

STATUTORY FUNDING CONTRACT 2017-21

Parties

**The Minister for Agriculture and Water Resources on behalf of the
Commonwealth of Australia represented by the
Department of Agriculture and Water Resources
(ABN 24 113 085 695)**

and

**Dairy Australia Limited
(ACN 105 227 987)**

Date: 26 June 2017

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AGREEMENT DATE: 26 June 2017

BETWEEN The **MINISTER FOR AGRICULTURE AND WATER RESOURCES, ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA**, represented by the Department of Agriculture and Water Resources ABN 24 113 085 695, 18 Marcus Clarke Street, Canberra Act 2601 (**Commonwealth**).

AND DAIRY AUSTRALIA LIMITED
ACN 105 227 987, a Research and Development Corporation having its registered office at Level 5, IBM Centre, 60 City Road, **SOUTHBANK VICTORIA 3006 (DA)**.

BACKGROUND

- A. The Australian Government and Australia's primary producers recognise the need to invest in rural research and development.
- B. Australia's rural research and development corporations are the mechanism by which primary producers and the government co-invest in research and development for industry and community benefits.
- C. Dairy Australia Limited has been declared to be the Industry Services Body for the Australian Dairy Industry under section 7 of the *Dairy Produce Act 1986 (Cth)* (the Act).
- D. Section 5 of the Act provides that the Commonwealth may enter into a funding contract with the declared Industry Service Body. The Parties have entered into a funding contract since 2003.
- E. While this Agreement recognises that responsibility for corporate governance including strategic and operational decisions resides with the Board and management of DA, the Commonwealth has expectations that the DA Board and management will have in place a framework to ensure good corporate governance.
- F. The Agreement, and funding agreements in similar terms entered into with other RDCs, are intended to provide clarity, consistency and transparency across the management and accountability frameworks applicable to all RDCs.
- G. The Agreement also allows for the performance of the RDC to be reviewed by the Commonwealth and, in circumstances where issues are identified, the ability for appropriate responses to be developed.

- H. The Commonwealth and DA have agreed to enter into a further funding contract on the terms and conditions set out in this Agreement.

PART ONE – GENERAL REQUIREMENTS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

'Act' means the *Dairy Produce Act 1986* (Cth).

'Activities' means specific tasks or projects performed as part of a Program.

'Agreement' means this funding agreement and any schedules and annexures to it.

'Agreement Date' means the date on which this Agreement has been signed by both parties.

'Agreement-related Assets and Liabilities' means any assets obtained and liabilities incurred by DA through use of the Funds (including employee liabilities and other contractual commitments incurred by DA in applying the Funds in accordance with this Agreement).

'Agri-Political Activity' means engaging in or financing any form of external or internal political campaigning, and/or advocating the adoption of particular public policy and resource allocation decisions, but does not include:

- (a) an activity required or authorised under the *Corporations Act 2001* (Cth) or another law;
- (b) DA, or an officer of DA, recommending a candidate for election to the Board,
- (c) DA collecting, analysing or communicating information to the Industry, other industries, government, other stakeholders and/or the public in accordance with this Agreement;
- (d) DA making statements or providing information to the industry on matters related to DA's objects in the proper performance of DA's functions and the proper furtherance of its objects;
- (e) use by an Industry Representative Body or any other person, for the purpose of engaging in Agri-Political Activity, of information collected, analysed and communicated, or financed by DA in accordance with this Agreement;
- (f) an officer of DA or an employee of DA holding a position on the Board of any entity engaging in Agri-Political Activity;

(g) the use by an officer of DA, or an employee of DA of his or her own funds to conduct a campaign for election to the Board or the board of any entity engaging in Agri-Political Activity; or

(h) consultation with an Industry Representative Body.

'Annual Operational Plan' or **'AOP'** means the plan to implement DA's Strategic Plan, developed in accordance with clause 32 of this Agreement.

'Annual Report' means a report prepared by the Directors of DA in accordance with Chapter 2M of the Corporations Act and clause 33 of this Agreement.

'Audit Committee' means the Board committee responsible for providing guidance and recommendations to assist the Board and DA in fulfilling its responsibilities relating to risk, accounting, reporting and compliance practices of DA (currently known as the Audit and Risk Management Committee).

'Balanced Portfolio' means a research and development investment portfolio that includes a balance between long-term and short-term, high-risk and low-risk, and strategic and adaptive research needs including consideration of regional variations and needs.

'Board' means the Board of DA.

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

'Commonwealth Matching Payments' means funds paid to DA consistent with section 5 of the Act for Research and Development Activities.

'Confidential Information' means information including, but not limited to, Levy Payer Information, for which all of the following requirements are satisfied:

- (a) the information is given by one party (the disclosing party) to the other (the receiving party) for, or in connection with, this Agreement;
- (b) the information is by nature confidential; and
- (c) the disclosing party informs the receiving party that the information is confidential before or when the disclosing party gives the information to the receiving party. This may be by marking a document confidential or otherwise advising the receiving party that the information is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of the Agreement or by any other unlawful means;
- (e) is in the possession of the receiving party without restriction in relation to disclosure before being given by the disclosing party; or
- (f) has been independently developed or acquired by the receiving party.

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

‘Dairy Service Levy’ means:

- (a) a Levy imposed under Schedule 6 of the *Primary Industries (Excise) Levies Act 1999* (Cth) as the Dairy Service Levy, corporation levy, promotion levy or research levy; and
- (b) penalty amounts (if any) payable under the *Primary Industries Levies and Charges Collections Act 1991* (Cth) in relation to any of the levies in clause (a).

‘Dairy Service Payments’ means funds paid to DA consistent with section 5 of the Act for Research and Development Activities and Industry Services Activities.

‘Department’ means:

- (a) the Department of Agriculture and Water Resources 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 and Water Resources—the Department of State administered by that Minister.

‘Director’ means a person appointed or elected to the office of director of DA in accordance with its constitution.

‘Effective Date’ means the date this Agreement becomes effective, being the day after the Agreement Date.

‘Evaluation Framework’ means a framework developed in accordance with clause 31 of this Agreement for DA to undertake rigorous and regular evaluation of Activities and Programs and should include a process for evaluating the efficiency, effectiveness and impact of DA’s Activities and a means of publishing and disseminating relevant research outcomes.

‘Extension’ means facilitating the adoption of Research & Development by persons or organisations engaged in or with the industry through activities which educate and

inform them about opportunities for change or which develop their capacity to adopt changes.

‘Financial Year’ means each period from 1 July to the following 30 June occurring during the term of this Agreement, or any part of such a period occurring at the beginning or end of the term of this Agreement.

‘Former Agreement’ means the previous statutory funding agreement between the Commonwealth and DA in accordance with section 5 of the Act entered into on 26 June 2013.

‘Fraud Control Plan’ means a plan that meets the minimum acceptable compliance levels as stated in the most current version of the Australian Standard for *Fraud and Corruption Control* (AS8001–2008) prepared and maintained by DA specifying measures to minimise the risk of fraud within DA in accordance with clause 25.4.

‘Funds’ means each of the following:

- (a) Dairy Service Payments;
- (b) Commonwealth Matching Payments;
- (c) income earned or derived by DA from the Dairy Service Payments or Commonwealth Matching Payments; and
- (d) the proceeds of the sale or other disposition of assets acquired with the Funds referred to in clauses (a) to (c) of this definition.

‘Group B Members’ means the Dairy Australia members designated as such under Dairy Australia’s Constitution.

‘Guidelines’ means each of the following:

- (a) the Rural Research and Development Priorities;
- (b) the National Research Priorities determined by the Minister for Industry, Innovation and Science;
- (c) other priorities or directions communicated to DA by Commonwealth from time to time in writing; and
- (d) the Levy Principles and Guidelines, being the guidelines relating to the introduction of new levies or changes to existing levies.

‘Independent Director’ means a Director who, consistent with the *ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations (Third Edition) (2014)* is free of any interest, position, association or relationship that might

influence, or reasonably be perceived to influence, in a material respect his or her capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of DA and its members generally.

Note: for the avoidance of doubt, levy payers that are also directors are not, by reason of paying a levy to DA, in a position that might materially influence their capacity for independent judgement.

‘Industry’ means the Australian dairy industry.

‘Industry Services’ means:

- (a) marketing;
- (b) promotion;
- (c) strategic policy development, or
- (d) other activities for the benefit of the Industry (other than Research and Development Activities) that are supported by levy payers and members and that relate to a function for which there is market failure.

Note: Consistent with the Levy Principles and Guidelines, levies are imposed in relation to specific functions for which there is market failure and for which levy payers or their representatives have expressed support. Supporting information for other activities should be proportional to the scale of intended activities.

Note: market failure arguments have related to the fact that agriculture is dominated by relatively small scale businesses that, individually, do not have the capacity to invest in substantial R&D or marketing activities, and that outcomes of such work is generally non-excludable (i.e. the business that paid for the R&D/promotion cannot prevent other businesses benefiting from it). This free-rider effect discourages individual businesses from investing.

‘Industry Services Activity’ means an activity that is carried out by DA or with its support for the purposes of Industry Services.

‘Industry Representative Bodies’ means organisations that represent an Australian industry and undertake Agri-Political Activities or activities that aim to influence public policy and resource allocation decisions.

‘Industry Services Body’ means the body declared by the Minister to be the industry services body for the purposes of section 7 of the Act.

‘Insolvency Event’ means an event involving:

- (a) DA disposing of the whole or part of its assets, operations or business other than in the ordinary course of business; or
- (b) DA ceasing to carry on business; or
- (c) DA ceasing to be able to pay its debts as they become due; or
- (d) any step being taken by a mortgagee to take possession or dispose of the whole or part of DA's assets, operations or business and such act or step is not ceased, halted, terminated or otherwise removed within five days; or
- (e) any step being taken to enter into any compromise or arrangement between DA and its creditors or a class of them and such act or step is not ceased, halted, terminated or otherwise removed within five days; or
- (f) any step being 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 DA's assets, operations or business and such act or step is not ceased, halted, terminated or otherwise removed within five days.

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

'Intellectual Property Management Plan' means a plan prepared and maintained by DA specifying the procedures for management, adoption and commercialisation of Intellectual Property created by DA in accordance with clause 25.4 of this Agreement.

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

'Levy Legislation' means the *Primary Industries (Excise) Levies Act 1999 (Cth)* and the *Primary Industries Levies and Charges Collections Act 1991 (Cth)*.

'Levy Payers' means the persons who are required to pay the Dairy Service Levy under the Levy Legislation.

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

'Performance Review' means a review conducted in accordance with clause 18 of this Agreement.

'Performance Review Report' means a report prepared in accordance with clause 18 of this Agreement.

'Poll' means a Dairy Service Levy Poll, conducted in accordance with the *Dairy Produce (Dairy Service Levy Poll) Instrument 2016*, as amended from time to time.

'Program' means a group of Activities that collectively deliver services or benefits to members and levy payers or the community in general with the aim of achieving a planned outcome.

'R&D Expenditure' means expenditure on Activities that qualify as Research & Development Activities.

'RD&E Framework' means the National Primary Industries Research, Development and Extension Framework – Statement of Intent.

'RDCs' means the statutory and industry-owned research and development corporations declared under the *Primary Industries Research and Development Act 1989 (Cth)* and industry specific enabling legislation.

'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 the Industry's products; or goods that are derived from the Industry's products; or
- (b) applying such knowledge for the purpose of achieving or furthering such an objective, including through Extension.

'Research and Development Activity' means an activity that is carried out by DA or with its support for the purposes of Research and Development.

'Research and Development Funds' means Dairy Service Payments the Board has allocated to Research and Development Activities.

'Risk Management Plan' means the plan prepared and maintained by DA specifying the measures to be implemented to manage its material, commercial, legal and administrative risks in accordance with clause 25.4 of this Agreement.

‘Selection Committee’ means the committee responsible for recommending to the Board necessary and desirable director candidates for appointment or election.

‘Strategic Plan’ means the plan developed by DA in accordance with clause 30 of this Agreement.

‘Unmatched Research & Development Excess’ has the meaning set out in section 6 of the Act.

2. INTERPRETATION

2.1 In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;

- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) headings are for ease of reference only and do not affect interpretation.

3. TERM AND OPERATION OF THIS AGREEMENT

3.1 This Agreement:

- (a) takes effect on the Effective Date, and expires four years after the Agreement Date;
- (b) constitutes the entire agreement between the parties as to its subject matter; and
- (c) subject to clause 3.3, in relation to its 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.

3.2 The parties agree that the Former Agreement terminates immediately before this Agreement commences.

3.3 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.

3.4 The parties must, at least six months before the expiry of this Agreement, commence renegotiation of the Agreement in good faith with a view to entering into a new agreement relating to the subject matter of this Agreement on terms and conditions as agreed by the parties. 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 this Agreement will continue in full force and effect for an additional six months, or such other period as agreed between the parties, unless one of the parties notifies the other party in writing that it does not wish to extend this Agreement.

3.5 Unless otherwise agreed, this Agreement may only be altered by an agreement in writing signed by both parties.

4. ACCESS TO RECORDS AND USE OF INFORMATION

Access by the Commonwealth

- 4.1 The Commonwealth or its delegated representative may, for the purpose of monitoring compliance by DA with this Agreement and the Act, at reasonable times and on giving reasonable notice:
- (a) access premises occupied by or under the control of DA;
 - (b) require the provision by DA of data, records, accounts and other financial material (in a data format and storage material accessible by the Commonwealth) and any property of the Commonwealth in the possession or under the control of DA, its officers, employees or agents; and
 - (c) inspect and copy documentation, books and records, however stored, in the possession or under the control of DA, its officers, employees, or agents.
- 4.2 DA must co-operate fully with the Commonwealth or its delegated representative to enable them to exercise their rights under clause 4.
- 4.3 The rights of the Commonwealth under clause 4.1 apply equally to the Auditor-General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General's or Australian Information Commissioner's statutory functions or powers.

Confidential Information

- 4.4 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 (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) without the prior approval in writing from the other party and subject to any reasonable conditions or restrictions imposed by the other party in giving approval.
- 4.5 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.
- 4.6 The Commonwealth will not be in breach of clause 4.4 in respect of Confidential Information given by DA and held by the Commonwealth where:
- (a) 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; or
- (b) the Department shares the Confidential Information with another Commonwealth entity, where this serves the Commonwealth's legitimate interests, provided that the Department notifies the other Commonwealth entity of the confidential nature of the information and requests the same to hold and deal with that information on an in camera basis.

Note: The Department will in normal circumstances advise DA where Confidential Information is shared with other Commonwealth entities unless this information is being shared for confidential deliberations, such as to inform Cabinet processes.

Use of Reports

- 4.7 DA 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 (except to the extent permitted by clause 4.4); and
 - (b) any material, including any image or text, identified by DA as being material in which a third party owns all or part of the copyright.
- 4.8 If DA includes any material in which a third party owns all or part of the copyright in any report or plan provided to the Commonwealth under this Agreement, DA must use its best endeavours to obtain from that third party, at DA's own cost, a licence of such material for the Commonwealth on terms equivalent to those set out in clause 4.7. DA is not required to incur unreasonable costs in doing this.
- 4.9 Where DA is unable to obtain a licence as required in clause 4.8 for the Commonwealth, DA must:
- (a) notify the Commonwealth where third party copyright is included in any report or plan provided to the Commonwealth under this Agreement; and
 - (b) clearly identify third party copyright in any report or plan provided to the Commonwealth under this Agreement.

5. INDEMNITY

5.1 DA indemnifies the Commonwealth, its officers and agents against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the person claiming the indemnity) sustained or incurred as a result, whether directly or indirectly, of:

- (a) any breach of this Agreement by DA; or
- (b) any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of DA or its officers, employees or agents; or
- (c) a claim, action or proceeding that the use by the Commonwealth of material for which the Commonwealth has a licence under this Agreement infringes the copyright of a third-party.

5.2 The amount payable under an indemnity under clause 5.1 is reduced to the extent that the expenses, losses, damages and costs concerned were caused or contributed to by a breach of a licence under this Agreement by, or a negligent act or omission of the Commonwealth, or a negligent act or omission or wilful misconduct of an officer or agent of the Commonwealth.

5.3 DA agrees that a person indemnified under clause 5.1 may recover a payment under an indemnity in this Agreement before the person makes the payment in respect of which the indemnity is given.

5.4 The indemnities in this Agreement are irrevocable and survive the termination of this Agreement.

5.5 DA agrees that the Commonwealth holds the benefit of an indemnity under clause 5 in favour of an officer or agent of the Commonwealth in trust for the officer or agent.

6. AUTHORISATION OF PERSONS TO ACT

6.1 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 or the Department.

6.2 Performance of an obligation of the Commonwealth under this Agreement by the Minister or a delegate of the Minister or the Department is taken to be performance of the obligation by the Commonwealth.

7. RELATIONSHIP

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

8. ASSIGNMENT

- 8.1 DA must not assign or novate this Agreement or any right or obligation under this Agreement unless DA:

- (a) is not in breach of this Agreement; and
- (b) obtains the prior written consent of the Commonwealth; and
- (c) ensures that the assignee agrees to be bound by all of DA's obligations under this Agreement.

9. WAIVER

- 9.1 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.

10. SEVERABILITY

- 10.1 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.

11. GOVERNING LAW AND JURISDICTION

- 11.1 This Agreement is governed by the law applicable in the Australian Capital Territory.
- 11.2 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.

12. RESOLUTION OF DISPUTES

- 12.1 Except where a party seeks urgent interlocutory relief, the parties agree to deal with a dispute arising under this Agreement in accordance with clause 12 before commencing any legal proceedings.
- 12.2 The party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute.

- 12.3 During the 10 Business Days (or such longer period agreed to in writing by the parties to the dispute) after a notice is given under clause 12.2 each party to the dispute must use reasonable efforts to resolve the dispute through a meeting of representatives of each party.
- 12.4 If the dispute is not resolved by the parties at the meeting referred to in clause 12.3 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 Mediation Rules (in operation from time to time).
- 12.5 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.
- 12.6 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. Unless otherwise agreed by the parties the mediation will be deemed to commence on the appointment of the mediator.

13. NOTICE

- 13.1 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 13, as varied by any notice; or
 - (b) hand delivered or sent by prepaid post to facsimile or Electronic Communication to that address.
- 13.2 The parties' addresses are:

Commonwealth	The Secretary Department of Agriculture and Water Resources GPO Box 858 CANBERRA CITY ACT 2601 Email: Daryl.Quinlivan@agriculture.gov.au cc: RDCGovernance@agriculture.gov.au
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Dairy Australia Limited	The Chairman Dairy Australia Limited Level 5, IBM Centre 60 City Road SOUTHBANK VIC 3006 Email: governance@dairyaustralia.com.au cc: Ebraun@dairyaustralia.com.au
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13.3 A notice given in accordance with clause 13.1 is taken to be received if:

- (a) hand delivered—on delivery; or
- (b) if sent by prepaid post—5 business days after the date of posting; or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)*.

PART 2 – MANAGEMENT AND GOVERNANCE OF DA

14. CORPORATE GOVERNANCE

14.1 DA must maintain, implement and regularly review a framework of good corporate governance practice to ensure proper use and management of the Funds, which should draw on better practice guides, including the Guidelines and the *ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (Third Edition) (2014)*.

14.2 The framework under clause 14.1 must include a governance policy which includes a clear statement of DA's commitment to effective governance and cover:

- (a) Board charter;
- (b) matters reserved for the Board;
- (c) Board delegations of authority;
- (d) charter of the Audit Committee and Selection Committee;
- (e) Board appointments, composition (including requirements for diversity and a number of Independent Directors) renewal and succession planning; and
- (f) code of conduct for Directors and senior management.

BOARD

14.3 DA must establish a skills based board of directors which can demonstrate collective expertise against each of the following:

- (a) corporate governance;

- (b) production and/or processing in the dairy Industry;
- (c) finance and business management;
- (d) Research and Development; technology and technology transfer, commercialisation and adoption.

14.4 The Audit Committee must be comprised of at least half Independent Directors.

DISCLOSURE OF PECUNIARY INTERESTS

14.5 If a person is appointed as a member of a DA committee or panel concerned with the selection and funding of Research and Development Activities and/or Industry Services Activities and has a pecuniary interest that relates to the affairs under consideration by the committee or panel, DA must use best endeavours to cause that person to disclose that interest in accordance with any instructions given by DA.

15. ROLE OF DA

15.1 DA must ensure that it effectively represents and reflects the interests of its members and Levy Payers in undertaking Research and Development Activities and Industry Services Activities.

15.2 DA must ensure eligible Levy Payers who are not members of DA are advised of their entitlement to become members, and how they may become members of DA.

15.3 DA must not use Funds to:

- (a) engage in Agri-Political Activity; or
- (b) act as, or imply it is, an Industry Representative Body; or
- (c) encourage or support a campaign for the election of a candidate, person or party for public office.

DA Constitution

15.4 DA must ensure that its Constitution remains appropriate to a body performing the functions of the declared Industry Services Body and:

- (a) discuss any proposed changes to its Constitution with the Commonwealth; and
- (b) give the Commonwealth a copy of each notice of a resolution to modify its Constitution, at the same time as it gives notice of the resolution to its members; and
- (c) as soon as practicable after any modification of the Constitution is made, give the Commonwealth notice setting out the modification and explaining its effect.

16. NOTIFICATION OF SIGNIFICANT ISSUES

- 16.1 DA must give reasonable notice to the Commonwealth if it becomes aware of any significant issues that will materially affect or have affected DA or any of its subsidiaries' ability to achieve the objectives stated in its Strategic Plan or comply with its obligations under this Agreement or the Act.

17. CONFLICT OF INTEREST

- 17.1 DA warrants that, at the Agreement Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.
- 17.2 If a conflict of interest, or risk of a conflict of interest, arises in the performance of DA's obligations under this Agreement, DA must notify the Commonwealth of that conflict or risk and take steps acceptable to the Commonwealth to resolve or avoid the conflict.

18. REVIEW OF PERFORMANCE

- 18.1 DA must complete a Performance Review and deliver the final Performance Review Report to the Commonwealth at least six months before the expiry of this Agreement, but no more than 12 months before the expiry of this Agreement without the agreement of the Commonwealth.
- 18.2 DA must agree the terms of reference for the Performance Review with the Commonwealth at least three months before the Performance Review commences.
- 18.3 DA must engage, at its own cost, an independent organisation to undertake the Performance Review and prepare the Performance Review Report.
- 18.4 The organisation engaged to undertake the Performance Review required under clause 18.3 must not within the previous four years have carried out any corporate governance activity or reviews, performance audit or similar reviews of DA.
- 18.5 The terms of reference for the Performance Review must take into account DA's performance in:
- (a) meeting its obligations under this Agreement and the Act;
 - (b) implementing governance arrangements and practices for ensuring proper use and management of the Funds;
 - (c) meeting the planned outcomes and targets of its Strategic Plan;
 - (d) delivering benefits to members, Levy Payers and the broader community;

- (e) consulting with Levy Payers and Industry Representative Bodies; and
- (f) any other matters consistent with DA's Strategic Plan and the Act the Commonwealth requires the Performance Review to cover.

- 18.6 DA must provide the Commonwealth with a copy of the draft Performance Review Report at the same time as DA receives a copy.
- 18.7 DA must provide the final Performance Review Report to the Commonwealth within 14 days of acceptance by the Board.
- 18.8 DA must 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 Performance Review Report; and provide the response to the Commonwealth within 30 days of the Board's acceptance of that response.
- 18.9 The Parties must take the outcomes of the latest Performance Review Report into account when negotiating renewal of this Agreement.
- 18.10 DA must publish the most recent Performance Review Report on its public website at least 28 days prior to sending out ballot papers for any Poll.

19. PERFORMANCE MANAGEMENT

- 19.1 Notwithstanding any other provision in this Agreement, the Commonwealth may review DA's performance and compliance with this Agreement or the Act, at any time during the term of this Agreement.
- 19.2 In reviewing DA's performance and compliance with this Agreement or the Act, the Commonwealth will consult with DA and may have regard to any information available to it. The Commonwealth may also request additional reports or explanations relating to management and expenditure of the Funds from DA, including an audit report or opinion to inform its consideration.

Note: For the avoidance of doubt, consultation includes providing advice to DA as to the nature of the Commonwealth's concerns and discussing any information provided. Having regard to information available to it would include considering the potential to resolve performance concerns on the basis of information provided by DA through consultations.

- 19.3 DA must give the Commonwealth any additional reports or explanations that the Commonwealth requests as soon as reasonably practicable.

19.4 If the Commonwealth requests an audit report or opinion, DA must at its own expense:

- (a) promptly obtain the audit report or opinion from DA's auditor; or
- (b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by DA's auditor, promptly 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 after DA receives it.

19.5 The Commonwealth may:

- (a) issue a notice requiring DA to take actions in relation to the outcomes or recommendations of any review under clause 19 within a reasonable timeframe or within the timeframe (if any) specified in the notice. Before issuing a notice under clause 19.5 the Commonwealth will provide DA an opportunity to review and comment on performance issues raised in the review; or
- (b) provide a report of a review (or extract of its recommendations) to DA for its consideration and response. DA must:
 - (i) within 30 days of receiving the report, provide a notice to the Commonwealth detailing the actions it intends to undertake to address the recommendations of the report;
 - (ii) within 60 days of receiving the report, negotiate in good faith with the Commonwealth any recommendations of the report or review that DA has not agreed to implement; and
 - (iii) within 90 days of receiving the report, provide the Commonwealth with a written report detailing progress and substantiating the actions it has taken in implementing the recommendations of the report.

19.6 In each Annual Report, DA must include a written report detailing progress and substantiating the actions it has taken in implementing the recommendations of the report until all the recommendations that DA has agreed to implement under clause 19.5 (b) or the Commonwealth has directed DA to implement under clause 19.5 (a) are implemented to the satisfaction of the Commonwealth.

20. REDUCTION, SUSPENSION OR TERMINATION OF THE AGREEMENT

20.1 Without limiting any other rights or remedies the Commonwealth may have against DA arising out of or in connection with this Agreement, the Commonwealth may terminate this Agreement effective immediately, by giving notice to DA, if:

- (a) an Insolvency Event occurs; or
- (b) DA ceases to be the Industry Services Body under the Act; or
- (c) there has been a material breach by DA or its officers or its Directors of this Agreement, the Act, the Corporations Act or another law; or
- (d) there has been a change to DA's Constitution which the Commonwealth considers to be in conflict with this Agreement or the Act.

20.2 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 20.1; and/or
- (b) there has been a change in Commonwealth policy relating to raising or spending of the Funds; then subject to clause 20.3, the Commonwealth may, by providing notice to DA:
 - i. direct DA to deal with all or any of the Funds in a certain way and/or
 - ii. reduce the amount of payment of the Funds that would otherwise be made; and/or
 - iii. suspend payment of any or all of the Funds.

20.3 If an event outlined in clause 20.2(b) occurs, the Commonwealth may terminate this Agreement by undertaking the following steps in order:

- (a) provide an explanation to DA of its intention to terminate and consult with DA in relation to that explanation
- (b) issue a notice to DA advising DA it has not less than three months to respond to the explanation provided in clause 20.3(a):
- (c) have regard to any matters raised by DA in response (including, but not limited to, matters related to any long term commitments of DA); and
- (d) 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.

20.4 Where a termination notice has been issued, DA must prepare a plan for cessation of operations of DA 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; and
- (c) management of any Activities extending beyond the termination date.

21. REPAYMENT OF FUNDS ON TERMINATION

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

21.2 Amounts payable by DA in accordance with clause 21.1 are a debt due to the Commonwealth.

22. AGREEMENT-RELATED ASSETS AND LIABILITIES

22.1 Notwithstanding any other clause in this Agreement and subject to any other applicable Australian law, including directors' duties, in the event that DA is no longer the declared Industry Services Body or this Agreement is terminated, the Commonwealth may, by notice to DA, direct DA to deal with both its Agreement-related Assets and Liabilities in a manner determined by the Commonwealth.

Note: This clause relates to assets and liabilities acquired using the Funds, not to assets and liabilities using non-Fund resources.

22.2 DA must ensure that it has appropriate contractual or other rights enabling it to deal with its Agreement-related Assets and Liabilities in the manner determined by the Commonwealth in accordance with clause 22.1.

22.3 For the purposes of clause 22.1, the Commonwealth may request a list of all Agreement-related Assets and Liabilities from DA. The list must be provided to the Commonwealth within 10 Business Days of receiving the request.

22.4 Where the Agreement is terminated, clause 22 survives termination of this Agreement.

23. CONSULTATIONS WITH THE COMMONWEALTH

23.1 The Chair of the Board, or in the Chair's absence, a Director nominated by the Chair of the Board must meet with the Commonwealth at not more than six-monthly intervals from the Effective Date or at any other time requested by the Commonwealth on reasonable notice, to brief the Commonwealth on DA's performance of its functions including:

- (a) progress on implementing DA's Annual Operational Plan and Strategic Plan and the other plans referred to in clause 25.4;
- (b) progress on the implementation of the relevant sectoral and cross-sectoral strategies under the RD&E Framework;
- (c) consultation with levy payers and Industry Representative Bodies;
- (d) measures taken to enhance corporate governance in accordance with clause 14;
- (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.

23.2 Notwithstanding clause 23.1, DA may, at any time, seek consultations with the Commonwealth in relation to any matter connected with this Agreement.

Changes to the Guidelines

23.3 The Commonwealth may vary the Guidelines provided that the Commonwealth:

- (a) consults with DA prior to the variation, including to discuss the need for any ministerial direction under the Act and its likely impact on DA's commercial activities; and
- (b) gives DA a reasonable period to implement the variation.

23.4 Where the Board considers that a proposed variation to the Guidelines may, if issued:

- (a) require the Directors to act, or omit to act, in a manner that may breach any duty owed by the Directors to any person;
- (b) cause the contravention of any law;
- (c) be likely to prejudice commercial activities carried on by or on behalf of DA; or
- (d) be contrary to the public interest or the best interest of the industry

then the Directors must notify the Commonwealth.

PART THREE – ACTIVITIES AND FUNDING

24. PAYMENT OF FUNDS

- 24.1 The Commonwealth must pay to DA Dairy Service Payments and Commonwealth Matching Payments by a method agreed by both parties.
- 24.2 The Commonwealth must pay the Dairy Service Payments amounts to DA as soon as reasonably practicable after the Commonwealth receives the Dairy Service Payments in cleared funds. Payments to DA must be made as soon as reasonably practicable after the 15th day and the final Business Day of each month.
- 24.3 Any Unmatched Research & Development Excess will be rolled over into the following financial years in accordance with section 6 of the Act.
- 24.4 The Commonwealth must give DA, a non-binding estimate of the amount of costs incurred by the Commonwealth in relation to the collection, recovery and administration of the Levy.
- 24.5 DA must provide a non-binding estimate of the amount of the dairy service levy and matching payment payable to DA for the current and forward financial years upon request by the Commonwealth.
- 24.6 Subject to applicable limits under the Act, the Commonwealth must use its reasonable endeavours to pay the Commonwealth Matching Funds to DA as soon as practicable after receiving from DA:
- a) a valid claim for payment; and
 - b) evidence satisfactory to the Commonwealth that DA has spent the amount that forms the basis of the claim on Research and Development Activities.
- 24.7 For the purposes of clause 24.6 (b) certificate signed by the Chief Executive Officer (or equivalent), the Chief Financial Officer or the Secretary of DA, certifying that DA has spent a particular amount on Research and Development, is satisfactory evidence in the absence of any evidence to the contrary.
- 24.8 The final claim for a Financial Year must be supported by an independent audit report which confirms:
- (a) the total amount of R&D Expenditure for the relevant Financial Year; and

- (b) that claims for Commonwealth Matching Payments under clause 24.6 and the declared R&D Expenditure for that Financial Year are accurate and in accordance with the Act and this Agreement.

25. MANAGEMENT OF THE FUNDS

25.1 DA must establish and maintain accounting systems, processes and controls to ensure:

- (a) 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.

25.2 DA must notify the Commonwealth of the details of the systems, procedures and controls established in accordance with clause 25.1 on request.

25.3 DA must not delegate or outsource the responsibility for the management, allocation, or investment of Funds to third parties, including to Industry Representative Bodies.

Note: For the avoidance of doubt, while DA must not delegate or outsource responsibility for the provision of Industry Services and Research and Development Activities, this clause does not prevent DA from making arrangements to invest its reserves prior to investment in Industry Services and Research and Development Activities. Nor does it prevent DA from investing Funds in conjunction with third parties to undertake Industry Services and Research and Development Activities (for example, co-investment in a CRC).

25.4 DA must maintain, implement and regularly review a Risk Management Plan, a Fraud Control Plan and an Intellectual Property Management Plan.

25.5 DA must provide any material variations or updates to the Risk Management Plan, Fraud Control Plan and Intellectual Property Management Plan, to the Commonwealth within 30 days of the variations or updates being adopted by DA.

25.6 The accounting systems, processes and controls to manage the Funds with clause 25.1 must take into account the Risk Management Plan, Fraud Control Plan and Cost Allocation Policy.

25.7 DA 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; and
- (b) keep the accounts and records referred to in clause 25.7(a) separately in relation to the Dairy Service Payments and Commonwealth Matching Payments; and
- (c) keep accounts and records referred to in clause 25.7(a) to enable disclosure of the full costs of the Research and Development and Industry Services programs.

26. APPLICATION OF THE FUNDS

26.1 DA must only spend the Funds:

- (a) in accordance with the Act and this Agreement; and
- (b) in a manner that is consistent with:
 - (i) its current Strategic Plan and AOP; and
 - (ii) the Guidelines

26.2 Dairy Service Payments may only be applied by DA to Research and Development Activities and Industry Services Activities related to the industry and for the benefit of members and levy payers.

26.3 Commonwealth Matching Payments may only be claimed or applied by DA for, or in relation to, Research and Development Activities related to the industry, for the benefit of members and levy payers, and the Australian community generally and/or to make payments to the Commonwealth under section 6(4) of the Act.

26.4 DA must not spend the Funds on making payments to Industry Representative Bodies. This does not preclude:

- (a) payments by way of membership fees where that membership contributes to DA pursuing the objects of the Act.
- (b) payments to procure goods or services in accordance with DA's procurement policy, and when all of the following conditions are met:
 - (i) the procurement process is open, transparent and, competitive;
 - (ii) the conditions of the transaction between DA and the relevant body are the same as they would be for an arm's length transaction with any third party providing those goods or services; and

- (iii) the arrangement for goods and services incorporates appropriate measures to demonstrate the performance of the relevant body undertaking the task. This assessment must be provided to the Commonwealth on request.

Note: for the avoidance of doubt, this does not preclude DA paying travel or other incidental costs for or to Industry Representative Bodies, provided the payment is in accordance with Clause 26.4 (b) (i) and is consistent with DA's procurement and related policies.

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

26.6 DA must publish a copy of any written notice under clause 26.5 in its next annual report.

27. ACKNOWLEDGEMENT OF FUNDING

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

28. CONSULTATIONS WITH INDUSTRY

28.1 DA must, communicate directly with Levy Payers and members

- (a) as part of reviewing priorities for its Research and Development Activities and Industry Services Activities; and
- (b) to report on DA's performance against the Strategic Plan and the Annual Operational Plan.

28.2 DA must meet with Industry Representative Bodies at not more than six-monthly intervals:

- (a) as part of reviewing industry priorities for Research and Development and Industry Services investments, including any regional equity considerations; and
- (b) to report on DA's performance against the Strategic Plan and the Annual Operational Plan.

29. INFORMATION ON ACTIVITIES

29.1 DA must ensure the following is available on its public website:

- (a) this Agreement;
- (b) DA's governance policy developed in accordance with clause 14.2
- (c) DA's Strategic Plan, including the consultation plan developed in accordance with clause 30.3;
- (d) DA's Annual Report;
- (e) the Performance Review Report and DA's response to its recommendations;
- (f) DA's Evaluation Framework and evaluation outcomes;
- (g) an overview of DA's Annual Operating Plan, including:
 - (i) the priorities used by DA to determine which projects it will fund;
 - (ii) an overview of planned outcomes and Programs to achieve those outcomes; and
 - (iii) key Research and Development Activities (including Extension) and Industry Services Activities which DA is funding.
- (h) details of industry consultation including feedback received:
 - (i) from Industry Representative Bodies through consultation conducted under clause 28; and
 - (ii) on the development of DA's strategic plan under clause 30.

29.2 The information to be published under the preceding subclause shall not include information of the following kinds:

- (a) personal information as defined in the *Privacy Act 1988* (Cth), unless permitted by the Privacy Act;
- (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; and
- (c) information which would, or could reasonably be expected to damage:
 - (i) DA;
 - (ii) the Industry; or
 - (iii) the national interest.

29.3 Where DA invests Funds towards projects initiated under an open call or tender process, DA must provide feedback on the outcomes of funding applications to all applicants.

30. STRATEGIC PLAN

30.1 DA must 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) obtain the Commonwealth's endorsement of any proposed new or amended draft Strategic Plan before the Strategic Plan comes into effect;

Note: Where the Commonwealth has advised DA that it has concerns that relate to a part of the proposed new or amended Strategic Plan, the Parties expect that DA would act in accordance with the balance of the proposed new or amended Strategic Plan following the Commonwealth's advice.

- (c) provide the Commonwealth with a copy of any new or amended Strategic Plan within 30 days of Board approval;
- (d) publish the Strategic Plan on its public website within 30 days of approval; and
- (e) consult with the Commonwealth during the term of this Agreement to ensure its Strategic Plan has regard to the Guidelines.

30.2 The Strategic Plan must include:

- (a) DA's roles and responsibilities as the Industry Services Body under the Act including DA's:
 - (i) obligations in delivering services to members and Levy Payers; and
 - (ii) responsibilities for proper use and management of the Funds;
- (b) an overview of the priorities and outcomes identified by members, levy payers and Industry Representative Bodies during consultations, including an explanation on the extent to which these priorities are reflected in the Strategic Plan;
- (c) if applicable, details on how the outcomes of the Poll have informed the development of the Strategic Plan;
- (d) key investment priorities and planned outcomes for the period of the Strategic Plan;
- (e) details of the Programs that DA intends to deliver Research and Development Activities and Industry Services Activities to achieve the planned outcomes, including details of key activities under those Programs;
- (f) key deliverables and performance indicators and that clearly set out how planned outcomes will be achieved;

- (g) details of planned evaluation activities to demonstrate the extent to which planned outcomes have been delivered;
- (h) details on how the Programs link, and give effect, to the Guidelines
- (i) planned collaboration with other RDCs on priority Research and Development issues;
- (j) planned contributions to the implementation of relevant industry sector and cross-sectoral strategies under the National Primary Industries RD&E Framework;
- (k) details on how Extension, technology transfer, and commercialisation of R&D will be addressed and demonstrating that Extension and adoption are incorporated into the planning and approval processes;
- (l) estimates of income and expenditure for the life of the plan including broad estimates of expenditure separately for the Research and Development and Industry Services Programs; and
- (m) an overview of DA's approach to ensuring a Balanced Portfolio of investment appropriate to the industry.

30.3 In developing or varying the Strategic Plan, DA must develop a consultation plan including, details of proposed consultations with:

- (a) Levy Payers;
- (b) the Commonwealth;
- (c) Industry Representative Bodies; and
- (d) other RDCs as appropriate.

30.4 The consultation plan must include provision for online and electronic submissions to be made.

30.5 The consultation plan must be discussed with peak Dairy producer industry representative bodies and agreed by the Commonwealth before consultation on development or variation of the Strategic Plan commences.

30.6 For minor variations to an existing Strategic Plan, DA may request approval from the Commonwealth not to develop a consultation plan.

31. EVALUATION FRAMEWORK

31.1 DA must develop an Evaluation Framework within six months of the Effective Date.

The Evaluation Framework must:

- (a) be consistent with DA's Strategic Plan;
- (b) ensure that key performance related information is routinely collected and monitored;
- (c) include a structured plan for the systematic evaluation of the efficiency, effectiveness and impact of DA's key investments; and
- (d) include a means of publishing and disseminating relevant Research and Development outcomes and the outcomes of evaluations.

31.2 DA must:

- (a) consult with the Commonwealth in preparing the Evaluation Framework;
- (b) participate in any Commonwealth or collective RDC evaluation project relevant to DA's operations; and
- (c) demonstrate DA's commitment to provide adequate expenditure for this purpose.

31.3 The Evaluation Framework must be published on its public website within 30 days of being adopted by DA.

32. ANNUAL OPERATIONAL PLAN

32.1 Before 1 July each year, DA must provide to the Commonwealth with an Annual Operational Plan to implement its Strategic Plan during the next Financial Year. The AOP must set out:

- (a) all activities to be funded by DA during the next Financial Year;
- (b) performance indicators, key deliverables, timetables and milestones for DA's proposed activities and expenditure which demonstrate progress being made towards planned outcomes;
- (c) estimates of all income and expenditure for the Financial Year separately detailed; and
- (d) detailed information on how DA intends to implement and operationalise a Balanced Portfolio for the next Financial Year.

32.2 DA must provide any material variations or updates to the Annual Operating Plan, to the Commonwealth within 30 days of the variations or updates being adopted by DA.

33. ANNUAL REPORT

- 33.1 DA must prepare its Annual Report in accordance with the requirements of the Corporations Act, the Australian Charities and Not-for-profits Commission Act and this Agreement.
- 33.2 DA must prepare and submit its Annual Report to the Minister for tabling in accordance with clause 33.1.
- 33.3 DA must provide its Annual Report to the Minister as soon as practicable after the Annual General Meeting and at the same time provide the Department with sufficient copies for tabling and four additional copies.
- 33.4 DA must follow the instructions on tabling as provided by the Department.
- 33.5 The Annual Report prepared in accordance with clause 33.1 should include comprehensive coverage of:
- (a) sources of all income separately identified;
 - (b) the full cost of the Research and Development and Industry Services Programs, with costs being allocated in accordance with the Cost Allocation Policy;
 - (c) progress against key performance indicators specified in the Strategic Plan and Annual Operating Plan;
 - (d) key Industry Services and Research and Development Programs deliverables and associated outcomes achieved;
 - (e) Intellectual Property creation and protection including management of Intellectual Property, arising from Research and Development Activities or acquired with the Funds;
 - (f) subsidiaries and joint ventures formed;
 - (g) collaboration with members and levy payers and other research providers;
 - (h) directions given by the Minister;
 - (i) consultation undertaken with stakeholders referred to in clause 30.3 on DA's Strategic Plan, Annual Operational Plan, Programs and Activities;
 - (j) details of senior executive and board remuneration;
 - (k) the rationale for the mix of projects included in the Balanced Portfolio; and
 - (l) any other matters relevant to DA's Annual Report notified to DA by the Commonwealth.

33.6 Additional comprehensive information beyond the requirements of the Corporations Act can be included in the Annual report or provided separately to the Minister at the same time as providing DA's Annual Report.

34. COMPLIANCE AUDIT REPORT

34.1 DA must, within five months after the end of its Financial Year, give the Commonwealth a report (**Compliance Audit Report**) providing an audit opinion on whether DA has complied with its obligations under clauses 25 and 26 during the financial year. The Compliance Audit Report must:

- (a) be prepared in accordance with relevant Australian Auditing and Assurance Standards;
- (b) include a review of the efficacy of the accounting systems processes and controls required under clause 25.1;
- (c) include any qualifications to the Compliance Audit Report and any material incidences of non-compliance; and
- (d) contain a detailed explanation of any incidence of material non-compliance.

34.2 The Compliance Audit Report must include a statement that it has been prepared for the Commonwealth for the purposes of this Agreement.

35. CERTIFICATION REPORT

35.1 DA must, within five months after the end of the Financial Year, give the Minister a report (**Certification Report**) from DA's Board of Directors signed by the Chair of the Board and the Chief Executive Officer of DA:

- (a) certifying whether DA has complied with its obligations under the Act and this Agreement during the financial year;
- (b) confirming that the Audit Committee has carried out all of its functions/responsibilities in accordance with its charter;
- (c) detailing any material non-compliance and providing an explanation of the non-compliance; and
- (d) containing an acknowledgement that the Certification Report will be relied upon by the Commonwealth.

SIGNING PAGE

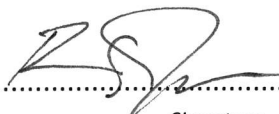
EXECUTED as an agreement

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA

by

the Hon. Barnaby Joyce MP

Minister for Agriculture and Water
Resources


.....
Signature

21 JUN 2017

.....
Date

in the presence of



.....
Signature of witness



.....
Name of witness

SIGNED for and on behalf of

Dairy Australia Limited

by


.....
Name of signatory


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Position of signatory


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Signature


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Date

in the presence of


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Name of witness


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Signature of witness