



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

STATUTORY FUNDING AGREEMENT 2020–2030

Parties

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

(ABN 34 190 894 983)

and

Australian Pork Limited

(ABN 83 092 783 278)

Date: **24** June 2020

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AGREEMENT DATE: 24 June 2020

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

AND **AUSTRALIAN PORK LIMITED** ABN 83 092 783 278, PO Box 4746, Kingston ACT 2604 (apl@australianpork.com.au) (**APL**)

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

RECITALS

- A. Subsection 9(1) of the *Pig Industry Act 2001* (Cth) (**the Act**) allows the Minister to enter into a funding contract with an eligible body, and subsection 11(1) of the Act allows the Minister to declare that eligible body as the industry services body.
- B. APL is the declared industry services body under section 11(1) of the Act and will continue as the declared industry services body if the parties enter into a further funding contract under subsection 9(1) of the Act.
- C. APL is permitted by the Act to undertake strategic policy development activities for the benefit of the Australian pig industry, in accordance with its industry representative body role.
- D. The Commonwealth has developed Performance Principles to guide APL performance under this funding contract.
- E. In that context, the Commonwealth and APL have agreed to enter into a funding contract on the terms and conditions set out in this Agreement, including applying the Performance Principles set out in this Agreement.

PART 1—GENERAL REQUIREMENTS

1. DEFINITIONS

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

In this Agreement, unless the contrary intention appears:

'Act' means the Act identified in Recital A.

'Agreement' means this funding contract, as varied from time to time, including any schedules and annexures to it.

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

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

- (a) encouraging or supporting a campaign for the election of a candidate, person or party for public office;
- (b) promoting a particular political party's policy over another political party's policy; or
- (c) representing the views of Industry as being those of the Australian Government.

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

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

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

'Annual Report' means a report prepared by APL in accordance with clause 12.1.

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

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

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

'Chair' means the Chair or the Chairperson of APL.

'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).

'Director' means a director of APL appointed in accordance with the Constitution of APL.

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

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

'Excess Matching Payment' means any amount of Matching Payment in a financial year that exceeds the lesser of:

- (a) 0.5% of the amount of the Gross Value of Production of pig meat production for that financial year; or
- (b) 50% of the amount spent by APL in the financial year on R&D Activities.

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

'Funds' means each of the following:

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

'Gross Value of Production' means the amount determined by the Minister before 31 October next following a financial year of the gross value of production of pig meat production in Australia in the financial year.

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

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

'Guidelines' means each of the following:

- (a) the Australian Government's Science and Research Priorities;
- (b) the Australian Government's Rural Research, Development and Extension Priorities;
- (c) the National Primary Industries Research Development and Extension Framework;

- (d) the Levy Principles and Guidelines, being the guideline relating to the introduction of new levy or changes to existing levy;
- (e) the non-binding companion document to this Funding Agreement; and
- (f) other guidelines or priorities of which the Commonwealth notifies APL in writing from time to time.

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

'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) APL disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) APL ceases to carry on business;
- (c) APL ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of APL's assets, operations or business;
- (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 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.

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

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

'Levy Payer' means any person who is required to pay a Levy that is payable to APL.

'Marketing Activities' means marketing, strategic policy development, advertising or promotion of the Industry and its products, but does not include R&D Activities.

'Matching Payments' means the amounts by that name payable under the Act by the Commonwealth to APL.

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

'Performance Principles' means the principles set out in clause 9.2.

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

'Research and Development' ('R&D') 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.

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

- (a) are procured, provided or carried out by APL or with its support for the purposes of R&D;
- (b) relate to Levy Payers of the broader Industry; and
- (c) are for the benefit of Levy Payers, the broader industry or the Australian community generally.

'RD&E' means R&D Activities and Extension.

'R&D Expenditure' means expenditure on R&D Activities.

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

'Rural Research and Development Priorities' means the priorities communicated to 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) R&D, innovation, technology and technology transfer, commercialisation and adoption of R&D;
- (d) product promotion and marketing (including communications);
- (e) exports and export market development;
- (f) pig industry knowledge, including practical growing and/or production experience; and
- (g) public policy and administration.

'Strategic Plan' means a plan prepared by APL in accordance with clause 12.

'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).

'Transition Out Plan' has the meaning given in clause 4.4.

'Voluntary Contributions' means voluntary payments contributed to APL for the purpose of funding RD&E and Marketing Activities.

2. AGREEMENT AND TERM

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

3. GOVERNING LAW AND JURISDICTION

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

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

4. TERMINATION

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

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

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

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

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

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

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

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

Transition Out Plan

- 4.4 The Commonwealth may request APL to develop and submit to the Commonwealth for approval a Transition Out Plan, as soon as reasonably possible after receipt of request.
- 4.5 A request for a Transition Out Plan will specify what details APL must include in the Transition Out Plan.
- 4.6 The Commonwealth may:
 - (a) approve the submitted Transition Out Plan; or
 - (b) request that reasonable changes be made to the Transition Out Plan, prior to giving its approval, in which case APL must comply with any changes requested by the Commonwealth.
- 4.7 Prior to ceasing APL as the industry services body under the Act, the Commonwealth will give sufficient notice to APL to allow APL to implement the approved Transition Out Plan, as directed by the Commonwealth.

5. RESOLUTION OF DISPUTES

- 5.1 Except when a party seeks urgent interlocutory relief, the parties must deal with a dispute arising under or in respect of this Agreement in accordance with the procedures set out in this clause 5 before they commence any legal proceedings.
- 5.2 A party claiming that there is a dispute must send the other party a written notice setting out the nature of the dispute.
- 5.3 During the 20 Business Days after a notice is given under clause 5.2 (or such longer period as may be agreed to in writing by the parties), each party must use reasonable efforts to resolve the dispute through a meeting of senior representatives of each party which are authorised to bind the party to an agreed resolution.
- 5.4 If the parties do not resolve the dispute at the meeting referred to in clause 5.3, the parties must refer the dispute to mediation, which must be conducted in Canberra (or elsewhere if agreed in writing between the parties), in accordance with the Resolution Institute's Rules for Mediation, as in operation at the relevant time.
- 5.5 Unless otherwise agreed by the parties, the mediation will be deemed to commence on the appointment of the mediator.
- 5.6 Despite the existence of a dispute, each party must, unless requested in writing by the other party not to do so, continue to perform its obligations under this Agreement.
- 5.7 If there is no resolution of the dispute within 20 Business Days of the commencement of the mediation (or such extended time as the parties may agree in writing before the expiration of that period), then either party may commence legal proceedings in respect of the dispute.

6. COMMUNICATION, ACCESS AND INFORMATION

Access by the Commonwealth

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

Confidential Information

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

- (b) made to a Commonwealth Minister or in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia, provided that the party notifies the recipient that the information is confidential.

Intellectual Property

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

- (a) any Confidential Information; and
- (b) any material, including any image or text, that is identified by APL as being material in which a third party owns all or part of the Intellectual Property Rights, and in respect of which APL does not have the right to grant such a licence to the Commonwealth.

7. NOTICE

Service of notices

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

- (a) directed to the recipient's address specified in the definition of the parties, as varied by any notice; or
- (b) hand delivered or sent by prepaid post, facsimile or Electronic Communication to that address.

Effective on receipt

7.2 A notice given in accordance with clause 7.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, five (5) Business Days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless, within one Business Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- (d) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

PART 2—MANAGEMENT AND GOVERNANCE OF APL

8. CORPORATE GOVERNANCE

- 8.1 APL 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, APL should draw on best practice guidance as appropriate.
- 8.2 APL must at all times maintain a Skills Based Board of Directors with the necessary skills and experience to effectively govern APL.

9. ROLE OF APL

- 9.1 APL is permitted by the Act to undertake strategic policy development activities for the benefit of the Australian pig industry, in accordance with its industry representative body role.
- 9.2 APL must, at all times, act in an apolitical and unbiased manner.
- 9.3 APL must not use Funds to engage in Agri-Political Activity.
- 9.4 The parties may consult with each other on whether or not a particular activity of APL would constitute an Agri-Political Activity.

10. PERFORMANCE

Performance Principles

- 10.1 Subject to clause 2.6, APL must at all times act in accordance with and uphold this Agreement, including the Guidelines and the Performance Principles under clause 10.2.
- 10.2 The Performance Principles are:
- (a) to engage stakeholders to identify RD&E priorities and activities that provide benefits to the Industry;
 - (b) to ensure RD&E priorities and activities (and Marketing Activities) are strategic, collaborative and targeted to improve 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 RD&E (and marketing) benefits to Levy Payers and the Australian community in general, and show continuous improvement in governance and administrative efficiency.

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

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

Review of Performance

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

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

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

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

- (a) the Commonwealth and APL will agree on an independent external consultant to review APL's progress and achievements against the Performance Principles and prepare an independent review.
- (b) APL 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 APL and the Commonwealth within 20 Business Days of concluding the draft independent review.
- (d) The Commonwealth and APL will meet and discuss any areas of underperformance identified in the independent review and agree on an approach for APL to address any such areas of underperformance.

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

11. CONSULTATION AND GUIDELINES

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

Changes to the Guidelines

- 11.4 The Commonwealth may vary the Guidelines and/or impose new Guidelines from time to time.

11.5 The Commonwealth must provide reasonable notice of any variations to the Guidelines, or new Guidelines to APL, and give APL a reasonable period to implement the effects of the variation or new Guidelines.

12. ANNUAL REPORTS

12.1 By 31 October of each year, APL must prepare and publish on its public website an Annual Report for the preceding financial year, that complies with the financial reporting and other reporting requirements in Chapter 2M of the Corporations Act and includes:

- (a) sources of income allowing for separate identification of Levy Funds, Matching Funds and Voluntary Contributions;
- (b) significant R&D Activities and transactions undertaken in the year in the conduct of APL functions as the Industry Services Body;
- (c) the full cost of the R&D Activities and Marketing Activities;
- (d) progress made in implementing the Strategic Plan and Performance Principles including progress against any key performance indicators;
- (e) key RD&E and marketing deliverables and associated outcomes achieved;
- (f) an assessment of the efficiency and effectiveness of APL's investments;
- (g) material changes to APL's membership;
- (h) how APL responded to any directions or Rural Research and Development Priorities given by the Minister under the Agreement or the Guidelines;
- (i) consultation with Levy Payers and Industry Representative Bodies on:
 - a. APL's Strategic Plan; and
 - b. RD&E and Marketing Activities;
- (j) APL'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 Australian Accounting Standards;
- (l) Research and Development and marketing agreements entered into by APL with third parties;
- (m) corporate governance practices in place during the Financial Year;
- (n) the rationale for the mix of projects included in the Balanced Portfolio; and
- (o) other matters notified to APL by the Commonwealth.

13. STRATEGIC PLAN

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

13.2 APL must maintain the Strategic Plan for its portfolio and must:

- (a) consult with the stakeholders and the Commonwealth to ensure that its Strategic Plan has regard to the Principles and Guidelines; and
- (b) publish the Strategic Plan (and any updates) on its public website.

PART 3—ACTIVITIES AND FUNDING

14. PAYMENT OF FUNDS

Levy Payments

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

Matching Payments

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

APL Payments

- 14.8 APL will pay the Commonwealth:
 - (a) any expense or liability incurred by the Commonwealth in participating in the implementation of its obligations in the Act, including in collection, recovery and administration of Levy Funds;
 - (b) any refunds paid by the Commonwealth in respect of Levy Funds; and
 - (c) any Excess Matching Payments.
- 14.9 The Commonwealth may invoice APL from time to time for the amounts identified in clause 14.8 and the parties agree that APL will have made a payment required when:

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

Estimates and Forecasts

14.10 Upon request by the Commonwealth, APL must provide to the Commonwealth:

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

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

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

GST

14.13 The Commonwealth will pay Levy Funds and Matching Payments on a GST inclusive basis to APL, unless otherwise required by law.

14.14 Unless otherwise indicated or required by law, all consideration for a supply under this Agreement is inclusive of GST. The recipient of a taxable supply under this Agreement on receipt of a tax invoice must pay the supplier any GST imposed. A party may claim from the other an amount for which an input tax credit or decreasing adjustment can be obtained. GST and GST related terms in this clause 14 have the meaning that they have in the *A New Tax System (Goods and Services Tax) Act 1999*.

15. MANAGEMENT OF THE FUNDS

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

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

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

- (a) in a manner that is inconsistent with the Agreement and Guidelines;
- (b) in a manner that it is not permitted by the Act or the Corporations Act;

- (c) for the management, allocation, or investment of Levy Funds and Matching Funds with an Industry Representative Organisation other than procurement of goods and services from such organisation or sponsorship of Industry related events;
- (d) for the management, allocation, or investment of Funds in a manner which may be viewed as engaging in Agri-Political Activity).

16. APPLICATION OF THE FUNDS

16.1 APL may only spend the Funds and Voluntary Contributions:

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

Other restrictions on spending the Funds

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

16.3 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 misspent Funds to the Commonwealth within the timeframe specified in the notice.

16.4 APL 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 APL's Strategic Plan.

Repayment of Funds

16.5 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 Voluntary Contributions and those Funds required by APL to meet liabilities properly incurred in accordance with this Agreement and the Act.

17. ACKNOWLEDGEMENT OF FUNDING

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

18. INFORMATION ON ACTIVITIES

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

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

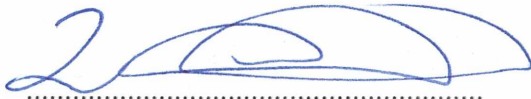
18.2 APL must make this Agreement available on its public website.

SIGNING PAGE

EXECUTED as an agreement

SIGNED on behalf of the
COMMONWEALTH OF AUSTRALIA
by the **Hon. David Littleproud MP**
Minister for Agriculture, Drought and
Emergency Management:

in the presence of: -



Signature of the Minister



Signature of the witness

24.6.20

Date

Jo Hutchinson

Name of witness

SIGNED for and on behalf of
AUSTRALIAN PORK LIMITED,
ABN 83 092 783 278
in accordance with section 127 of the
Corporations Act 2001 (Cth) on:

22 June 2020

Date

by:



Signature of Director

Andrew Baxter

Name of Director



Signature of Secretary

Damien Howse

Name of Director / Secretary