



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

# **STATUTORY FUNDING CONTRACT**

## **2021–2031**

### **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**

**Dairy Australia Limited (Dairy Australia)**

**(ABN 105 227 987)**

Date: 22 June 2021

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**AGREEMENT DATE:**

**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 (Paul.McNamara@awe.gov.au) (**Commonwealth**)

**AND** **DAIRY AUSTRALIA LIMITED** ACN 105 227 987, having its registered office at Level 5, 60 City Road, Southbank, Victoria 3006 (Gerry.Eeman@dairyaustralia.com.au) (**Dairy Australia**).

(collectively, 'the parties')

**RECITALS**

- A. Section 7 of the *Dairy Produce Act 1986* (Cth) (**the Act**) allows the Minister to declare a company to be the industry services body, for the purposes of the Act.
- B. Section 5 of the Act allows the Minister, on behalf of the Commonwealth, to enter into a contract with a company so that the contract provides for the Commonwealth to make Dairy Service Payments and Matching Payments to the company.
- C. The Minister may, in writing, declare a company to be the industry services body if the Commonwealth and the company have entered into a contract and the Minister is satisfied that, if the company is so declared, it will comply with its obligations under the contract and the Act.
- D. The Commonwealth has developed Performance Principles to guide Dairy Australia's performance under this Agreement.
- E. In that context, the parties have agreed to enter into a deed of agreement on the terms and conditions set out in this Agreement, including applying the Performance Principles set out in this Agreement.

## **PART 1—GENERAL REQUIREMENTS**

### **1. DEFINITIONS**

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

In this Agreement, unless the contrary intention appears:

**'Act'** means the Act identified in Recital A.

**'Agreement'** means this statutory 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 campaigning, including:

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

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

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

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

**'Annual Report'** means a report prepared by Dairy Australia in accordance with clause 12.1.

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

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

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

**'Chair'** means the Chair or the Chairperson of Dairy Australia.

**'Confidential Information'** means all information that the parties:

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

**'Corporations Act'** means the *Corporations Act 2001* (Cth).

**'Declaration'** means the declaration made by the Minister declaring Dairy Australia as the industry services body for the purposes of the Act, as set out in Recital C.

**'Director'** means a director of Dairy Australia appointed in accordance with the constitution of Dairy Australia.

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

**'Excess Matching Payment'** means any amount of Matching Payment in a financial year that exceeds 0.5% of the amount of the Gross Value of Production for that financial year.

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

**'Eligible R&D Expenditure'** means expenditure on activities that qualify as R&D Activities.

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

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

- (a) Levy Funds;
- (b) Matching Payments;
- (c) Voluntary Contributions;
- (d) income earned or derived by Dairy Australia from Funds referred to in paragraphs (a) to (c); and
- (e) 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 whole milk produced in Australia for the financial year.

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

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

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

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

**'Industry'** means the Australian dairy industry.

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

**'Insolvency Event'** means:

- (a) Dairy Australia disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) Dairy Australia ceases to carry on business;
- (c) Dairy Australia 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 Dairy Australia's assets, operations or business;
- (e) any step is taken to enter into any compromise or arrangement between Dairy Australia 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 Dairy Australia's assets, operations of business.

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

**'Levy Funds'** means the amounts which the Act authorises the Agreement to provide to be paid by the Commonwealth to Dairy Australia as Dairy Service Payments.

**'Levy Payer'** means any person who is required to pay a Levy that is attached to Dairy Australia.

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

**'Matching Payments'** means the amounts by that name which the Act authorises the Agreement to provide to be paid by the Commonwealth to Dairy Australia.

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

**'Performance Principles'** means the principles set out in clause 10.2.

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

**'R&D' and 'R&D Activities'** means an activity that is carried out by Dairy Australia or with its support for the purposes of research and development.

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

**'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 Dairy Australia from time to time by the Minister.

**'Secretary'** means Secretary of the department.

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

- (a) governance, risk and compliance;
- (b) finance, accounting and audit;
- (c) R&D, innovation, technology and technology transfer, commercialisation and adoption of R&D;
- (d) product promotion and marketing (including communications);
- (e) exports and export market development;
- (f) dairy industry knowledge, including practical production and/or processing experience;
- and
- (g) public policy and administration.

**'Strategic Plan'** means a plan prepared by Dairy Australia in accordance with clause 13.

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

**'Voluntary Contributions'** means payments made to Dairy Australia for the purpose of funding R&D Activities and Marketing Activities, excluding payments of Levy Funds and Matching Payments.

## **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) Dairy Australia must, at all times, perform its obligations under this Agreement in accordance with all relevant legislation in force from time to time, including the Act, the Corporations Act and the Privacy Act; and
  - (b) this Agreement does not set out all of the statutory conditions and obligations that apply to Dairy Australia and does not in any way vary or reduce Dairy Australia'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 Dairy Australia, if:



- (a) the Minister revokes the Declaration and Dairy Australia ceases to be an industry services body for the purposes of the Act; or
- (b) 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
- (c) an Insolvency Event occurs (provided that such termination is enforceable at law); or
- (d) there has been a material breach of this Agreement, the Act or another law, by Dairy Australia; or
- (e) 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) Dairy Australia 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 Dairy Australia, direct Dairy Australia 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 Dairy Australia 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 Dairy Australia must take the actions specified in the notice.

#### ***Transition Out Plan***

4.4 The Commonwealth may request Dairy Australia 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 Dairy Australia 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 Dairy Australia must comply with any changes requested by the Commonwealth.
- 4.7 Prior to the Minister revoking the Declaration declaring Dairy Australia as the industry services body under the Act, or the Commonwealth repealing or amending the Act such that Dairy Australia will no longer be able to exercise its rights as the industry services body under the Act or no longer have any Levy attached, the Commonwealth will endeavour to give sufficient notice to Dairy Australia to allow Dairy Australia to implement the approved Transition Out Plan, as directed by the Commonwealth.

## **5. RESOLUTION OF DISPUTES**

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

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

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

6.1 Subject to clause 6.2, the Commonwealth or its nominated representative may, for the purpose of monitoring Dairy Australia's performance under the Act, the Agreement and the Guidelines:

- (a) access premises occupied by or under the control of Dairy Australia;
- (b) access data, records, accounts and other financial material and any property of the Commonwealth in the possession or under the control of Dairy Australia, its officers, employees or agents; and
- (c) inspect any documentation, books and records, however stored, in the possession or under the control of Dairy Australia, its officers, employees, or agents.

6.2 The Commonwealth will:

- (a) provide reasonable notice to Dairy Australia in respect of a request to access or inspect under clause 6.1; and
- (b) comply with Dairy Australia's reasonable safety and security requirements in undertaking that access.

6.3 Dairy Australia 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, Dairy Australia 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 Dairy Australia 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 Dairy Australia as being material in which a third party owns all or part of the intellectual property rights, and in respect of which Dairy Australia 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 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; or
  - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)*,
- but if the delivery, 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 DAIRY AUSTRALIA**

### **8. CORPORATE GOVERNANCE**

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

### **9. ROLE OF DAIRY AUSTRALIA**

- 9.1 The parties acknowledge that the industry services body should not engage in Agri-Political Activities.
- 9.2 Dairy Australia must not, at any time, act as an Industry Representative Organisation or reference or provide information which implies to stakeholders or trading partners that Dairy Australia is an Industry Representative Organisation.
- 9.3 Dairy Australia must, at all times, act in an apolitical and unbiased manner.
- 9.4 Dairy Australia must not engage in Agri-Political Activity.
- 9.5 Dairy Australia may seek advice from the Commonwealth on whether a particular activity would constitute an Agri-Political Activity.
- 9.6 The Commonwealth may issue a notice requiring Dairy Australia to take action to address Agri-Political Activities. Dairy Australia must comply with such a notice within the timeframe that is specified or if no timeframe is specified, within a reasonable timeframe.

### **10. PERFORMANCE**

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

- 10.1 Subject to clause 2.6, Dairy Australia must at all times act in accordance with and uphold this Agreement, including the Guidelines and the Performance Principles under clause 10.2.
- 10.2 The Performance Principles are:
  - (a) to engage stakeholders to identify RD&E priorities and activities that provide benefits to the Industry;
  - (b) to ensure RD&E priorities and activities (and Marketing Activities) are strategic, collaborative and targeted to improve profitability, productivity, competitiveness and preparedness for future opportunities and challenges through a Balanced Portfolio;

- (c) to undertake strategic and sustained cross-industry and cross sectoral collaboration that addresses shared challenges and draws on experience from other sectors;
- (d) for governance arrangements and practices to fulfil legislative requirements and align with contemporary Australian best practice for open, transparent and proper use and management of Funds; and
- (e) to demonstrate positive outcomes and delivery of RD&E and marketing benefits to Levy Payers and the Australian community in general, and show continuous improvement in governance and administrative efficiency.

10.3 If, at any time, Dairy Australia 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 Dairy Australia 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 Dairy Australia'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 Dairy Australia to obtain, at Dairy Australia's expense, an independent review on Dairy Australia's performance against the Performance Principles. In that case, the following process will apply:

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

- (a) in the independent review; or
- (b) in relation to Dairy Australia's performance against the Performance Principles, within the timeframe specified in the notice or as otherwise agreed by the parties.

10.8 Dairy Australia 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 Dairy Australia's performance and achievement of the Performance Principles;
- (b) discuss and demonstrate implementation of measures taken to address any underperformance identified in an independent review, Annual Performance Meetings, and/or other fora;
- (c) discuss issues relating to Dairy Australia's compliance with the Act, this Agreement and the Guidelines; and
- (d) discuss other matters relevant to Dairy Australia or its Industry.

11.2 The Annual Performance Meeting may be undertaken in any format that is agreed in writing between the parties. (That may be, for example, a structured meeting, a discussion, a presentation of reports and documents, a presentation of an independent review or report, a demonstration of outcomes, an interactive site visit or another format proposed by Dairy Australia). For clarity, Dairy Australia 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 Dairy Australia 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 Dairy Australia, and give Dairy Australia a reasonable period to implement the effects of the variation or new Guidelines.

**12. ANNUAL REPORTS**

12.1 By 31 December of each year, Dairy Australia 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 under applicable legislation, and includes:

- (a) sources of income allowing for separate identification of Levy Funds, Matching Payments and Voluntary Contributions;
- (b) the full cost of the R&D Activities and Marketing Activities, and the cost of all other activities funded by the Levy Funds and Matching Payments; and
- (c) key RD&E and marketing deliverables and associated outcomes achieved,
- (d) and also includes significant R&D Activities and transactions undertaken in the year in the conduct of Dairy Australia's functions as the industry services body;
- (e) progress made in implementing the Strategic Plan and Performance Principles including progress against any key performance indicators;
- (f) an assessment of the efficiency and effectiveness of Dairy Australia's investments;
- (g) material changes to Dairy Australia's membership;
- (h) how Dairy Australia responded to any directions made under the Act or Rural Research and Development Priorities given by the Minister under the Agreement or the Guidelines;
- (i) consultation with Levy Payers and Industry Representative Organisations on:
  - a. Dairy Australia's Strategic Plan; and
  - b. RD&E and Marketing Activities;
- (j) Dairy Australia's contributions to relevant industry sectoral and cross-sectoral strategies, including the strategies under the RD&E Framework;
- (k) details of senior executive and Board remuneration in the format required by the relevant Australian Accounting Standards;



- (l) Research and Development and marketing agreements entered into by Dairy Australia 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 Dairy Australia by the Commonwealth.

12.2 The parties acknowledge that Dairy Australia must, within 14 days of lodging its Annual Financial Report with the applicable regulators, give the Minister a copy of the report. At the same time, Dairy Australia must provide the Department sufficient copies for tabling in a format that accords with any applicable guidelines for the presentation of documents tabled in the Parliament of the Commonwealth of Australia.

### **13. STRATEGIC PLAN**

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

13.2 Dairy Australia may satisfy the requirement to have an approved Strategic Plan in place at the date of this Agreement if the following conditions are met:

- (a) Dairy Australia has an existing strategic plan at the date of this agreement that has been approved by the Commonwealth; and
- (b) Dairy Australia provides a transition statement in relation to the existing strategic plan that has regard to the Performance Principles and Guidelines.

13.3 Dairy Australia must implement and maintain a Strategic Plan for its portfolio and must:

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

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

## **PART 3—ACTIVITIES AND FUNDING**

### **14. PAYMENT OF FUNDS**

#### ***Levy Payments***

- 14.1 The Commonwealth will pay Levy Funds to Dairy Australia in accordance with the Agreement.
- 14.2 The Commonwealth will pay Levy Funds soon as reasonably practicable after the Levy has been received in cleared funds.

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

- 14.3 The Commonwealth will pay Matching Payments to Dairy Australia in accordance with the Agreement.
- 14.4 The Commonwealth will pay Matching Payments to Dairy Australia of amounts equal to the one-half of Dairy Australia's Eligible R&D Expenditure, subject to the total appropriation amount worked out under paragraph 6(3) of the Act and, to the Gross Value of Production for each financial year.
- 14.5 The Commonwealth will pay the Matching Payments to Dairy Australia as soon as reasonably practicable after receiving from Dairy Australia:
- (a) a correctly rendered claim for payment identifying an amount that is one-half of Dairy Australia's Eligible R&D Expenditure; and
  - (b) satisfactory substantiation that Dairy Australia has met all the requirements set out in the Act and under this Agreement to trigger its right to receive the Matching Payments.
- 14.6 For the purposes of clause 14.5(b), a certificate stating compliance with the relevant requirements of the Act and this Agreement, signed by the Managing Director or the Chief Financial Officer (or equivalent) of Dairy Australia, is satisfactory substantiation, in the absence of any evidence to the contrary.
- 14.7 Dairy Australia's final claim for Matching Payments in respect of Eligible R&D Expenditure made in a Financial Year must be supported by an independent audit report of Dairy Australia's financial statements. (This work may be completed in accordance with the Standard on Assurance Engagements ASAE 3100.)
- 14.8 Upon request, Dairy Australia must provide a reconciliation between the total amount of Eligible 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.

#### ***Dairy Australia Payments***

- 14.9 Dairy Australia will pay the Commonwealth:
- (a) any expense incurred by the Commonwealth in collection, recovery and administration of Levy Funds;
  - (b) any refunds paid by the Commonwealth in respect of Levy Funds; and

(c) any Excess Matching Payments.

14.10 The Commonwealth may invoice Dairy Australia from time to time for the amounts identified in clause 14.9 and the parties agree that Dairy Australia will have made a payment by either:

- (a) the Commonwealth reducing a payment of Levy Funds and/or Matching Payments by an amount equal to the payment required; or
- (b) Dairy Australia making the payment to the Commonwealth by direct deposit or other method agreed between the parties.

***Estimates and Forecasts***

14.11 Upon request by the Commonwealth, Dairy Australia must provide to the Commonwealth:

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

14.12 The Commonwealth may, if requested, give Dairy Australia 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.

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

***GST***

14.14 The Commonwealth will pay Levy Funds and Matching Payments on a GST exclusive basis to Dairy Australia, unless otherwise required by law.

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

**15. MANAGEMENT OF THE FUNDS**

15.1 Dairy Australia 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 Dairy Australia must notify the Commonwealth of the details of the systems, procedures and controls established in accordance with clause 15.1 on request.
- 15.3 Dairy Australia must not enter into any agency arrangement, subcontract or other outsourcing arrangement:
- (a) in a manner that is inconsistent with the Agreement and Guidelines;
  - (b) in a manner that it is not permitted by the Act or the Corporation Act;
  - (c) for the management, allocation, or investment of Levy Funds and Matching Payments 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 Dairy Australia must only spend the Funds:
- (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.
- 16.2 Specifically, Dairy Australia must only spend:
- (a) Levy Funds on Marketing Activities, strategic policy development, R&D Activities or other activities, for the benefit of the Australian dairy industry; and
  - (b) Matching Payments on R&D Activities for the benefit of the Australian dairy industry and the Australian community generally and any Excess Matching Payments.

### ***Other restrictions on spending the Funds***

- 16.3 Dairy Australia must develop, implement and maintain an appropriate Balanced Portfolio.
- 16.4 If Dairy Australia spends the Funds other than in accordance with this Agreement or the Act, the Commonwealth may, by written notice to Dairy Australia, require Dairy Australia to repay all or a part of those misspent Funds to the Commonwealth within the timeframe specified in the notice.
- 16.5 Dairy Australia 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 Dairy Australia's Strategic Plan.

### ***Repayment of Funds***

16.6 If this Agreement is terminated, the Commonwealth may, by notice to Dairy Australia, require Dairy Australia to repay to the Commonwealth, by the date specified in the notice, all or any part of the Funds held by Dairy Australia, excluding Voluntary Contributions and those Funds required by Dairy Australia 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, Dairy Australia must ensure that all significant publications and publicity by Dairy Australia acknowledge the provision of funding by Levy Payers and the Commonwealth, as applicable.

### **18. INFORMATION ON ACTIVITIES**

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

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

18.2 Dairy Australia must make this Agreement available on its public website.

**SIGNING PAGE**

EXECUTED as an agreement

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

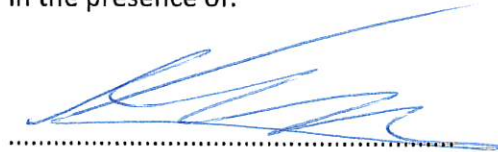


Signature of the Minister

22 June 2021

Date

in the presence of:



Signature of the witness

Michael Negorenich

Name of witness

SIGNED, SEALED AND DELIVERED for and on behalf of **DAIRY AUSTRALIA LIMITED, ACN 105 227 987** in accordance with section 127 of the Corporations Act 2001 (Cth) on:

15 JUNE 2021

Date

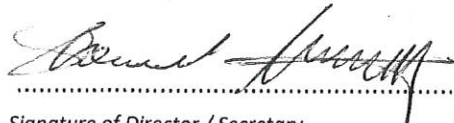
by:



Signature of Director

DAVID NATION

Name of Director



Signature of Director / Secretary

SHERIDAN VERWEY

Name of Director / Secretary