hort Innovation ceasing to carry on business;
- (c) Hort Innovation ceasing to be able to pay its debts as they become due;
- (d) any step being 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 being taken to enter into any compromise or arrangement between Hort Innovation and its creditors or a class of them; or
- (f) any step being 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 or business.

**'Levy'** has the meaning given in section 4 of the Disbursement Act.

**'Levy or Charge Payments'** means the amounts payable under section 15 of the Disbursement Act by the Commonwealth to Hort Innovation.

**'Levy Payer'** means any person who has paid, or is liable to pay, a Levy that includes a component based on which an amount is payable to Hort Innovation.

**'Marketing Activities'** has the meaning given in section 4 of the Disbursement Act.

**'Matching Payments'** means the amounts payable under section 23 of the Disbursement Act by the Commonwealth to Hort Innovation.

**'Minister'** means the Commonwealth Minister who from time to time has responsibility for the Disbursement Act and includes a delegate of the Minister under the Disbursement Act.

**'Performance Principles'** means the principles set out in clause 11.2.

**'Privacy Act'** means the *Privacy Act 1988* (Cth).

**‘Proper’**, when used in relation to the use or management of Funds, means efficient, effective, economical and ethical.

**‘Qualifying Expenditure Amount’** has the meaning given by section 24 of the Disbursement Act.

**‘Recipient Body’** has the meaning given in section 4 of the Disbursement Act.

**‘Research and Development’** has the meaning given by section 10 of the Disbursement Act.

**‘Research and Development Activity’** has the meaning given by section 9 of the Disbursement Act.

**‘Skills Based Board’** means a board of directors which can demonstrate collective expertise against a range of relevant areas, which should 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) advertising, promotion and marketing (including communications);
- (e) exports and export market development;
- (f) Industry knowledge, including practical growing and/or production experience;
- (g) public policy and administration.

**‘Strategic Plan’** means a plan prepared by Hort Innovation in accordance with clause 14.

**‘Transition Out Plan’** has the meaning given in clause 5.4.

**‘Voluntary Contributions’** means:

- (a) payments, other than Funds, made to Hort Innovation for the purpose of funding Research and Development Activities, Marketing Activities and any other matters that Hort Innovation can spend Levy or Charge Payments on under the Disbursement Act or the Disbursement Rules, including any such payment from industry or from a State or Territory Government;
- (b) income earned or derived by Hort Innovation from the use of the Voluntary Contributions referred to in paragraph (a); and
- (c) the proceeds of the sale or other disposition of assets acquired with the Voluntary Contributions referred to in paragraphs (a) and (b).

## **2. AGREEMENT AND TERM**

2.1 This Agreement takes effect on 1 January 2025 and, subject to clauses 2.2 and 2.3, expires at the end of 31 December 2034.

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 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 Disbursement Act, the Corporations Act and the Privacy Act; and
  - (b) this Agreement does not set out all 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. STATUS OF FORMER FUNDING AGREEMENT**

- 3.1 Except as provided for under this clause 3, this Agreement supersedes the Former Funding Agreement between the parties on and from 1 January 2025, without prejudice to any rights or obligations of either party that have accrued prior.
- 3.2 The Former Funding Agreement continues to have effect, on and after 1 January 2025, as provided by clauses 3.3 and 3.4.
- 3.3 If the Former Funding Agreement relates to a levy or charge under the *Primary Industries (Excise) Levies Act 1999* (Cth) or *Primary Industries (Customs) Charges Act 1999* (Cth) in a levy year, within the meaning of a levy year under the *Primary Industries Levies and Charges Collection Act 1991* (Cth) as in force immediately before 1 January 2025, and that levy year:
- (a) began before 1 January 2025; and
  - (b) has not ended prior to 1 January 2025; then
- the terms of the Former Funding Agreement continue to apply in relation to that levy and levy year to the extent that the terms relate to payments, other than matching payments, by the Commonwealth to Hort Innovation until the Commonwealth has discharged all its obligations to Hort Innovation in relation to those payments.

- 3.4 The terms of the Former Funding Agreement continue to apply in relation to the Commonwealth's obligation to make matching payments to Hort Innovation for the financial year beginning on 1 July 2024 or an earlier financial year until an instrument under subitem 5(6) of Schedule 3 to the C&T Act (carry-over amounts) relating to Hort Innovation and to the financial year beginning 1 July 2025 commences.
- 3.5 The Former Funding Agreement expires at the later of:
- (a) the date the Commonwealth has discharged all its payment obligations as described in clause 3.3; or
  - (b) the date an instrument as described in clause 3.4 commences.
- 3.6 The following clauses of the Former Funding Agreement survive termination or expiry:
- (a) those clauses that provide how amounts defined as Funds under the Former Funding Agreement are to be managed and applied, including how those amounts may be spent;
  - (b) those clauses that provide for Hort Innovation to repay an amount to the Commonwealth.

#### **4. GOVERNING LAW AND JURISDICTION**

- 4.1 This Agreement is governed by the laws applicable in the Australian Capital Territory.
- 4.2 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.

#### **5. TERMINATION**

- 5.1 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 Disbursement 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;
  - (b) the Disbursement Rules are repealed, are no longer in force or are substantially or materially amended in a manner inconsistent with the continued operation of this Agreement in its current form;
  - (c) the Minister revokes any declaration of Hort Innovation as a Recipient Body under section 40 of the Disbursement Act;
  - (d) an Insolvency Event occurs (provided that such termination is enforceable at law);
  - (e) there has been a material breach of this Agreement, the Disbursement Act or another law, by Hort Innovation; or

- (f) there has been a change in Commonwealth policy relating to the funding of Recipient Bodies.

5.2 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 5.1;

the Commonwealth may, to the extent it is not inconsistent with the Disbursement 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 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 5.4;
- (f) comply with additional reporting requirements;
- (g) take any other action, as specified in this Agreement.

5.3 Any notice the Commonwealth gives to Hort Innovation in accordance with clause 5.2 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***

5.4 If the Commonwealth directs Hort Innovation, under paragraph 5.2(e) to provide a Transition Out Plan, Hort Innovation will develop and submit to the Commonwealth for approval a Transition Out Plan, within 60 Business Days of the direction or such other reasonable period as the Commonwealth specifies in the direction.

5.5 A direction to provide a Transition Out Plan will specify what details Hort Innovation must include in the Transition Out Plan.

5.6 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.

5.7 Prior to taking any action mentioned in paragraphs 5.1(a) to (c) of this Agreement, 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.

## **6. RESOLUTION OF DISPUTES**

6.1 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 6 before they commence any legal proceedings.

6.2 A party claiming that there is a dispute must send the other party a written notice setting out the nature of the dispute.

6.3 During the 20 Business Days after a notice is given under clause 6.2 (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.

6.4 If the parties do not resolve the dispute at the meeting referred to in clause 6.3, 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.

6.5 Unless otherwise agreed by the parties, the mediation will be deemed to commence on the appointment of the mediator.

6.6 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.

6.7 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.

## **7. COMMUNICATION, ACCESS AND INFORMATION**

### ***Access by the Commonwealth***

7.1 Subject to clauses 7.2 and 7.3, the Commonwealth or its nominated representative may, for the purpose of monitoring performance by Hort Innovation under the Disbursement 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.

7.2 The Commonwealth will:

- (a) provide reasonable notice to Hort Innovation in respect of a request to access or inspect under clause 7.1; and
- (b) comply with Hort Innovation's reasonable safety and security requirements in undertaking that access.

7.3 For the purposes of clause 7.1, 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***

7.4 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 Disbursement 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 Disbursement 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.

7.5 A party will not be in breach of clause 7.4 if it discloses Confidential Information to the extent that the disclosure is:

- (a) required by law or by an order of a court; 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***

7.6 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 Disbursement 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.

## **8. NOTICE**

### ***Service of notices***

8.1 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 or Electronic Communication to that address.

### ***Effective on receipt***

8.2 A notice given in accordance with clause 8.1 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; or
- (c) 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 or receipt 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**

### **9. CORPORATE GOVERNANCE**

- 9.1 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.
- 9.2 Hort Innovation must at all times maintain a Skills Based Board of Directors with the necessary skills and experience to effectively govern Hort Innovation.

### **10. ROLE OF HORT INNOVATION**

- 10.1 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.
- 10.2 Hort Innovation must, at all times, act in an apolitical and unbiased manner.
- 10.3 Hort Innovation must not engage in or fund Agri-Political Activity.
- 10.4 Hort Innovation may seek advice from the Commonwealth on whether a particular activity would constitute an Agri-Political Activity.
- 10.5 The Commonwealth may issue a notice requiring Hort Innovation to cease or otherwise take action to address Agri-Political Activities. Hort Innovation must comply with such a notice within the timeframe that is specified or if no timeframe is specified, within a reasonable timeframe.

### **11. PERFORMANCE**

#### ***Performance Principles***

- 11.1 Subject to clause 2.5, Hort Innovation must at all times act in accordance with and uphold this Agreement, including the Guidelines and the Performance Principles under clause 11.2.
- 11.2 The Performance Principles are:
- (a) to engage stakeholders to identify Research and Development Activities and associated priorities that provide benefits to the Industry;
  - (b) to ensure Research and Development Activities, Marketing Activities and associated priorities are strategic, collaborative and targeted to improve Industry 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 Research and Development Activities, Marketing Activities and associated benefits to Levy Payers, Charge Payers and the Australian community in general, and show continuous improvement in governance and administrative efficiency.

11.3 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***

11.4 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, Charge Payers and other stakeholders. (Demonstrations could include updates by newsletter, meetings, website, email or annual report.)

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

11.6 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 of 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.

11.7 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.

11.8 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.

## **12. CONSULTATION AND GUIDELINES**

12.1 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 the independent review, Annual Performance Meetings, and/or other forums;
- (c) discuss issues relating to Hort Innovation's compliance with the Disbursement Act, this Agreement and the Guidelines; and
- (d) discuss other matters relevant to Hort Innovation or the Industry.

12.2 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 additional 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.

12.3 Either party may, at any time, request additional meeting(s) with the other party to discuss matters arising under the Disbursement Act, this Agreement, or the Guidelines, or otherwise related to Hort Innovation or the Industry.

***Changes to the Guidelines***

12.4 The Commonwealth may vary the Guidelines and/or impose new Guidelines from time to time by providing an updated **Attachment A** to Hort Innovation.

12.5 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.

**13. ANNUAL REPORTS**

13.1 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 subsection 41(5) of the Disbursement Act as applicable, and includes:

- (a) sources of income allowing for separate identification of Levy or Charge Payments, Matching Payments and Voluntary Contributions;
- (b) significant Research and Development Activities and transactions undertaken in the year in the conduct of Hort Innovation's functions as the Horticultural Industry Body;
- (c) the full cost of the Research and Development Activities, Marketing Activities, and any other matters that Hort Innovation can spend Levy or Charge Payments on under the Disbursement Rules;
- (d) progress made in implementing the Strategic Plan and Performance Principles including progress against any key performance indicators;
- (e) key deliverables for Research and Development Activities and Marketing Activities, 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 issued by the Minister under the Disbursement Act or new Guidelines under the Agreement;
- (i) consultation with Levy Payers, Charge Payers and Industry Representative Organisations on:
  - a. Hort Innovation's Strategic Plan; and

- b. Research and Development Activities, Marketing Activities, and any other matters that Hort Innovation can spend Levy or Charge Payments on under the Disbursement Rules;
  - (j) Hort Innovation's contributions to relevant Industry sectoral and cross-sectoral strategies, including the strategies under the Guidelines;
  - (k) details of senior executive and Board remuneration in the format required by the relevant Australian Accounting Standards;
  - (l) agreements entered into by Hort Innovation with third parties for the delivery of Research and Development Activities and Marketing Activities;
  - (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.
- 13.2 The Annual Report due 31 October 2025 must report on the preceding Financial Year in its entirety (including the period prior to the Agreement Date) and include information as set out in clause 12 of the Former Funding Agreement as relevant in respect of any period of that Financial Year to which clause 13 of this Agreement does not apply or is not relevant.

#### **14. STRATEGIC PLAN**

- 14.1 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.
- 14.2 Hort Innovation must implement and maintain a Strategic Plan for its portfolio and must:
- (a) consult with stakeholders, including the Commonwealth, during the term of this Agreement to ensure that its Strategic Plan has regard to the Performance Principles and Guidelines; and
  - (b) publish the Strategic Plan (and any updates) on its public website.

## **PART 3—ACTIVITIES AND FUNDING**

### **15. PAYMENT OF FUNDS**

#### ***Levy or Charge Payments***

- 15.1 The Commonwealth will make Levy or Charge Payments to Hort Innovation in accordance with the Disbursement Act and the Disbursement Rules.
- 15.2 The Commonwealth will make Levy or Charge Payments as soon as reasonably practicable after the amounts of Levy or Charge on which those payments are based have been received in cleared funds.

#### ***Matching Payments***

- 15.3 The Commonwealth will make Matching Payments to Hort Innovation in accordance with the Disbursement Act and the Disbursement Rules.
- 15.4 The Commonwealth will make the Matching Payments to Hort Innovation as soon as reasonably practicable after receiving from Hort Innovation:
- (a) a correctly rendered claim for payment or tax invoice; and
  - (b) satisfactory substantiation that Hort Innovation has met all the requirements set out in the Disbursement Act to trigger its right to receive the Matching Payments.
- 15.5 For the purposes of clause 15.4(b), a certificate stating compliance with the relevant requirements of the Disbursement Act, signed by the Executive Director (or equivalent) or the Chief Financial Officer (or equivalent) of Hort Innovation, is satisfactory substantiation, in the absence of any evidence to the contrary.
- 15.6 Hort Innovation's final claim for Matching Payments in respect of its Qualifying Expenditure Amount for a Financial Year must be supported by an independent audit report of Hort Innovation's financial statements in accordance with the relevant Australian Auditing and Assurance Standards. (This work may be completed in accordance with the Standard on Assurance Engagements ASAE 3100.)
- 15.7 Upon request, Hort Innovation must provide other supporting documentation, including a reconciliation between the total Qualifying Expenditure Amount on which its claim for Matching Payments for the Financial Year is based and the amounts shown in the audited financial statements.

#### ***Estimates and Forecasts***

- 15.8 Upon request by the Commonwealth, Hort Innovation must provide to the Commonwealth:
- (a) an indicative estimate of the amount of the Levy or Charge Payments and Matching Payments it expects the Commonwealth to pay to it under the Disbursement Act, for the current and any future Financial Years as requested by the Commonwealth; and

- (b) a monthly breakdown of the estimated amount of Levy or Charge Payments and Matching Payments that it expects the Commonwealth to pay to it under the Disbursement Act for the current Financial Year and/or the next Financial Year as requested by the Commonwealth.

15.9 The Commonwealth may, if requested, give Hort Innovation an estimate of the amount of costs incurred by the Commonwealth in relation to:

- (a) the collection and recovery of components of Levy or Charge based on which an amount is payable to Hort Innovation for the Financial Year; and
- (b) the administration of section 15 of the Disbursement Act in relation to payments to Hort Innovation for the Financial Year.

15.10 The Commonwealth will, by 30 November in each Financial Year, advise Hort Innovation of the final costs incurred by the Commonwealth in relation to:

- (a) the collection and recovery of components of Levy or Charge based on which an amount is payable to Hort Innovation for the previous Financial Year; and
- (b) the administration of section 15 of the Disbursement Act in relation to payments to Hort Innovation for the previous Financial Year.

***Method of payment***

15.11 All payments by the Commonwealth and Hort Innovation must be by direct deposit or other method agreed between the parties.

***GST***

15.12 The Commonwealth will make Levy or Charge Payments and Matching Payments on a GST inclusive basis to Hort Innovation, unless otherwise required by law.

15.13 In this Agreement:

- (a) unless specifically described as 'GST Inclusive', any consideration to be paid for a supply made under or in connection with the Agreement does not include an amount for GST; and
- (b) if a party makes a supply under or in connection with this Agreement on which GST is imposed, the consideration payable or to be provided for that supply under the Agreement is increased by, and the recipient of the supply must pay the supplier, an amount equal to the GST payable on the supply.

15.14 A party may claim from the other an amount for which an input tax credit or decreasing adjustment can be obtained.

**16. MANAGEMENT OF THE FUNDS, VOLUNTARY CONTRIBUTIONS AND OTHER MONEY**

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

- 16.2 Hort Innovation must notify the Commonwealth of the details of the systems, procedures and controls established in accordance with clause 16.1 on request.
- 16.3 Hort Innovation must not enter into any agency arrangement, subcontract or other outsourcing arrangement:
- (a) in a manner that is inconsistent with the Agreement or the Guidelines;
  - (b) in a manner that it is not permitted by the Disbursement Act or the Corporations Act;
  - (c) for the management, allocation, or investment of Funds or Voluntary Contributions with an Industry Representative Organisation other than procurement of goods and services from such organisation or sponsorship of Industry related events; or
  - (d) for the management, allocation, or investment of money if it could be used in a manner which may be viewed as engaging in Agri-Political Activity.

## **17. APPLICATION OF THE FUNDS AND VOLUNTARY CONTRIBUTIONS**

- 17.1 Hort Innovation may only spend the Funds and Voluntary Contributions:
- (a) in accordance with the Disbursement Act, the Disbursement Rules, 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.
- 17.2 Where Hort Innovation spends Voluntary Contributions on Research and Development Activities or Marketing Activities, that expenditure must be for the benefit of the Industry or the Australian community.

### ***Other restrictions***

- 17.3 Hort Innovation must develop, implement and maintain an appropriate Balanced Portfolio.
- 17.4 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***

- 17.5 If Hort Innovation spends the Funds other than in accordance with this Agreement or the Disbursement 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.

17.6 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 those Funds required by Hort Innovation to meet liabilities properly incurred in accordance with this Agreement and the Disbursement Act.

**18. ACKNOWLEDGEMENT OF FUNDING**

18.1 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, Charge Payers and the Commonwealth, as applicable.

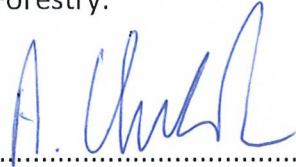
**19. INFORMATION ON ACTIVITIES**

- 19.1 Hort Innovation must ensure that it documents and communicates on its public website (other than any Confidential Information, unless permitted by clause 7.5):
- (a) any documentation required to be made public under the Disbursement Act or the Corporations Act;
  - (b) its plans, reports and priorities; and
  - (c) key information about its Research and Development Activities, Marketing Activities, and any other matters that Hort Innovation can spend Levy or Charge Payments on under the Disbursement Rules.
- 19.2 Hort Innovation must make this Agreement available on its public website.

# SIGNING PAGE

EXECUTED as an agreement

SIGNED for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
by **Senator the Hon. Anthony Chisholm**  
Assistant Minister for Agriculture, Fisheries  
and Forestry:

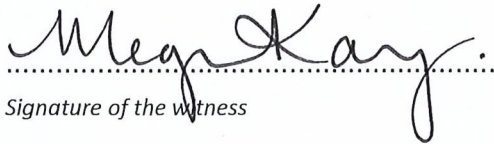


.....  
*Signature of the Minister*

3/12/2024

.....  
*Date*

in the presence of:



.....  
*Signature of the witness*


MEGAN KAY

.....  
*Name of witness*

03/12/2024

.....  
*Date*

SIGNED 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)* by:



.....  
*Signature of Director*

Julie Bird

.....  
*Name of Director*

23/11/2024 | 11:10 AM AEDT

.....  
*Date*



.....  
*Signature of Director / Secretary*

Emma Braun

.....  
*Name of Director / Secretary*

24/11/2024 | 9:08 AM AEDT

.....  
*Date*



## **ATTACHMENT A: GUIDELINES**

For the purposes of this Agreement between the Commonwealth and Hort Innovation the following are the '**Guidelines**':

### ***General research and innovation***

- (a) Australia's National Science Statement;
- (b) the Australian Government's National Agricultural Innovation Policy Statement;
- (c) the National Primary Industries Research Development and Extension Framework Statement of Intent.

### ***Agricultural levy system***

- (d) the Levy Guidelines: How to establish or amend agricultural levies;
- (e) the Companion to Rural Research & Development Corporations Funding Agreement;
- (f) the Guidelines for Statutory Funding Agreements;
- (g) the RDC Knowledge Transfer and Commercialisation Guide;
- (h) the Best Practice Guide to Stakeholder Consultation: Horticulture Innovation Australia Limited;
- (i) other guidelines or priorities of which the Commonwealth notifies Hort Innovation in writing from time to time.