



Australian Government
Department of Agriculture



FUNDING AGREEMENT

2015-19

between the

**Commonwealth of Australia represented by the
Department of Agriculture**

ABN 24 113 085 695

and

Australian Pork Limited

**ACN 092 783 278
ABN 83 092 783 278**

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AGREEMENT DATE

Twenty seventh of June, 2015

BETWEEN

The **COMMONWEALTH OF AUSTRALIA**, represented by the
Department of Agriculture ABN 24 113 085 695 (**Commonwealth**)

AND

AUSTRALIAN PORK LIMITED ACN 092 783 278,
ABN 83 092 783 278 (**APL**)

RECITALS

- A. The Australian pig industry established Australian Pork Limited (APL) to undertake marketing, promotion, research and development, strategic policy development and other activities for the benefit of pork producers and the Australian pig industry (the Industry) as a whole.
- B. APL is the declared Industry Services Body under section 11 of the *Pig Industry Act 2001* (the Act).
- C. The Commonwealth and APL have, since APL was declared the Industry Services Body, entered into agreements that set out the terms and conditions for the payment of Marketing Payments, R&D Payments and Commonwealth Matching Payments.
- D. APL is permitted by the Act to undertake strategic policy development activities for the benefit of the Australian pig industry, in accord with its industry representative body role.
- E. Former agreements between APL and the Commonwealth have defined strategic policy development to include the development of strategic policy positions for the industry and the advocacy of those positions to stakeholders, including government. This is carried forward into this Agreement.
- F. This Agreement replaces the Former Agreement.

PREAMBLE

Australia's primary producers recognise the need to invest in rural research and development because it contributes to the profitability, productivity, competitiveness and long-term sustainability of their respective industry and business. The Australian Government provides public investment in rural R&D because profitable, competitive and sustainable rural industries provide benefits for the whole Australian community.

Industry and the government also recognise that creating and meeting demand for Australian produce is essential to the competitiveness and profitability of our primary industries.

Australia's rural research and development corporations (RDCs) are the mechanism by which primary producers and the government co-invest in research and development for industry and community benefits. This partnership between industry and government is reflected in joint funding and in input to RDC priorities and planning processes.

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

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

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

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

CORE REQUIREMENTS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

‘Act’ means the *Pig Industry Act 2001* and associated regulations.

‘Activities’ means tasks or projects performed as part of APL’s Programs.

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

‘Agreement’ means this funding contract and any schedules and annexures to it.

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

‘Agri-Political Activity’ means engaging in or financing any form of external or internal political campaigning, but does not include an activity required or authorised under the *Corporations Act 2001* or another law. Agri-Political Activity does not include any of the following:

- (a) Strategic Policy Development;
- (b) APL, or an officer of APL, recommending a candidate for election to the Board; or
- (c) APL making statements or providing information on matters related to APL's objects in the proper performance of APL's functions and the proper furtherance of its objects; or
- (d) use by another person, for Agri-Political Activities, of a report or other publication prepared or financed by APL in accordance with this Agreement; or
- (e) the use by an officer of APL, or an employee of APL, of his or her own funds to conduct a campaign for election to the board of APL or any entity engaging in Agri-Political Activity; or consultation with an Industry Representative Body.

‘Annual Operational Plan’ means a plan prepared by APL in accordance with clause 12.17.

‘Annual Report’ means a report prepared by APL in accordance with clauses 13.7 and 13.8.

‘Balanced Portfolio’ means a Research and Development investment portfolio incorporating issues of critical national importance based on government and Levy Payer priorities and balancing long-term, short-term, high and low risk, and strategic and adaptive research needs and includes consideration of regional variations and needs.

‘Board’ means APL’s board of Directors.

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

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

‘Certification Report’ means a report prepared in accordance with clause 13.3.

‘Commonwealth Matching Payments’ means the matching payments referred to in paragraph 9(1)(c) of the Act.

‘Compliance Audit Report’ means a report prepared in accordance with clause 13.1.

‘Confidential Information’ means all information that the parties agree to treat as confidential by notice to each other after the Agreement Date, or that the parties know, or ought reasonable know is confidential.

‘Constitution’ means the constitution of APL.

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

‘Department’ means:

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

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

‘Director’ means a person who is a director of APL, as defined in the *Corporations Act 2001*.

‘Economical’ relates to minimising cost.

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

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

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

‘Ethical’ relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour includes identifying and managing conflicts of interest, and not making improper use of an individual’s position.

‘Evaluation Framework’ means the framework to undertake rigorous and regular evaluation of Research and Development Activities and Marketing Activities as required by clause 12.5.

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

‘Former Agreement’ means the agreement between the Commonwealth and APL which came into operation on 12 July 2011.

‘Fraud Control Plan’ means a plan prepared and maintained by APL for the purposes of clause 12.21 specifying measures to minimise the risk of fraud within APL.

‘Funds’ means each of the following:

- (a) Marketing Payments;
- (b) R&D Payments;
- (c) Commonwealth Matching Payments;
- (d) income earned or derived by APL from the Marketing Payments, R&D Payments or Commonwealth Matching Payments; and

- (e) the proceeds of the sale or other disposition of assets acquired with the Funds referred to in clauses (a) to (c) of this definition.

‘Guidelines’ means each of the following:

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

‘Industry’ means the Australian pig industry (including in relation to pig meat and other pig products).

‘Industry Assets and Liabilities’ means any assets obtained and liabilities incurred by APL through use of the Funds (including, for the avoidance of doubt, employee liabilities and other contractual commitments incurred by APL in applying the Funds in accordance with this Agreement).

‘Industry Representative Body’ means a peak industry body or a body which undertakes similar Advocacy and/or Agri-Political Activities.

‘Industry Services Body’ has the same meaning as in section 7 of the Act.

‘Insolvency Event’ means:

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

(f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of APL's assets, operations or business.

'Intellectual Property' means all copyright and neighbouring rights, and all rights in relation to inventions (including patents), plant varieties, registered and unregistered trademarks, registered designs, Confidential Information (including trade secrets and know how) and circuit layout designs resulting from the intellectual activity in the industrial, scientific, literary or artistic fields.

'Intellectual Property Management Plan' means a plan prepared and maintained by APL specifying the procedures for management, adoption and commercialisation of Intellectual Property created by APL.

'Levy' means a levy, tax or charge required to be paid under the Levy Legislation.

'Levy Legislation' means Schedule 22 to the *Primary Industries (Excise) Levies Act 1999*.

'Levy Payers' means the persons who are required to pay Levy in accordance with the Levy Legislation.

'Marketing Activities' means activities carried out by APL or with its support for the purposes of marketing, promotion, strategic policy development or other activities, for the benefit of the Industry. Schedule 2 provides examples of activities which may be determined to be Marketing Activities.

'Marketing Payments' means payments referred to in paragraph 9(1)(a) of the Act.

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

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

'Performance Review' means a review conducted in accordance with clause 14 of this Agreement.

'Performance Review Report' means a report prepared in accordance with clause 14 of this Agreement.

'Program' means a group of Activities that collectively deliver services or benefits to Levy Payers, the broader Industry or the community in general with the aim of achieving a planned outcome.

'Program Framework' means the planning and budgeting framework applied by APL in accordance with clauses 12.2 to 12.4.

'R&D Payments' means payments referred to in paragraph 9(1)(b) of the Act.

'RD&E Framework' means the *National Primary Industries Research, Development and Extension Framework*.

'RDC' means Research and Development Corporation.

'Research and Development' means systematic experimentation and analysis in any field of science, technology, economics or business (including the study of the social or environmental consequences of the adoption of new technology) carried out with the object of:

- (a) acquiring knowledge that may be of use in achieving or furthering an objective of the Industry, including knowledge that may be used for the purpose of improving any aspect of the production, processing, storage, transport or marketing of pigs, pig meat or other pig products; or
- (b) applying such knowledge for the purpose of achieving or furthering such an objective.

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

- (a) are procured, provided or carried out by APL or with its support for the purposes of Research and Development; and
- (b) relate to Levy Payers or the broader Industry; and

(c) are for the benefit of Levy Payers, the broader Industry or the Australian community generally.

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

‘Research and Development Corporations’ means, collectively, the statutory research and development corporations incorporated by regulations made under the *Primary Industries Research and Development Act 1989*, *Australian Grape and Wine Authority Act 2013* and the bodies declared under industry-specific legislation as the industry services bodies.

‘Risk Management Plan’ means the plan prepared and maintained by APL for the purposes of clause 12.21 specifying the measures to be implemented to manage its material commercial, legal and administrative risks.

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

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

- (a) governance, risk and compliance;
- (b) finance, accounting and audit;
- (c) Research and Development, innovation, technology and technology transfer, commercialisation and adoption of Research and Development;
- (d) product promotion and marketing (including communications);
- (e) exports and export market development;
- (f) Industry knowledge, including practical growing and/or production or processing experience; and

should include:

- (g) public policy and administration

‘Strategic Plan’ means a plan prepared by APL in accordance with clause 12.8.

‘Strategic Policy Development’ means:

- (a) the collection of information from a range of sources (including consultation within the Industry, and with other industries, government, other stakeholders or the public);
- (b) the balanced analysis of that information in the context of the Industry environment;
- (c) the development of a strategic policy position within the Industry; and
- (d) the advocacy of that position (including within the Industry, and with other industries, government, the public or other stakeholders).

‘Strategic Research Priorities’ means the Australian Government’s overall priorities for investment in science and research (currently the *Strategic Research Priorities* 2013) that are announced by the responsible Minister and communicated to APL from time to time.

‘Underperformance’ means failure by APL to comply with its obligations under this Agreement or the Act, including a failure to deliver services.

‘Voluntary Contribution’ means payments from one or more persons, including investors, contributed to APL for the purpose of funding Marketing Activities or Research and Development Activities.

2. TERM AND OPERATION OF THIS AGREEMENT

- 2.1 This Agreement commences and takes effect on the day following the Agreement Date and expires four years after the Agreement Date.
- 2.2 The parties agree that the Former Agreement terminates immediately before this Agreement commences.
- 2.3 The termination of the Former Agreement does not affect the rights or liabilities of a party which accrued on or before the termination of the Former Agreement.
- 2.4 The parties must, at least six months before the expiry of this Agreement, commence negotiation in good faith with a view to renewing this Agreement either on the same terms and conditions or on varied terms and conditions as agreed by the parties.

- 2.5 If the parties are unable to agree on the terms of a new Agreement to replace this Agreement within that six month period, then the parties agree that:
- (a) this Agreement will continue in full force and effect for an additional six months or for such other period as the parties agree; and
 - (b) during that extended period the parties will continue to seek to agree on the terms of a new Agreement to replace this Agreement.
- 2.6 If one of the parties does not wish to extend this Agreement, it must advise the other party in writing, having given consideration to the progress made and the matters yet to be agreed.
- 2.7 In negotiating the renewal of this Agreement, the outcomes of the latest Performance Review will be taken into account.
- 2.8 APL must publish this signed Agreement and any variation to this Agreement on its public website.

3. LEGISLATION

- 3.1 APL must comply with all relevant laws, including the Act and the *Corporations Act 2001*.

4. RDC CORPORATE GOVERNANCE AND BOARD PERFORMANCE

- 4.1 APL must implement a framework of good corporate governance practice in managing and investing the Funds. The framework should draw on better practice guides as appropriate, including the *ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, Third Edition, March 2014* and as amended from time to time.
- 4.2 APL must report on measures taken to enhance corporate governance at the six-monthly meeting held in accordance with clause 16.1.
- 4.3 The Board shall be an independent Skills Based Board, to the extent that it comprises Directors nominated by the Director Nomination Committee.
- 4.4 APL must have in place processes for evaluating the performance of its Board and its committees.
- 4.5 APL must:
- (a) consult with the Commonwealth on changes to its Constitution to ensure that it will remain appropriate to a body performing the functions of the declared Industry Services Body;

- (b) give the Commonwealth a copy of each notice of a motion to modify its Constitution, at the same time as it gives notice of the motion to its members; and
 - (c) as soon as practicable after any modification of its Constitution is made, provide the Commonwealth notice setting out the modification and explaining its effect.
- 4.6 APL must do all things necessary to ensure that it effectively represents and reflects the interests of its members and the Research and Development, marketing and Strategic Policy Development interests of Levy Payers and the Industry.
- 4.7 APL must use reasonable endeavours to ensure that Levy Payers who are not members are advised of their entitlements to become members of APL with the aim of having a substantial proportion of Levy Payers as members of APL.
- 4.8 APL must ensure that up-to-date information on the following is available on its public website:
 - (a) the Strategic Plan, including information relating to its development and any changes;
 - (b) the priorities used by APL to determine which Activities it will fund;
 - (c) an overview of APL's key Activities; and
 - (d) key Research and Development and Marketing Activities and extension activities which APL is funding.
- 4.9 The information to be published under the preceding subclause need not include information of the following kinds:
 - (a) personal information as defined in the *Privacy Act 1988*, unless permitted by the *Privacy Act 1988*; or
 - (b) information about the business, commercial, financial or professional affairs of any person if it would be unreasonable to publish that information, such as Confidential Information; or
 - (c) information which would, or could reasonably be expected to damage:
 - (i) APL; or
 - (ii) the Industry; or
 - (iii) the national interest.

Committee and panel member's disclosure of pecuniary interests

- 4.10 If a person is appointed as a member of an APL committee or panel concerned with research and development and/or marketing project selection and funding and has a pecuniary interest that relates to the affairs under consideration by the committee or panel, APL must require that person to disclose that interest.

5. PAYMENT OF FUNDS

- 5.1 In consideration for APL undertaking activities as specified in this Agreement, and subject to this Agreement, the Commonwealth must pay to APL:
- (a) the Marketing Payments;
 - (b) the R&D Payments; and
 - (c) Commonwealth Matching Payments.
- 5.2 Commonwealth Matching Payments will only be made subject to, and in accordance with, the requirements of any applicable government policy relating to matching of Voluntary Contributions.
- 5.3 Nothing in this Agreement obliges the Commonwealth to make a payment to APL unless:
- (a) a declaration of APL as the Industry Services Body under the Act is in force at the time the payment is to be made; and
 - (b) this Agreement has not expired or been terminated.
- 5.4 Notwithstanding any other provision of this Agreement:
- (a) the Commonwealth may either:
 - (i) invoice APL for; or
 - (ii) deduct from Marketing Amounts or Research and Development Amounts to be paid to APL;amounts equal to the costs incurred by the Commonwealth in relation to collecting, recovering and administering provisions relating to payments as referred in the Act and consistent with the Department's cost recovery policy and guidelines;
 - (b) APL must pay any amount invoiced by the Commonwealth within 30 days of receipt of the invoice; and

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

- (i) from the Marketing Payments to the extent that the amount relates to the Marketing Payments; or
- (ii) from the R&D Payments to the extent that the amount relates to the R&D Payments.

5.5 The Commonwealth must give APL, in accordance with an agreed process, an indicative, non-binding, estimate of the amount of the costs and amounts referred to in clause 5.4 for the Financial Year.

Timing and manner of payments

5.6 The Commonwealth must pay the R&D Payments and Marketing Payments to APL as soon as reasonably practicable after the Commonwealth receives the R&D Payments and Marketing Payments in cleared funds.

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

- (a) a correctly rendered claim for payment or tax invoice; and
- (b) evidence reasonably satisfactory to the Commonwealth that APL has already spent the amount that forms the basis of the claim on Research and Development Activities.

5.8 For the purposes of clause 5.7(b), a certificate signed by the Chief Executive Officer (or equivalent) and the Chief Financial Officer (or equivalent) of APL, certifying that APL has spent a particular amount on Research and Development Activities, is reasonably satisfactory evidence, in the absence of any evidence to the contrary.

5.9 The final claim for a Financial Year must be supported by a certification from an Independent Auditor and the Chief Executive Officer or equivalent of APL certifying:

- (a) the amount of Eligible R&D Expenditure expended for the relevant Financial Year; and
- (b) the claims for payment of Commonwealth Matching Payments under clause 5.7 and the declared Eligible R&D Expenditure are accurate and in accordance with the legislation and this Agreement.

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

6. APPLICATION OF THE FUNDS

- 6.1 APL must spend the Funds:

- (a) only in accordance with the Act and this Agreement; and
- (b) in a manner that is consistent with:
 - (i) the current Strategic Plan;
 - (ii) the current Annual Operational Plan;
 - (iii) the Guidelines to the extent they are applicable to this Agreement; and
- (c) in a manner that is Efficient, Effective and Economically and Ethically sound.

R&D Payments, Marketing Payments and Commonwealth Matching Payments

- 6.2 R&D Payments and Commonwealth Matching Payments must only be spent on Research and Development Activities. Marketing Payments must only to be spent on Marketing Activities.
- 6.3 APL must not spend the Funds to engage in Agri-Political Activity. For example, APL must not apply the Funds to encourage or support a campaign for the election of a candidate, person or party for public office.
- 6.4 APL must not spend the Funds on making payments to Industry Representative Bodies or other bodies which are established for the purpose of or substantially engaged in Advocacy and/or Agri-Political Activity. This does not preclude:
- (a) payments by way of membership fees where that membership contributes to APL pursuing its objects;
 - (b) payments to acquire goods or services or to fund Research and Development or Marketing Activities, where all of the following conditions are met:
 - (i) the acquisition or funding occurs through an open, transparent and competitive process;
 - (ii) if a competitive process is not undertaken, APL has documented in writing why such a process was not utilised;

- (iii) the conditions of the transaction between APL and the relevant body are the same as they would be for a transaction with any arbitrary third party providing those goods or services; and
 - (iv) the arrangement for services or funding incorporates appropriate measures to demonstrate the performance of the body undertaking the task. This assessment must be provided to the Commonwealth on request.
- 6.5 APL may, at any time, seek consultations with the Commonwealth in relation to any matter connected with this Agreement, including whether:
 - (a) a proposed expenditure would amount to engaging in Agri-Political Activity using the Funds; or
 - (b) a proposed activity is an eligible Research and Development or Marketing Activity.
- 6.6 APL must determine an appropriate Balanced Portfolio and report on this Balanced Portfolio in the Strategic Plan, the Annual Operational Plan and the Annual Report.

Note: The Commonwealth acknowledges that the Strategic Plan for 2015–2020 was approved prior to signing of the Agreement and so does not report on a Balanced Portfolio. However the Commonwealth would expect APL to report on a Balanced Portfolio through any amended Strategic Plan.
- 6.7 APL must contribute to the implementation of relevant Industry sector and cross-sectoral strategies under the RD&E Framework, as appropriate and consistent with the Strategic Plan.
- 6.8 APL must provide appropriate feedback on the outcomes of funding applications to all grant applicants.

7. MANAGEMENT OF THE FUNDS

- 7.1 APL must establish necessary accounting systems, procedures and controls, including a Cost Allocation Policy, to ensure:
 - (a) the Funds are spent only in accordance with this Agreement and the Act;
 - (b) all dealings with the Funds are properly authorised, conducted and accounted for; and
 - (c) an auditor is able to readily verify that the Funds have been used only in accordance with this Agreement and the Act.

- 7.2 The accounting systems, processes and controls to manage the Funds established in accordance with clause 7.1 are required to take into account the Risk Management Plan, the Fraud Control Plan and the Cost Allocation Policy.
- 7.3 APL must provide the Commonwealth with details of the systems, procedures and controls established in accordance with clause 7.1 on request.
- 7.4 APL must:
- (a) keep complete and detailed accounts and records of receipt, use and expenditure of the Funds in accordance with good accounting practice including all applicable Australian accounting standards;
 - (b) keep separate accounts and records referred to in clause 7.4(a) for Marketing Payments, R&D Payments and Voluntary Contributions; and
 - (c) keep accounts and records referred to in clause 7.4(a) to enable disclosure of the full costs of Research and Development Activities and Marketing Activities under clause 13.
- 7.5 Any additional systems, processes and controls necessary to meet the requirements of this Agreement must be implemented during the term of this Agreement, within a timeframe agreed to by the Commonwealth.

8. SUSPENSION OR TERMINATION OF THE AGREEMENT

- 8.1 Without limiting any other rights or remedies the Commonwealth may have against APL arising out of or in connection with this Agreement, the Commonwealth may terminate this Agreement effective immediately, by giving notice to APL, if:
- (a) an Insolvency Event occurs; or
 - (b) APL ceases to be the Industry Services Body under the Act; or
 - (c) there has been a material breach by APL or its officers or its Directors of this Agreement or the Act or another law.
- 8.2 Without limiting any other rights available to the Commonwealth, if:
- (a) an event has occurred which would entitle the Commonwealth to terminate the Agreement under clause 8.1; and/or
 - (b) there has been a change to APL's Constitution which the Commonwealth considers to be in conflict with this Agreement or the Act; and/or
 - (c) there has been a change in Commonwealth policy relating to raising or spending of the Funds;

then subject to clause 8.3, the Commonwealth may, by providing notice to APL:

- (d) direct APL to rectify any breach and provide a report or explanation of the breach;
- (e) direct APL to deal with all or any of the Funds in a certain way; and/or
- (f) reduce the amount of payment of the Funds that would otherwise be made; and/or
- (g) suspend payment of any or all of the Funds.

8.3 If an event outlined in clause 8.2(a) – (c) occurs, the Commonwealth may terminate this Agreement by undertaking the following steps in order:

- (a) first, the Commonwealth must provide an explanation to APL of its intention to terminate and must consult with APL in relation to that explanation;
- (b) second, the Commonwealth must issue a notice to APL advising APL it has not less than three months to respond to the explanation provided in clause 8.2(a)
- (c) third, the Commonwealth must have regard to any matters raised by APL in response (including, but not limited to, matters related to any long term commitments of APL); and
- (d) fourth, subject to meeting the requirements of the preceding subclauses, the Commonwealth may issue a notice of termination, specifying the date on which such termination shall be effective, provided that such date is not earlier than six months after the issue of the notice.

8.4 Where a termination notice has been issued by the Commonwealth to APL in accordance with the process set out in clause 8.3, APL must prepare a plan for cessation of operations of APL as the Industry Services Body, including arrangements for:

- (a) the repayment or transfer of the Funds to, or as directed by, the Commonwealth; and
- (b) the payment of employee entitlements and other commitments and expenses;

by the termination date specified in that notice, or within such other period as the parties agree.

- 8.5 Any dispute in relation to the suspension or termination of this Agreement will be dealt with in accordance with clause 23.

9. REPAYMENT OF FUNDS

- 9.1 If APL spends the Funds other than in accordance with this Agreement or the Act, the Commonwealth may, by written notice to APL, require APL to repay all or a part of those Funds to the Commonwealth within the timeframe specified in the notice. Any dispute in relation to the repayment of Funds will be dealt with in accordance with clause 23.
- 9.2 If this Agreement is terminated, the Commonwealth may, by notice to APL, require APL to repay to the Commonwealth, by the date specified in the notice, all or any part of the Funds held by APL, excluding those Funds required by APL to meet liabilities properly incurred in accordance with this Agreement or the Act.
- 9.3 Amounts payable by APL in accordance with clauses 9.1 and 9.2 are a debt due to the Commonwealth.

10. INDUSTRY ASSETS AND LIABILITIES

- 10.1 Notwithstanding any other clause in this Agreement and subject to any other applicable Australian law in the event that APL is no longer the declared Industry Services Body or this Agreement is terminated, the Commonwealth may, by notice to APL, direct APL to deal with both its Industry Assets and Liabilities in a manner determined by the Commonwealth.
- 10.2 For the purposes of clause 10.1, the Commonwealth may request a list of all Industry Assets and Liabilities from APL. The list must be provided to the Commonwealth within 10 Business Days of receiving the request.
- 10.3 This clause 10 survives termination of this Agreement.

11. EXTENSION OF RESEARCH AND DEVELOPMENT

11.1 APL must consider the dissemination, adoption and potential commercialisation of the results of Research and Development Activities. To ensure this APL must:

- (a) include in the Strategic Plan how APL plans to address extension, technology transfer and commercialisation of Research and Development;
- (b) demonstrate that pathways to extension and adoption are incorporated into planning and approval processes; and
- (c) as part of the Annual Report, report on APL's extension activities.

12. PLANNING

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

Program Framework

12.2 APL must develop and maintain a Program Framework to meet this Agreement's requirements for proper planning, performance monitoring and reporting and to ensure that expenditure can be accurately reported in the Annual Report, and if otherwise requested by the Commonwealth.

12.3 The Program Framework should inform the development of key planning and reporting documents such as the Strategic and Annual Operational Plans and Annual Report and must include specifications of:

- (a) planned outcomes—results, consequences and impacts—from the investment of Funds. An outcomes statement should:
 - (i) be specific, focused and easily interpreted;
 - (ii) identify the intended outcomes, with the level of achievement against the intended outcomes being measurable;
 - (iii) specify the target groups (where these groups can be identified) for the outcomes;
 - (iv) specify the Programs, sub programs (if any), key deliverables and Activities to be undertaken that contribute to the achievement of the intended outcomes; and

- (v) be endorsed by key stakeholders and the Commonwealth as part of developing the Strategic Plan;
- (b) for each Program, identify key performance indicators that can provide an accurate and succinct story of performance. Key performance indicators should:
 - (i) in the Strategic Plan, be strategic in nature and linked to the planned outcomes;
 - (ii) in the Annual Operational Plan, link to the deliverables;
 - (iii) in the Annual Report, bring the key performance indicators under (i) and (ii) above together and demonstrate how the deliverables funded advanced the outcomes;
 - (iv) be clear, unambiguous and measurable with appropriate timeframes for achievement;
- (c) the expected total cost (direct and indirect) of Activities and resources attributable to the delivery, development and associated costs of each Program; and
- (d) an Evaluation Framework designed in accordance with clause 12.5.

12.4 The Program Framework should be supported by a structured Cost Allocation Policy and should clearly separate R&D Payments and Marketing Payments.

Evaluation Framework

12.5 The Evaluation Framework must:

- (a) support and complement the Program Framework;
- (b) ensure that key performance related information is generated by the Program Framework and is routinely collected and monitored;
- (c) include a structured plan for the systematic evaluation of the Efficiency, Effectiveness and impact of APL's key investments; and
- (d) include a means of publishing and disseminating relevant Research and Development outcomes and outcomes of evaluations undertaken under subclause 12.5(c).

12.6 APL must:

- (a) consult with the Commonwealth in preparing the Evaluation Framework;
- (b) participate in any evaluation project relevant to APL's operations which is established for all RDCs; and

- (c) demonstrate APL's commitment to provide adequate expenditure for this purpose.

12.7 The Evaluation Framework must be published on APL's public website within 30 days of being adopted by APL.

Strategic Plan

12.8 APL must create, implement and maintain a Strategic Plan covering a three to five year period and must:

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

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

12.10 The Strategic Plan must be prepared in accordance with good planning practice and must cover matters including, but not limited to, the following:

- (a) APL's vision or mission;
- (b) an assessment of APL's operating environment including its strengths, weaknesses, opportunities and threats , and including current and future trends and implications;
- (c) collaboration with other RDCs on priority Research and Development issues;

- (d) a broad overview of the priorities and outcomes from stakeholder consultation, as more fully described in the stakeholder consultation plan required under clause 12.11;
- (e) an explanation of the extent to which the priorities of Levy Payers are reflected in the Strategic Plan;
- (f) a broad investment plan and funding model for Industry Research and Development Activities and Marketing Activities;
- (g) key investment priorities and outcomes planned for the period of the Strategic Plan;
- (h) the Research and Development and Marketing Activities that APL intends to fund to achieve the planned outcomes;
- (i) key deliverables which contribute to achieving the planned outcomes;
- (j) performance indicators that enable progress being made towards achieving planned outcomes to be monitored and reported upon;
- (k) how the Research and Development and Marketing Activities to be funded align with, and give effect to, the Guidelines;
- (l) how APL addresses extension, technology transfer, and commercialisation of Research and Development, and demonstrate that extension and adoption are incorporated into planning and approval processes;
- (m) estimates of income and expenditure, including broad estimates of expenditure separately for each of the key Research and Development and Marketing Activities, for the life of the Strategic Plan;
- (n) an explanatory statement of APL's approach to ensuring a Balanced Portfolio appropriate to the Industry;
- (o) a corporate governance statement noting the Commonwealth's expectation that APL implement good corporate governance practice in managing and investing the Funds; and
- (p) APL's roles and responsibilities as the declared Industry Services Body under the Act including APL's:
 - (i) mutual obligations as partner with the Commonwealth in delivering services to members and Levy Payers; and
 - (ii) responsibilities for the custody and investment of the Funds.

- 12.11 In developing, reviewing and amending the Strategic Plan, APL must develop a consultation plan including the proposed approach to consultations with:
- (a) the Commonwealth;
 - (b) Levy Payers;
 - (c) Industry Representative Bodies;
 - (d) other RDCs, as appropriate; and
 - (e) other stakeholders, as appropriate.
- 12.12 Consistent with clause 6.5, APL may, at any time, seek consultations with the Commonwealth in relation to any matter connected with clause 12.11, including the required content of the consultation plan.
- 12.13 For minor amendments to an existing Strategic Plan, APL may request approval from the Commonwealth not to prepare a consultation plan as set out in clause 12.11.
- 12.14 The consultation plan must be published on APL's public website and include provision for online and electronic submissions to be made from the parties listed in paragraphs (a) to (e) above.
- 12.15 The consultation plan must be agreed with the Commonwealth before consultation commences.
- 12.16 The Commonwealth must treat the Strategic Plan, each amendment of the Strategic Plan and the consultation plan as Confidential Information until such information is publicly released by APL.

Annual Operational Plan

- 12.17 APL must, prior to 1 July each year, provide to the Commonwealth an Annual Operational Plan to implement the Strategic Plan setting out:
- (a) the intended operations of APL for the next Financial Year;
 - (b) the key Research and Development and Marketing Activities (including identifying the Strategic Policy Development activities) to be funded during the Financial Year under each of the Research and Development Programs and marketing Programs of APL;
 - (c) how Research and Development and Marketing Activities to be funded align with, and give effect to, the Guidelines;
 - (d) key deliverables arising during the Financial Year from the Research and Development and Marketing Activities planned;

- (e) performance indicators and timetables relating to APL's proposed Research and Development and Marketing Activities and expenditure which enable the progress being made towards achieving the planned outcomes to be monitored and reported upon;
- (f) estimates of income and expenditure for the Financial Year which include:
 - (i) the amounts to be received by APL, separately, in respect of Marketing Payments, R&D Payments, Commonwealth Matching Payments, Voluntary Contributions and any other form of income; and
 - (ii) expenditure by APL on Research and Development Activities and Marketing Activities;
- (g) collaboration with other RDCs on priority Research and Development issues;
- (h) a statement on how APL intends to implement and operationalise a Balanced Portfolio appropriate to the Industry for the next Financial Year; and
- (i) any other matters the Directors consider should be set out in the Annual Operational Plan.

12.18 In developing its Annual Operational Plan APL must consider:

- (a) any directions given by the Minister under this Agreement or the Guidelines;
- (b) community, member and Levy Payer expectations when setting senior executive and Board remuneration packages; and
- (c) investments to support the development and implementation of the RD&E Framework where applicable.

12.19 APL must submit the Annual Operational Plan developed in accordance with clause 12.17. All material variations or updates to the Annual Operational Plan must be provided to the Commonwealth within 30 days of the variations or updates being adopted by APL.

12.20 The Commonwealth must treat an Annual Operational Plan or an amended Annual Operational Plan provided to it as Confidential Information until it is publicly released by APL.

Other Plans

- 12.21 APL must develop, maintain and implement the following plans:
- (a) a Risk Management Plan;
 - (b) a Fraud Control Plan; and
 - (c) an Intellectual Property Management Plan.
- 12.22 APL must review the plans listed in paragraphs (a) – (c) above at intervals of no more than three years.
- 12.23 APL must provide the Commonwealth with a copy of the plans listed in paragraphs (a) – (c) above, or amendments to the plans, within 30 days of their approval by the Board.
- 12.24 The Commonwealth must treat a plan or an amended plan as Confidential Information until it is publicly released by APL.

13. REPORTS

Compliance Audit Report

- 13.1 APL must, within five months after the end of each Financial Year, give the Commonwealth a Compliance Audit Report, which provides an independent opinion on whether APL has complied with its obligations under clauses 6 and 7 during the Financial Year. A Compliance Audit Report must:
- (a) be prepared in accordance with relevant Australian Auditing and Assurance Standards and this Agreement;
 - (b) include a review of the efficacy of the accounting systems processes and controls required under clause 7.1;
 - (c) include a review of the amounts spent on Marketing Activities and Research and Development Activities and verify the claims made for Commonwealth Matching Payments under clause 5.7 are consistent with the amount of Eligible R&D Expenditure;
 - (d) state any qualifications to which the Compliance Audit Report is subject;
 - (e) subject to clause 13.2, include an opinion whether APL has complied with its obligations under clauses 6 and 7 during the Financial Year;
 - (f) indicate any incidences of non-compliance and assess and report on the impact of those incidences of non-compliance; and

- (g) include a statement that the Compliance Audit Report has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgement that the Compliance Audit Report will be relied upon by the Commonwealth.

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

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

Certification Report

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

- (a) certifying that APL has complied in all material respects with its obligations under the Act and this Agreement during the Financial Year;
- (b) certifying the claims for Commonwealth Matching Payments under clause 5.7 are consistent with the amount of Eligible R&D Expenditure;
- (c) stating whether any incidences of non-compliance have come to their attention;
- (d) assessing and reporting on the impact of those incidences of non-compliance; and
- (e) including a statement that the Certification Report has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgement that the Certification Report will be relied upon by the Commonwealth.

Other Audit Reports

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

13.5 If the Commonwealth requests an audit report or opinion under clause 13.4, APL must at its own expense:

- (a) obtain the audit report or opinion from APL's auditor; or

- (b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by APL's auditor, engage another auditor to conduct an audit and give the audit report or opinion; and
- (c) give a copy of the audit report or opinion to the Commonwealth within 14 days of APL receiving it.

Annual Reports

- 13.6 APL must provide four copies of its Annual Report, prepared in accordance with clauses 13.7 and 13.8, to the Commonwealth at the same time it provides the Annual Report to its members.
- 13.7 APL must prepare an Annual Report that complies with the financial reporting and other reporting requirements of the *Corporations Act 2001*. Additional information beyond the requirements of the *Corporations Act 2001* required to meet the requirements of this Agreement must be provided to the Commonwealth separately.
- 13.8 The Annual Report should include, in respect of the relevant Financial Year:
 - (a) sources of income allowing for separate identification of Marketing Payments, R&D Payments, Commonwealth Matching Payments and Voluntary Contributions;
 - (b) significant Activities and transactions undertaken in the year in the conduct of APL's functions as the Industry Services Body;
 - (c) the full cost of the Research and Development Activities and Marketing Activities (including identifying the Strategic Policy Development activities), with costs being allocated in accordance with the Cost Allocation Policy;
 - (d) progress made in implementing the Strategic Plan and Annual Operational Plan including progress against key performance indicators specified in those plans;
 - (e) key Research and Development and marketing deliverables and associated outcomes achieved;
 - (f) collaboration with Levy Payers, the broader Industry and other research providers;

- (g) collaboration with other RDCs to fund Research and Development Activities to address the Strategic Research Priorities and Rural Research and Development Priorities;
- (h) collaboration with other Research and Development Corporations to deliver Research and Development or Marketing services in a more Efficient and Effective manner;
- (i) expenditure on evaluations and outcomes of evaluations undertaken;
- (j) an assessment of the efficiency and effectiveness of APL's investments;
- (k) how APL has addressed extension, technology transfer and commercialisation of Research and Development and Marketing Activities;
- (l) Intellectual Property creation and protection, including management of Intellectual Property arising from Research and Development Activities or acquired with Funds;
- (m) subsidiaries and joint ventures formed;
- (n) material changes to APL's membership;
- (o) how APL responded to any directions given by the Minister under the Guidelines;
- (p) consultation with Levy Payers and Industry Representative Bodies on:
 - (i) APL's Strategic Plan and Annual Operational Plan; and
 - (ii) Research and Development and Marketing Activities and extension activities;
- (q) APL's contributions to relevant Industry sectoral and cross-sectoral strategies, including the strategies under the RD&E Framework;
- (r) Remuneration details of the director's of the Board and key management personnel in accordance with the *Corporations Act 2001*.
- (s) Research and Development and Marketing agreements entered into by APL with third parties;
- (t) corporate governance practices in place during the Financial Year;
- (u) the rationale for the mix of projects included in the Balanced Portfolio; and
- (v) other matters notified to APL by the Commonwealth.

Other Reports

- 13.9 APL must report to the Commonwealth any significant matters that have come to APL's attention that will or may affect APL's ability to achieve the outcomes stated in its Strategic Plan or comply with its obligations under this Agreement or the Act within 30 days of becoming aware of that matter.
- 13.10 In addition to the reports required under clauses 13.6 and 13.9, on notice APL must give the Commonwealth, within such period as the Commonwealth specifies after consultation with APL, any other report or explanation relating to management and expenditure of the Funds.
- 13.11 When giving the reports or explanations referred to in clause 13.10, APL must consult with the Commonwealth as to the nature of any action required and must take that action within a timeframe agreed with the Commonwealth.
- 13.12 APL must report its contribution to the implementation of relevant Industry sector and cross-sectoral strategies under the RD&E Framework.

14. REVIEW OF PERFORMANCE

- 14.1 APL must complete a Performance Review six months before the expiry of this Agreement and must:
 - (a) engage an independent organisation to undertake the Performance Review and prepare a report on the Performance Review;
 - (b) agree the terms of reference six months before the Performance Review commences with the Commonwealth to ensure that the Performance Review will meet the requirements of this Agreement;
 - (c) provide the Commonwealth with a copy of the draft Performance Review Report at the same time the Board receives a copy;
 - (d) provide the final Performance Review Report to the Commonwealth within 14 days of it being provided to the Board;
 - (e) notify the Commonwealth of the date the Board accepts the final Performance Review Report;
 - (f) develop a response to the final Performance Review Report and a proposed implementation plan, including dates and milestones, for the implementation of recommendations within three months of the Board's acceptance of the final Performance Review Report;

- (g) provide the Commonwealth with the response developed under clause 14.1(f) within 30 days of the Board accepting the response;
 - (h) report to the Commonwealth in the meetings required under clause 16.1 on progress implementing the Performance Review Report recommendations; and
 - (i) publish the Performance Review Report and APL's response to the Performance Review Report recommendations on APL's public website.
- 14.2 The independent organisation engaged to carry out the Performance Review must be an organisation that has not, within the previous four years, carried out any corporate governance activities or reviews, performance audits or similar reviews of APL.
- 14.3 The Performance Review must take into account:
 - (a) the performance of APL in meeting its obligations under this Agreement and the Act;
 - (b) APL's development and implementation of its Strategic, Annual Operational, Risk Management, Fraud Control and Intellectual Property Management Plans and APL's effectiveness in meeting the priorities, targets and budgets set out in those plans;
 - (c) the Efficiency with which APL carried out those plans;
 - (d) the Efficiency and Effectiveness of APL's investments;
 - (e) the delivery of benefits to members, Levy Payers and the broader community foreshadowed by those plans, including an assessment of the degree to which APL's investments have met the needs of members, Levy Payers and the broader community; and
 - (f) any other matters related to APL's functions under the Act or performance of this Agreement required to be covered by the Minister and any other issues relevant to the Industry that may require specific attention.

15. PERFORMANCE MANAGEMENT

- 15.1 If, in the opinion of the Commonwealth, APL is Underperforming, the Commonwealth will first consult with APL to determine the accuracy of such opinions, including the existence and the nature of the Underperformance.

- 15.2 To support the parties to clarify the existence and/or nature of the Underperformance and to develop appropriate responses the Commonwealth may:
- (a) request additional reports, including audit reports, related to the Underperformance be provided by APL; and
 - (b) in consultation with APL, use its best endeavours to develop and agree a work plan for APL to rectify Underperformance; and
- 15.3 Any disputes relating to the existence, nature or means of the Underperformance will be dealt with in accordance with clause 23.

16. CONSULTATIONS AND DIRECTIONS

Consultation with the Commonwealth

- 16.1 The Chairperson of APL, or in their absence, their Board nominee, must meet with the Commonwealth at six-monthly intervals from the Agreement Date, or at any other time requested by the Commonwealth on reasonable notice, to brief the Commonwealth on APL's performance of its functions as the Industry Services Body including:
- (a) progress on implementing APL's Annual Operational Plan and Strategic Plan, including APL's financial position;
 - (b) progress on the implementation of the relevant sectoral and cross-sectoral strategies under the RD&E Framework;
 - (c) consultation with other RDCs and Industry Representative Bodies;
 - (d) measures taken to enhance corporate governance in accordance with clause 4;
 - (e) progress in developing and implementing the Evaluation Framework;
 - (f) progress on implementing the recommendations from the most recent Performance Review; and
 - (g) the development and implementation of additional systems, processes and controls necessary to meet the requirements of this Agreement required by clause 7.5 of this Agreement.

Consultation with Levy Payers and the broader Industry

16.2 APL must, as far as possible, communicate directly with Levy Payers and members to:

- (a) review priorities for Research and Development and marketing investments, including any regional equity considerations; and
- (b) report on APL's performance against the Strategic Plan and the Annual Operational Plan.

16.3 APL must collaborate with other Research and Development Corporations and other bodies to identify opportunities for collaboration and minimise duplication of Research and Development and Marketing Activities.

Changes to the Guidelines & Ministerial directions

16.4 Subject to clause 16.5, the Commonwealth may vary the Guidelines provided that the Commonwealth:

- (a) consults with APL prior to the variation; and
- (b) gives APL a period to implement the variation.

16.5 If the Department becomes aware that the Minister proposes to issue a direction under section 12 of the Act:

- (a) the Department agrees to use reasonable endeavours to inform APL of the proposal as soon as practicable;
- (b) if the Directors are of the opinion that the proposed direction may require the Directors to act, or omit to act, in a manner that is likely to breach the duties owed by the Directors to members or be in contravention of any law, APL's Constitution or other binding obligations, the Directors must notify the Department; and
- (c) the Department and APL must engage in discussion about the relevant issue including to consider whether there is a mutually acceptable resolution.

16.6 Any disputes relating to directions will be resolved in accordance with clause 23.

17. ACCESS TO RECORDS AND USE OF INFORMATION

- 17.1 The Commonwealth, the Auditor-General and any duly authorised representative of the Commonwealth who, in the case of a person who is not a Commonwealth officer bound by the *Public Service Act 1999*, has signed an appropriate confidentiality deed, may, for the purpose of monitoring compliance by APL with this Agreement and the Act, have access to:
- (a) premises occupied by or under the control of APL; and
 - (b) data, records, accounts and other financial material and any property of the Commonwealth in the possession or under the control of APL.
- 17.2 APL must grant this access, on request:
- (a) during Business Hours – at any time on notice in writing; or
 - (b) outside Business Hours – on 48 hours' notice given to APL and marked for the attention of the Chief Executive Officer or equivalent of APL.
- 17.3 APL must provide access to all its accounts and records relating to this Agreement and the Act (other than any legally privileged material) and otherwise co-operate fully with the Commonwealth, the Auditor-General or any duly authorised representative for the purposes of clause 17.1.
- 17.4 Without limiting clause 17.3, APL must, as appropriate, make available relevant RDC personnel to provide information or answer questions on any matter that relates to APL's obligations under this Agreement or the Act.
- 17.5 Each party must, in respect of Confidential Information given by the other party:
- (a) use that Confidential Information only for the purposes of administering or enforcing this Agreement or the Act; and
 - (b) not disclose that Confidential Information to any person without the prior approval in writing from the other party and subject to any conditions or restrictions imposed by the other party in giving approval.
- 17.6 A party will not be in breach of this clause to the extent that it is legally obliged to make a particular use or disclosure of Confidential Information.
- 17.7 The Commonwealth will not be in breach of clause 17.5 in respect of Confidential Information given by APL and held by the Commonwealth where a request is made by Parliament (including a committee of Parliament) for that information to be given to Parliament, provided that the Commonwealth notifies Parliament of the

confidential nature of the information and requests Parliament hold and deal with that information on an *in camera* basis.

- 17.8 APL grants the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence to use, reproduce, modify, adapt, distribute, communicate and publish all or part of any report or plan provided to the Commonwealth under this Agreement, excluding:

- (a) any Confidential Information; and
- (b) any material, including any image or text, identified by APL as being material in which a third party owns all or part of the copyright.

- 17.9 APL must make reasonable efforts to obtain all necessary Intellectual Property rights and permissions from third parties for the purposes of clause 17.8. APL must inform the Commonwealth, in writing, if it is unable to obtain the necessary permissions in relation to the relevant third party material and provide sufficient information to enable the Commonwealth to avoid breaching the third party's Intellectual Property rights.

18. INDEMNITY

- 18.1 Subject to clauses 18.2 and 18.6 to 18.10 APL indemnifies the Commonwealth, its officers and agents from and against any loss or liability, including:

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

arising out of or as a consequence of:

- (a) an infringement, or an alleged infringement, of the Intellectual Property rights (including moral rights) of any person, which occurred by reason of the Commonwealth relying on its licence under clause 17.8;
- (b) of an act done by the Commonwealth in relation to any part of this Agreement;
- (c) any actual, likely or threatened breach of APL's obligations relating to Confidential Information or personal information; or

- (d) without limiting the preceding paragraphs, any breach of this Agreement by APL, or negligence on the part of APL, its personnel or subcontractors or wrongful or unlawful act or omission on the part of APL, its personnel or subcontractors.
- 18.2 The amount payable under the indemnity in clause 18.1 will be reduced proportionally to the extent that any:
- (a) act or omission which is negligent, wrongful, unlawful, malicious, fraudulent, wilful, illegal or reckless; or
 - (b) breach of this Agreement; by the Commonwealth or its officers, employees, contractors or agents contributed to the loss, liability, expense or cost.
- 18.3 APL agrees that a person indemnified under clause 18.1 may recover a payment under an indemnity in this Agreement before the person makes the payment in respect of which the indemnity is given if:
- (a) the amount is a liquidated sum; and
 - (b) the Commonwealth has complied with its obligations in clauses 18.7 to 18.10.
- 18.4 The indemnities in this Agreement are irrevocable and survive the termination of this Agreement.
- 18.5 APL agrees that the Commonwealth holds the benefit of an indemnity under clause 18.1 in favour of an officer or agent of the Commonwealth in trust for the officer or agent.
- 18.6 The liability of APL under the indemnity in clause 18.1 is limited to \$20,000,000, on a per event and yearly aggregate basis, provided that the limit on liability will not apply in respect of:
- (a) personal injury or death;
 - (b) loss of or damage to Commonwealth property;
 - (c) breach of Intellectual Property rights or obligations of confidentiality; or
 - (d) conduct by APL or its officers, employees, contractors or agents which is malicious, fraudulent, wilful, illegal or reckless.
- 18.7 The Commonwealth must notify APL in writing as soon as it becomes aware of any action, claim, dispute, suit or proceedings (**Proceedings**) threatened or brought against the Commonwealth or its officers or agents in respect of which the Commonwealth may seek indemnification under clause 18.1.

- 18.8 If APL agrees to comply at all times with Commonwealth policy relevant to the conduct of the Proceedings, including the Legal Services Directions in force from time to time issued in accordance with the *Judiciary Act 1903* (Cth) (LSDs), and the Commonwealth is granted leave to withdraw from the Proceedings:
- (a) the Commonwealth may withdraw from the Proceedings; and
 - (b) APL may, in its own name and at its own expense, conduct the Proceedings.
- 18.9 For Proceedings from which the Commonwealth is not granted leave to withdraw, if APL admits its obligations under the indemnity in clause 18.1 and upon request lodges security in a reasonable amount with the Commonwealth, the Commonwealth:
- (a) must keep APL informed of all developments in the Proceedings; and
 - (b) may defend, arbitrate, appeal, settle or otherwise conduct the Proceedings.
- 18.10 The Commonwealth must consult with APL prior to agreeing to a settlement of a matter for which it seeks indemnification under these provisions.

19. ACKNOWLEDGEMENT OF FUNDING

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

20. AUTHORISATION OF PERSONS TO ACT

- 20.1 The rights, functions and powers of the Commonwealth under this Agreement may be exercised and performed on behalf of the Commonwealth by the Minister, or a delegate of the Minister (who may be an officer of the Department).
- 20.2 Performance of an obligation of the Commonwealth under this Agreement by the Minister, or a delegate of the Minister, is taken to be performance of the obligation by the Commonwealth.

21. RELATIONSHIP

- 21.1 This Agreement does not create a relationship of employment, agency or partnership between the parties.

22. FURTHER ACTION

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

23. RESOLUTION OF DISPUTES

- 23.1 Except where a party seeks urgent interlocutory relief, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement which cannot be resolved by informal discussion ("Dispute") until the procedures set out in this clause 23 have been followed.
- 23.2 The parties agree that any Dispute arising during the course of this Agreement will be dealt with as follows:
- (a) the party claiming that there is a Dispute will send the other party a written notice setting out the nature of the Dispute and requesting a meeting between the parties to discuss that Dispute; and
 - (b) the parties will have 20 Business Days (or such longer period agreed to in writing by the parties to the Dispute) from the date of the notice within which to hold a meeting of one duly authorised representative of each party, and those representatives must use reasonable efforts to resolve the Dispute.
- 23.3 If the Dispute is not resolved by the parties at the meeting referred to in subclause 23.2(b) the parties must refer the Dispute to mediation, which must be conducted in Canberra (or elsewhere as agreed in writing between the parties), in accordance with the Institute of Arbitrators and Mediators of Australia Rules for the Mediation of Commercial Disputes (in operation from time to time), except where such Rules conflict with this clause 23, in which case this clause 23 shall prevail to the extent of the inconsistency.
- 23.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 5 Business Days after the Dispute is referred to mediation in accordance with subclause 23.3:
- (a) the mediator is the person appointed by; and
 - (b) the remuneration of the mediator is the amount or rate determined by; the Chairman of the Institute of Arbitrators and Mediators Australia (Chairman), or the Chairman's nominee.
- 23.5 The mediator's remuneration must be paid by the parties in equal proportions.

- 23.6 The mediation is confidential and the parties each acknowledge and agree that:
- (a) written statements prepared by the mediator or the parties; and
 - (b) any discussions between the participants to the mediation, before or during the mediation, cannot be used or relied upon by either party in any subsequent legal proceedings.
- 23.7 Despite the existence of a Dispute, both parties must, unless requested in writing by the other party not to do so, continue to perform their respective obligations under this Agreement.
- 23.8 If there is no resolution of the Dispute within 20 Business Days of the commencement of the mediation (or such extended time as the parties may agree in writing before the expiration of that period), then either party may commence legal proceedings in respect of the Dispute.

24. ASSIGNMENT

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

25. ENTIRE AGREEMENT

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

26. ALTERATION

- 26.1 Except as expressly permitted under this Agreement, this Agreement may be altered only by an agreement in writing signed by each party.

27. WAIVER

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

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

28. SEVERABILITY

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

29. GOVERNING LAW AND JURISDICTION

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

29.2 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.

30. NOTICE

30.1 A party giving notice or notifying under this Agreement must do so in writing or by electronic communication:

- (a) directed to the recipient's address specified in this clause, as varied by any notice; or
- (b) hand delivered or sent by prepaid post or facsimile or electronic communication to that address.

30.2 The parties' addresses are:

Commonwealth	Mr Peter Ottesen Assistant Secretary Agricultural Industries Branch Agricultural Policy Division Department of Agriculture GPO Box 858 CANBERRA ACT 2601 Email: peter.ottesen@agriculture.gov.au Cc: RDC.Governance@agriculture.gov.au
Australian Pork Limited	Mr Andrew Spencer Chief Executive Officer Australian Pork Limited PO Box 4746 KINGSTON ACT 2604 Email: Andrew.Spencer@australianpork.com.au cc: apl@australianpork.com.au

30.3 A notice given in accordance with clause 30.1 is taken to be received if:

- (a) hand delivered—on delivery; or
- (b) if sent by prepaid post—3 days after the date of posting; or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within one Business Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- (d) if sent by electronic communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999*.

31. INTERPRETATION

31.1 In this Agreement, unless the contrary intention appears:

- (a) the words "includes" and "including" are not words of limitation;
- (b) headings are for ease of reference only and do not affect the meaning of this Agreement;

- (c) the singular includes the plural and vice versa and words importing a gender include other genders;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;
- (f) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901*; and
- (k) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

- 31.2 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- 31.3 Where a provision of this Agreement requires a thing to be done on a day which is a Saturday, Sunday or public holiday in the place at which the thing is to be done, that provision shall be taken to require the thing to be done on the next day which is not a Saturday, Sunday or public holiday at that place.
- 31.4 The Schedules are provisions of this Agreement, but notes and headings are not provisions of this Agreement.

SCHEDULE 1– RESEARCH AND DEVELOPMENT ACTIVITIES

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

- (a) the development of workforce skills, education and the training of people to undertake Research and Development and apply the outcomes;
- (b) the building of strong Research and Development leadership capacity and encouraging diversity of Levy Payers and the broader Industry;
- (c) the investigation and evaluation of the requirements for Research and Development and, on the basis of such investigation and evaluation, the preparation, review and revision of Research and Development plans;
- (d) the carrying out, and the coordination and funding of the carrying out, of Research and Development;
- (e) monitoring, evaluating and reporting to the Commonwealth, Levy Payers and the broader Industry on Research and Development funded by APL;
- (f) facilitating the dissemination, adoption and commercialisation of the results of Research and Development or of practices or technological developments that have been designed or adapted to improve the operation or efficiency of the Levy Payers and the broader Industry;
- (g) the dissemination of information related to any aspect of Research and Development whether electronically, by print or by any other means;
- (h) improving the accountability for expenditure on Research and Development Activities in relation to Levy Payers and the broader Industry;
- (i) the development in the Industry of an awareness of the contribution that can be made by Research and Development in improving its efficiency and competitiveness;
- (j) the collection and interpretation of statistical information on the Industry;
- (k) engaging Directors, employees, consultants and agents of APL and in meeting administration, operating or capital expenses (including, but not limited to, lease costs and legal and other professional expenses) reasonably necessary or appropriate to be incurred by APL to support its Research and Development Activities;
- (l) paying remuneration and allowances to Directors, employees, consultants and agents of APL and in meeting administrative, operating and capital

- expenses reasonably necessary or appropriate to be incurred by APL to support its Research and Development Activities;
- (m) in maintaining a membership register and holding general meetings of APL;
- (n) such other activities as may be approved by the Commonwealth in writing from time to time; and
- (o) any activity incidental but considered important to its Research and Development Activities.

APL must ensure that there is a clear distinction between expenditure on Research and Development Activities and Marketing Activities.

SCHEDULE 2 – MARKETING ACTIVITIES

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

- (a) Strategic Policy Development activities;
- (b) making payments for, or in relation to Marketing Activities or promotion for the benefit of Levy Payers and the broader Industry, including, without limitation:
 - (i) for the investigation and evaluation of the requirements for domestic and export marketing; and/or
 - (ii) on the basis of such investigations and evaluations, for the preparation, review and revision of Marketing plans; and/or
 - (iii) the carrying out, and the co-ordination and funding of the carrying out of Marketing Activities; and/or
 - (iv) the monitoring, evaluating and reporting to the Commonwealth, Levy Payers and the broader Industry on Marketing Activities undertaken by APL.
- (c) maintaining a membership register and holding general meetings of APL;
- (d) activities with the aim of promoting and encouraging consumer choice of pig meat and other pig products;
- (e) paying remuneration and allowances to Directors, employees, consultants and agents of APL and in meeting administrative, operating and capital expenses reasonably necessary or appropriate to be incurred by APL to support its Marketing Activities;
- (f) making payments to the Commonwealth and otherwise complying with obligations imposed on APL under this Agreement or the Act; and
- (g) making any other payment APL is authorised or required to make by law in accordance with this Agreement and the Act.

SIGNING PAGE

EXECUTED as a deed

SIGNED, SEALED AND DELIVERED for and
on behalf of the

COMMONWEALTH OF AUSTRALIA

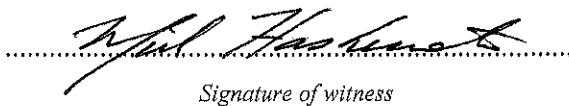
by

the Hon. Barnaby Joyce MP

Minister for Agriculture


Signature

in the presence of


Signature of witness

26/05/15
Date signed

Melinda Hashimoto
Name of witness

SIGNED, SEALED AND DELIVERED for and
on behalf of

AUSTRALIAN PORK LIMITED

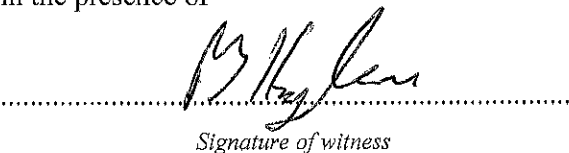
by


Name of signatory

APL CHAIRMAN
Position of signatory


Signature

in the presence of


Signature of witness

27 JUNE 2015
Date signed

Enzo Allara
Name of witness