



Australian Government
Department of Agriculture



Australian Government
Australian Grape and Wine Authority

FUNDING AGREEMENT

2015–19

between the

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

ABN 24 113 085 695

and the

Australian Grape and Wine Authority

ABN 89 636 749 924

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AGREEMENT DATE

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

AND The **AUSTRALIAN GRAPE AND WINE AUTHORITY** ABN 89 636 749 924, a statutory authority having its registered office at Industry House, Cnr Botanic and Hackney Roads, Adelaide SA 5000.

RECITALS

- A. The Australian Grape and Wine Authority (AGWA) is established under the *Australian Grape and Wine Authority Act 2013* (the Act).
- B. AGWA was established on 1 July 2014 as a new authority to undertake the research and development and extension functions of the former Grape and Wine Development Corporation and regulatory, marketing and other functions of the Wine Australia Corporation. AGWA's functions are as specified in section 7 of the Act.
- C. Section 35(1c) of the Act allows the Minister to enter into a funding agreement with AGWA.
- D. The Commonwealth and AGWA have agreed to enter into a funding agreement (Agreement) on the terms and conditions set out in this Agreement.

PREAMBLE

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

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

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

The Australian Government has previously entered into agreements with the RDCs which are industry-owned companies as a means to define and govern aspects of their relationship. The Parliament of Australia has legislated to require similar negotiated agreements between the Australian Government and the statutory RDCs.

With a variety of participants and stakeholders, effective communication and coordination is crucial. This Agreement between the government and AGWA sets out expectations about performance, transparency and accountability to levy-payers, the government and to the public.

Review of the performance of all RDCs is important to ensure accountability and help foster a culture of continuous improvement. The Agreement between the government and AGWA establishes a framework for periodic, independent reviews.

The periodic renegotiation of this Agreement, informed by performance reviews, is designed to allow the government and AGWA the flexibility to reflect changing expectations about industry and government priorities for research and development and some aspects of governance without the need to change legislation.

The Agreement also reflects the fact that cross-sectoral research and development challenges in Australia often affect multiple or all rural industries. The Agreement therefore recognises AGWA's role in cooperative R&D and the system for coordination and priority-setting of the national rural R&D effort.

The Parliament has also legislated to provide for statutory RDCs to undertake marketing, where the relevant industry requests this and agrees to raise a marketing levy. The Agreement establishes governance arrangements that would apply to this function.

CORE REQUIREMENTS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

'Act' means the *Australian Grape and Wine Authority Act 2013*.

'Activities' means tasks or projects performed as part of AGWA's Program, as well as anything else done by AGWA in the exercise of its powers or the performance of its functions.

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

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

'Agreement Date' is the date on which this Agreement has been signed by both parties, and where the parties sign the agreement on different dates, it is the latter of those dates.

'Agri-Political Activity' means engaging in or financing any form of external or internal political campaigning. Agri-political Activity does not include any of the following:

- (a) AGWA, or an officer of AGWA, nominating a candidate for appointment to the Board of AGWA; or
- (b) AGWA making statements or providing information to Industry on matters related to AGWA's objects in the proper performance of AGWA's functions and the proper furtherance of its objects; or
- (c) use by another person, engaged in Agri-Political Activity, of a report or other publication prepared or financed by AGWA in accordance with the Act and this Agreement; or
- (d) the use by an officer of AGWA, or an employee of AGWA, of his or her own funds to conduct a campaign for appointment to an entity engaging in Agri-Political Activity; or

(e) the cost of consultation with, or a contribution towards consultation by, AGWA's Representative Organisation.

'Annual Operational Plan' means a plan prepared by AGWA in accordance with section 31F of the Act and clause 10.12 of this Agreement.

'Annual Report' means a report prepared by the Directors of AGWA in accordance with section 46 of the *Public Governance, Performance and Accountability Act 2013*, (PGPA Act) Section 38 of the Act and clause 11.8 of this Agreement.

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

'Board' means AGWA's board of Directors.

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

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

'Charge' means the 'wine export charge' as defined in Section 4 of the Act.

'Commonwealth Matching Payments' means funds paid to AGWA for Eligible R&D Expenditure in accordance with section 32(ai) of the Act.

'Compliance Assurance Report' means a report prepared in accordance with clause 11.1 of this Agreement.

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

'Corporate Plan' means a corporate plan prepared by AGWA under Section 31 of the Act.

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

‘Department’ means

- (a) the Department of Agriculture which represents the interest of the Commonwealth of Australia in this Agreement; or
- (b) if the Act is administered by a Minister of State other than the Minister for Agriculture – the Department of State administered by that Minister.

‘Director’ has the same meaning as in Section 4 of the Act.

‘Eligible R&D Expenditure’ means expenditure on Activities that qualify as Research and Development Activities, and that were included in the Annual Operational Plan for AGWA at the time the expenditure was incurred. The Commonwealth does not consider marketing to be an Eligible R&D Expenditure.

‘Evaluation Framework’ means the framework to undertake rigorous and regular evaluation of Activities and programs as required by clause 10.4 of this Agreement.

‘Financial Year’ means a period of 12 months commencing 1 July and ending 30 June the following year.

‘Fraud Control Plan’ means a plan prepared and maintained by AGWA under the PGPA Act.

‘Funds’ means each of the following:

- (a) Levy;
- (b) Charge;
- (c) Commonwealth Matching Payments;
- (d) Voluntary Contributions;
- (e) income earned or derived by AGWA from the Levy, the Charge or Commonwealth Matching Payments; and
- (f) the proceeds of the sale or other disposition of assets acquired with the Funds referred to above in this definition.

‘Guidelines’ means each of the following:

- (a) the Rural Research and Development Priorities;

- (b) the Strategic Research Priorities;
- (c) other guidelines or priorities which the Commonwealth notifies AGWA from time to time in writing; the *Levy Principles and Guidelines*, being the guidelines relating to the introduction of new levies or changes to existing levies.

‘Industry’ means the Australian ‘grape industry’ and ‘wine industry’ as defined under Section 4 of the Act.

‘Industry Representative Body’ means a peak body or a body established for the purpose of, or substantially engaged in, Advocacy and/or Agri-Political Activity.

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

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

‘Levy’ means the ‘grapes research levy’ and/or the ‘wine grapes levy’ as defined in section 4 of the Act.

‘Levy Payers’ means the persons who are liable to pay a Levy.

‘Minister’ means the Commonwealth Minister who from time to time has responsibility for the Act and includes a delegate of the Minister in accordance with the Act.

‘Performance Review’ means a review, conducted in accordance with clause 12 of this Agreement.

‘Performance Review Report’ means a report prepared in accordance with clause 12.1 of this Agreement.

‘PGPA Act’ means the *Public Governance, Performance and Accountability Act 2013* and includes any rules made under that Act.

‘Program’ means a group of Activities that collectively deliver services or benefits to Industry or the community in general with the aim of achieving a planned outcome.

‘Program Framework’ means the planning and budgeting framework applied by AGWA in accordance with clauses 10.1 to 10.2 of this Agreement.

‘Proper’ has the same meaning as in Section 8 of the PGPA Act.

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

‘Regulations’ means the *Australian Grape and Wine Authority Regulations 1981*.

‘Representative Organisation’ has the same meaning as in Section 5BA of the Act.

‘Research and Development’ has the same meaning as ‘grape or wine research and development’ in section 4 of the Act.

‘Research and Development Activity’ has the same meaning as ‘grape or wine research and development activity’ in section 4 of the Act.

‘Risk Management Plan’ means the plan prepared and maintained by AGWA in accordance section 16 of the PGPA Act.

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

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

‘Voluntary Contribution’ means a payment contributed to AGWA for the purpose of funding Activities including Research and Development Activities.

‘Wind-Up Plan’ means a plan prepared by AGWA, which includes:

- a) any information reasonably requested by the Commonwealth that relates to the repealing or amendment of the Act, such that AGWA no longer exists or no longer has any Levy attached; and
- b) if requested by the Commonwealth, a proposal from AGWA setting out how the operations of AGWA will cease or be transferred on repeal or amendment to the Act, including an estimate of the cost and timeframe for implementing the proposal.

2. TERM AND OPERATION OF THIS AGREEMENT

- 2.1 This Agreement commences and takes effect on the day following the Agreement Date and expires four years after the Agreement Date.
- 2.2 The parties must, at least six months before the expiry of this Agreement, commence negotiation in good faith with a view to entering into a new Agreement either on the same terms and conditions or on varied terms and conditions as agreed by the parties.
- 2.3 If the parties are unable to agree on the terms of an extended or new agreement to replace this Agreement within that six month period, then the parties agree that the Agreement will continue in full force and effect between the parties for an additional six months unless one of the parties advises the other party in writing it does not wish to extend the Agreement.
- 2.4 In negotiating an extension of this Agreement or entry into a new Agreement, the parties may have regard to any information available to them, including the outcomes of the latest Performance Review.
- 2.5 If the parties do not agree to an extension of this Agreement or entry into a new Agreement within the extended period set out in clause 2.4, the Commonwealth may request a Wind-Up Plan from AGWA.
- 2.6 If requested by the Commonwealth under clause 2.5 or 8.2, AGWA must develop and provide a Wind-Up Plan to the Commonwealth within 3 months of the request. The Wind-Up Plan must be approved by the Commonwealth (with the Commonwealth able to request reasonable changes prior to providing any approval).
- 2.7 Prior to repealing or amending the Act such that AGWA no longer exists or no longer has any Levy attached, the Commonwealth will give sufficient notice to AGWA to allow AGWA to implement the approved Wind-Up Plan, as directed by the Commonwealth.

- 2.8 If preparing or implementing the Wind-Up Plan will require expenditure of Funds by AGWA beyond the expiry of the Agreement, the Commonwealth may in its absolute discretion, notify AGWA of a revised expiry date for the Agreement to provide additional time for the Wind-Up Plan to be prepared or implemented. If a new expiry date is notified under this clause, AGWA will only be able to spend Funds throughout this extended period for the purpose of preparing and implementing the Wind-Up Plan and in accordance with the Wind-Up Plan. The notice may also detail additional constraints on AGWA's expenditure throughout this period.

3. COMPLIANCE WITH LEGISLATION

- 3.1 AGWA must comply with all relevant laws, including their respective obligations under the Act, the Regulations, and the PGPA Act.

4. CORPORATE GOVERNANCE AND BOARD PERFORMANCE

- 4.1 AGWA must comply with the corporate governance requirements in the PGPA Act and implement a framework of good corporate governance practice in managing and investing the Funds. In establishing and maintaining the framework AGWA should draw on better practice guidance as appropriate.
- 4.2 AGWA must ensure that current versions of the following documents are available on its public website within 30 days of the relevant document being approved by the Board or Minister, whichever is appropriate:
- (a) the signed Agreement and any variation to this Agreement
 - (b) Annual Report
 - (c) Corporate Plan including information relating to its development and any amended Corporate Plan
 - (d) Annual Operational Plan
 - (e) Evaluation Framework
 - (f) Consultation Plan prior to consultation commencing
 - (g) Performance Review Report
 - (h) AGWA's response to the Performance Review Report

As well as up-to-date information on:

- (i) priorities used by AGWA to determine which projects it will fund;

- (j) an overview of AGWA's desired outcomes, key Activities to achieve those outcomes and key achievements; and
- (k) key Activities including Research and Development and extension Activities which AGWA is funding.

4.3 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*, unless permitted under the *Privacy Act 1988*; or
- (b) information about the business, commercial, financial or professional affairs of any person if it would be unreasonable to publish that information, such as Confidential Information; or
- (c) information which would, or could reasonably be expected to damage:
 - (i) AGWA; or
 - (ii) the Industry; or
 - (iii) the national interest.

Committee and panel member's disclosure of pecuniary interests

4.4 If a person is appointed as a member of an AGWA committee or panel concerned with the selection and funding of Research and Development or other Activities and has a pecuniary interest that relates to the affairs under consideration by the committee or panel, that person must disclose that interest in accordance with any instructions given by AGWA.

5. PAYMENT OF FUNDS

5.1 Payments to AGWA will be made in accordance with the Act.

5.2 Notwithstanding any other provision of this Agreement, for the purposes of section 35 and 36 of the Act:

- (a) the Commonwealth must invoice AGWA for amounts equal to the expenses incurred by the Commonwealth in relation to collecting, recovering and administering such payments;
- (b) AGWA must pay any amount so invoiced to the Commonwealth within 30 days of receipt of the invoice; and
- (c) an amount to be paid by AGWA under this clause must be paid:

- (i) from the grapes research levy or the wine grapes levy, to the extent that the amount relates to the collection, recovery or administration of the grapes research levy or the wine grapes levy; or
- (ii) from the Charge to the extent that the amount relates to the collection, recovery or administration of the Charge.

5.3 The Commonwealth must give AGWA, in accordance with an agreed timetable, an indicative estimate of the amount of the costs and amounts referred to in clause 5.2 for the Financial Year.

Timing and manner of making payments

5.4 The Commonwealth must pay the Levy and the Charge to AGWA within two calendar months after the Commonwealth receives the amounts in cleared funds.

5.5 Subject to the applicable limits and certification, the Commonwealth will use its reasonable endeavours to pay the Commonwealth Matching Payments to AGWA within two calendar months after receiving from AGWA:

- (a) a correctly rendered claim for payment or tax invoice; and
- (b) evidence reasonably satisfactory to the Commonwealth that AGWA has already spent the amount that forms the basis of the claim on Eligible R&D Expenditure.

5.6 For the purposes of clause 5.5(b) a certificate signed by the Chief Executive Officer or the Chief Financial Officer (or equivalent) of AGWA, certifying that AGWA has spent a particular amount on Research and Development, is reasonably satisfactory evidence in the absence of any evidence to the contrary.

5.7 The final claim for a Financial Year must be supported by a certification from the Board, signed by the Chair of the Board and the Chief Executive Officer or equivalent of AGWA certifying:

- (a) the amount of Eligible R&D Expenditure expended for the relevant Financial Year; and
- (b) the claims for payment of Commonwealth Matching Payments under clause 5.5 and the declared Eligible R&D Expenditure are accurate and in accordance with the Act and this Agreement.

5.8 Payment must be by direct deposit or cheque or other method agreed between the parties.

6. APPLICATION OF THE FUNDS

6.1 AGWA may only spend the Funds:

- (a) in accordance with the Act (in particular Part VI) and the PGPA Act (in particular section 15) as it applies and this Agreement; and
- (b) in a manner that is consistent with:
 - (i) the Corporate Plan;
 - (ii) the Annual Operational Plan; and
 - (iii) the Guidelines.

6.2 AGWA may only spend Funds on Research and Development Activities if those Research and Development Activities:

- (a) relate to the Industry and are for the benefit of Industry; and/or
- (b) are for the benefit of Industry and for the Australian community generally.

Other restrictions on spending the Funds

6.3 AGWA must not use the funds to engage in Agri-Political Activity or Advocacy. For example, AGWA must not apply the Funds:

- (a) to act as an Industry Representative Body or to reference or provide information which implies to stakeholders that AGWA is an Industry Representative Body; or
- (b) for Advocacy of a particular Industry policy position; or
- (c) to encourage or support a campaign for the election of a candidate, person or party for public office.

6.4 Payments made by AGWA to its declared Representative Organisation for consultation costs are to be made in accordance with section 10D of the Act.

6.5 AGWA must not spend the Funds on making payments to Industry Representative Bodies, other than for:

- (a) payments by way of membership fees where that membership contributes to AGWA pursuing its objects; or
- (b) payments to acquire goods or services or to fund Research and Development Activities or other Activities where all the following conditions are met:
 - (i) the acquisition or funding occurs in accordance with the PGPA Act, and, even if these obligations do not ordinarily apply, in

accordance with the *Commonwealth Grant Rules and Guidelines* or the *Commonwealth Procurement Rules* (depending on whether the expenditure is considered granting or procurement).

- (ii) the arrangement for services or funding includes measures that allow AGWA to assess the performance of the Industry Representative Body in undertaking the task. If requested by the Commonwealth, AGWA must rely on such measures and provide the assessment of performance to the Commonwealth.

- 6.6 AGWA may, at any time, seek consultations with the Commonwealth in relation to any matter connected with the Act or this Agreement including whether a proposed expenditure would amount to engaging in Agri-Political Activity using the Funds, or whether the Commonwealth would consider a proposed Activity to be Eligible R&D Expenditure.
- 6.7 AGWA must determine an appropriate Balanced Portfolio through the Corporate Plan and the Annual Operational Plan, and explain in AGWA's Corporate Plan the approach to give effect to this.
- 6.8 AGWA must contribute to the implementation of relevant Industry sector and cross-sectoral strategies under the RD&E Framework as appropriate to its national leadership role in relevant Industry strategies and support role in other relevant strategies and consistent with AGWA's Corporate Plan.
- 6.9 AGWA must provide feedback on the outcomes of funding applications to all applicants.

7. MANAGEMENT OF THE FUNDS

- 7.1 AGWA must maintain necessary accounting systems, procedures and controls in accordance with the PGPA Act and this Agreement including a Cost Allocation Policy, to ensure:
 - (a) the Funds are spent only in accordance with the Act and this Agreement;
and
 - (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 the Act and this Agreement.

7.2 The accounting systems, processes and controls to manage the Funds established in accordance with clause 7.1 are required to take into account the Risk Management Plan, Fraud Control Plan and the Cost Allocation Policy.

7.3 AGWA must provide the Commonwealth with details of the systems, procedures and controls maintained in accordance with clause 7.1 on request.

8. BREACH OR TERMINATION OF THE AGREEMENT

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

- (a) an insolvency event occurs; or
- (b) the Act establishing AGWA is repealed; or
- (c) there has been a material breach of the Agreement, the Act or another law by AGWA.

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

- (a) AGWA breaches this Agreement and fails to rectify a breach within 10 Business Days of receiving a notice from the Commonwealth to do so, or within such other period specified by the Commonwealth; and/or
- (b) there has been a change in Commonwealth policy relating to raising or spending the Funds; and/or
- (c) an event has occurred which would entitle the Commonwealth to terminate the Agreement under clause 8.1(c).

then subject to clause 8.3 the Commonwealth may:

- (d) direct AGWA to deal with all or any of the Funds in a certain way; or
- (e) require AGWA provide a Wind-Up Plan to the Commonwealth in accordance with Clause 2.6 and 2.7 of this Agreement; or
- (f) impose additional reporting requirements on AGWA;
- (g) take any other action, as specified in this Agreement.

8.3 Any notice the Commonwealth issues to AGWA in accordance with clause 8.2 will specify:

- (a) the circumstances which give rise to the notice; and
- (b) if the Commonwealth determines necessary, a reasonable time by which

AGWA must:

- (i) provide a satisfactory report or explanation of the circumstances giving rise to the notice; or
 - (ii) rectify any breach outlined in the notice; or
 - (iii) otherwise take action in relation to the circumstances giving rise to the notice as directed by the Commonwealth;
- and

- (c) the consequences of non-compliance with the notice.

9. EXTENSION OF RESEARCH

9.1 AGWA must carry out its functions under section 7 of the Act and contribute to the implementation of relevant Industry sector and cross-sectoral strategies under the RD&E Framework.

9.2 Without limiting the obligations set out in clause 10.1, and for the purposes of carrying out its functions under subsection 7(e) of the Act, AGWA must demonstrate that pathways to extension and adoption are incorporated into the planning and approval processes contemplated by this Agreement.

10. PLANNING

Program Framework

10.1 AGWA must develop and maintain a Program Framework to support its planning, performance and accountability requirements under the PGPA Act (Chapter 2, Part 2-3) and this Agreement within six months of the Agreement Date.

Note: Where there is inconsistency between PGPA Act or Rules and this Agreement, the PGPA Act and the Rule prevail.

10.2 The Program Framework should also inform the development of the key planning and reporting documents such as the Corporate and Annual Operational Plans and the Annual Report, and must include specifications of:

- (a) planned outcomes—results, consequences and impacts—from the investment of Funds. An outcome statement should:
 - (i) be specific, focused and easily interpreted;

- (ii) identify the intended outputs, with the level of achievement against the intended outcomes being measurable;
 - (iii) specify the target groups (where these groups can be identified) for the outcomes;
 - (iv) specify the Programs, sub programs (if any), key deliverables and Activities to be undertaken that contribute to the achievement of the intended outputs and outcomes; and
 - (v) be agreed by key stakeholders and the Commonwealth as part of developing the Corporate Plan.
- (b) for each Program, identify key performance indicators that provide an accurate and succinct story of performance. Key performance indicators should:
- (i) in the Corporate Plan, be strategic in nature and linked to the planned outputs and outcomes;
 - (ii) in the Annual Operational Plan, link to the deliverables;
 - (iii) in the Annual Report, bring the key performance indicators under (i) and (ii) above together and demonstrate how the deliverables funded advanced the outcomes;
 - (iv) be clear, unambiguous and measurable with appropriate timeframes for achievement;
- (c) the expected total cost (direct and indirect) of Activities and resources attributable to the delivery, policy development and associated costs of each Program; and
- (d) an Evaluation Framework designed in accordance with clause 10.4.

10.3 The Program Framework should be supported by a structured Cost Allocation Policy and should clearly separate expenditure in relation to the Levy and the Charge.

Evaluation Framework

10.4 AGWA must develop an Evaluation Framework within six months of the Agreement Date. The Evaluation Framework must:

- (a) support the Program Framework;
- (b) ensure that key performance related information is generated by the Program Framework and is routinely collected and monitored;

- (c) include a structured plan for the systematic evaluation of the efficiency, effectiveness and impact of AGWA's key investments; and
- (d) include a means of publishing and disseminating relevant Research and Development outcomes and the outcomes of evaluations undertaken under subclause 10.4(c).

10.5 AGWA must:

- (a) consult with the Commonwealth in preparing the evaluation plan;
- (b) participate in any evaluation project relevant to AGWA's operations which is established for all RDCs; and
- (c) demonstrate AGWA's commitment to provide adequate expenditure for this purpose.

Corporate Plan

10.6 AGWA must:

- (a) prepare a Corporate Plan in accordance with the section 31 of the Act and this Agreement;
- (b) ensure the Corporate Plan is consistent with AGWA's Program Framework.

10.7 In addition to the matters in clause 10.6 the Corporate Plan must also cover matters including, but not limited to, the following:

- (a) collaboration with other RDCs on priority Research and Development issues;
- (b) a broad overview of the priorities and outcomes from stakeholder consultation, as more fully described in the stakeholder consultation plan required under clause 10.8.
- (c) consultation with Industry and an explanation on the extent to which Industry priorities are reflected in the Corporate Plan;
- (d) key deliverables which contribute to achieving the planned outcomes;
- (e) performance indicators that enable progress being made towards achieving planned outcomes to be monitored and reported upon;
- (f) how the Research and Development and other Activities to be funded align with, and give effect to, the Guidelines;
- (g) how AGWA addresses extension, technology transfer, and commercialisation of Research and Development and demonstrate that

extension and adoption are incorporated into the planning and approval process;

- (h) estimates of income and expenditure for the term of the Corporate Plan including broad estimates of expenditure separately for each of the Research and Development Activities and other Activities; and
- (i) an explanatory statement of AGWA's approach to ensuring a Balanced Portfolio appropriate to the Industry.

10.8 In developing a new plan Corporate Plan, or varying an existing Corporate Plan, AGWA must develop a consultation plan including details of proposed consultations with:

- (a) the Commonwealth; and
- (b) AGWA's Representative Organisations; and
- (c) other stakeholders as appropriate, including but not limited to, other RDCs.

10.9 For minor variations to an existing Corporate Plan, AGWA may request approval from the Commonwealth not to develop a consultation plan.

10.10 The consultation plan must be agreed with the Commonwealth before consultation commences.

10.11 The Commonwealth must treat the Corporate Plan, and each amendment of the Corporate Plan, as Confidential Information until the Corporate Plan or amendment is publicly released by AGWA.

Annual Operational Plan

10.12 AGWA must prepare an Annual Operational Plan in accordance with section 31F of the Act and this Agreement.

10.13 The Annual Operational Plan must be provided to the Commonwealth by 1 July each year and must set out:

- (a) the intended operations of AGWA for the Financial Year referred to in the plan;
- (b) how and to what extent Research and Development and other Activities to be funded give effect to the Corporate Plan and its objectives and the Guidelines;
- (c) the key Research and Development and other Activities to be funded by AGWA during the Financial Year under each Program of the Program Framework;

- (d) key deliverables arising from the Research and Development and other Activities planned;
- (e) performance indicators, timetables and milestones relating to AGWA's proposed Research and Development and other Activities and expenditure which enable the progress being made towards achieving planned outcomes to be monitored and reported upon;
- (f) estimates of income and expenditure for the Financial Year which include:
 - (i) the amounts to be received by AGWA, separately, in respect of the Levy, the Charge, Commonwealth Matching Payments, Voluntary Contributions, and any other form of income; and
 - (ii) expenditure by AGWA on Research and Development and other Activities under the Act;
- (g) a statement on how AGWA intends to implement and operationalise a Balanced Portfolio appropriate to the Industry for the Financial Year referred to in the plan.

10.14 AGWA must provide the Commonwealth with a copy of the Annual Operational Plan developed in accordance with clause 10.12, and all material variations or updates to the Commonwealth within 30 days of approval by the Board.

10.15 The Commonwealth must treat a plan or an amended plan provided to it as Confidential Information until it is publicly released by AGWA.

Other Plans

10.16 AGWA must develop, maintain and implement:

- (a) risk management and internal control systems consistent with the PGPA Act. This includes a Fraud Control Plan and Risk Management Plan; and
- (b) an Intellectual Property Management Plan.

10.17 AGWA must review the Intellectual Property Management Plan at intervals of no more than four years.

10.18 AGWA must provide the Commonwealth with a copy of the plans in 10.16

- (a) and (b), or amendments to the Plan, within 30 days of their approval by the Board.

10.19 The Commonwealth must treat a plan or an amended plan as Confidential Information until it is publicly released by AGWA.

11. REPORTS

Compliance Assurance Report

- 11.1 AGWA must, within five months after the end of the Financial Year, give the Commonwealth a Compliance Assurance Report regarding compliance with its obligations under the Act and this Agreement during the Financial Year.
- 11.2 A Compliance Assurance Report must include a statement from an independent auditor which provides an opinion on whether AGWA has complied with its obligations under clauses 6 and 7 of this Agreement during the Financial Year. The independent auditor's statement must:
- (a) be prepared in accordance with relevant Australian Auditing and Assurance Standards;
Note: This work can be completed with reference to ASAE 3100
 - (b) include a statement that AGWA has complied with clause 6.5 of this Agreement;
 - (c) include a statement that the accounting systems, processes and controls comply with clause 7.1;
 - (d) include a review of the amounts spent on Research and Development and other Activities and verify the claims made for Commonwealth Matching Payments under clause 5.5 are consistent with the amount of Eligible R&D Expenditure;
 - (e) state any limitations to which the Compliance Assurance Report is subject;
 - (f) indicate any incidences of non-compliance and assess and report on the impact of those incidences of non-compliance.
- 11.3 A Compliance Assurance Report must also include a certification from the Board, signed by the Chair of the Board and the Chief Executive Officer or equivalent of AGWA certifying whether, in the Board's opinion, AGWA has:
- (a) materially complied with its obligations under the Act and this Agreement during the Financial Year; or
 - (b) not materially complied with its obligations under the Act and this Agreement during the Financial Year giving an explanation of the non-compliances

- 11.4 The Compliance Assurance Report must also include a statement that it has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgement that it will be relied upon by the Commonwealth.
- 11.5 A Compliance Assurance Report need not include an opinion on whether the Funds have been applied for the benefit of Industry, or have been spent in a Proper manner or on Advocacy or Agri-Political Activities.

Other Audit Reports

- 11.6 If in the reasonable opinion of the Commonwealth, AGWA is in or may be in breach of the Act or this Agreement, the Commonwealth may request an audit report or opinion on any matter relevant to AGWA's compliance with the Act and/or this Agreement.
- 11.7 If the Commonwealth requests an audit report or opinion under clause 11.6, AGWA must at its own expense:
- (a) obtain the audit report or opinion from an independent auditor; or
 - (b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by the independent auditor, engage another auditor to conduct an audit and give the audit report or opinion; and
 - (c) give a copy of the audit report or opinion to the Commonwealth within 14 days after AGWA receives it.

Annual Reports

- 11.8 AGWA must prepare its Annual Report in accordance with the Act and Section 46 of the PGPA Act as appropriate and the requirements of this Agreement.
- 11.9 Additional information beyond the requirements of the Act and the PGPA Act, required to meet the requirements of this Agreement, can be provided to the Commonwealth separately if so desired by AGWA.
- 11.10 The Annual Report must include, in respect of the relevant Financial Year:
- (a) a report on AGWA's contribution to the implementation of relevant Industry sector and cross-sectoral strategies under the RD&E Framework;
 - (b) the rationale for the mix of projects included in the Balanced Portfolio;
 - (c) a report on AGWA's research extension activities;
 - (d) collaboration with Industry and other research providers;

- (e) sources of income allowing for separate identification of the Levy, the Charge, Commonwealth Matching Payments and any other form of income, including Voluntary Contributions;
- (f) the full cost of the Research and Development and other Activities, with costs being allocated in accordance with the Cost Allocation Policy;
- (g) progress made in implementing Corporate Plans, including progress against key performance indicators specified in the plans;
- (h) an assessment of the efficiency and effectiveness of AGWA's investments;
- (i) progress in implementing the Guidelines;
- (j) consultation with the corporation's Representative Organisations on its Corporate Plan, Annual Operational Plans, Research and Development and other Activities;
- (k) other relevant matters notified to AGWA by the Commonwealth by 30 June.

Other Reports

- 11.11 In addition to the reports required under clauses 11.8 and 11.10, on notice AGWA must give the Commonwealth, within such period as the Commonwealth specifies, any other report or explanation relating to management and expenditure of the Funds.
- 11.12 When giving the reports or explanations referred to in clause 11.11, AGWA must consult with the Commonwealth as to the nature of any action required and must take that action within a timeframe agreed with the Commonwealth.

12. REVIEW OF PERFORMANCE

- 12.1 AGWA must complete a Performance Review six months before the expiry of this Agreement and must:
 - (a) engage an independent organisation to undertake the Performance Review and prepare a report on the Performance Review (the Performance Review Report); and
 - (b) agree the terms of reference of the Performance Review six months prior to the commencement of the Performance Review process with the Commonwealth to ensure that the Performance Review will meet the requirements of the Act and this Agreement; and

- (c) provide the Commonwealth with a copy of the draft Performance Review Report and any comments made by the Board within 7 days of the Board considering the draft; and
 - (d) provide the final Performance Review Report to the Commonwealth within 14 days of its acceptance by the Board; and
 - (e) 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
 - (f) provide the Commonwealth with the response developed under clause 12.1(e) within 30 days of the Board accepting the response; and
 - (g) report to the Commonwealth in the meetings required under clause 14.1 on progress implementing the Performance Review Report recommendations.
- 12.2 The independent organisation engaged to carry out the Performance Review must be an organisation that has not, within the term of the Agreement, carried out any corporate governance activity or reviews, performance audit or similar reviews of AGWA.
- 12.3 The terms of reference for the Performance Review must take into account:
- (a) the performance of AGWA in meeting its obligations under the Act and this Agreement; and
 - (b) AGWA's development and implementation of its Corporate Plan, Annual Operational Plan, Risk Management Plan, Fraud Control Plan and Intellectual Property Management Plan, and AGWA's effectiveness in meeting the priorities, targets and budgets set out in those plans; and
 - (c) the efficiency with which AGWA carried out those plans; and
 - (d) the efficiency and effectiveness of AGWA's investments;
 - (e) the delivery of benefits to the Industry foreshadowed by those plans, including an assessment of the degree to which AGWA's investments have met the needs of Industry; and
 - (f) any other matters required to be covered by the Minister.
- 12.4 The Commonwealth must treat any draft or final Performance Review Report as Confidential Information until it is publicly released by AGWA.

13. PERFORMANCE MANAGEMENT

- 13.1 Notwithstanding any other provision in this Agreement, the Commonwealth may review AGWA's performance and compliance with this Agreement, at any time during the term of this Agreement.
- 13.2 In reviewing AGWA's performance and compliance with this Agreement for the purposes of clause 13.1, the Commonwealth may have regard to any information available to it.
- 13.3 Where, following completion of a review under clause 13.1, the Commonwealth considers that AGWA's performance and compliance with this Agreement is less than satisfactory, the Commonwealth will consult with AGWA prior to exercising any rights it may have under this Agreement, including those set out in clause 8, where appropriate.
- 13.4 In reviewing the AGWA's performance and compliance with this Agreement the Commonwealth may:
- (a) request information from AGWA, including the provision of additional reports, including audit reports, to inform its consideration; and
 - (b) request AGWA develop and provide a work plan for AGWA to improve its performance or compliance with this Agreement.

14. CONSULTATIONS

Consultation with the Commonwealth

- 14.1 The Chair of AGWA, or in their absence, their Board nominee, must meet with the Commonwealth at not more than six-monthly intervals from the Agreement Date (or soon thereafter if mutually agreeable to both parties) or at any other time requested by the Commonwealth on reasonable notice, to brief the Commonwealth on AGWA's performance of its functions including:
- (a) progress on implementing AGWA's Annual Operational Plan and Corporate Plan;
 - (b) progress on the implementation of the relevant sectoral and cross-sectoral strategies under the RD&E Framework;
 - (c) consultation with other RDCs and the corporation's Representative Organisation;
 - (d) measures taken to enhance corporate governance;

- (e) progress in developing and implementing the Evaluation Framework;
- (f) progress on implementing the recommendations from the most recent Performance Review; and
- (g) the development and implementation of additional systems, processes and controls necessary to meet the requirements of this Agreement required by clause 7.1 of this Agreement.

Consultation with Industry

- 14.2 In addition to complying with section 38A of the Act, AGWA must meet with its declared Representative Organisations at not more than six-monthly intervals to:
- (a) review Industry priorities for Research and Development and other Activity investments, including any regional equity considerations; and
 - (b) report on AGWA's performance against the Corporate Plan and the Annual Operational Plan.

Guidelines

- 14.3 The Commonwealth may vary the Guidelines provided that the Commonwealth:
- (a) consults with AGWA prior to the variation; and
 - (b) gives AGWA a reasonable period to implement the variation.
- 14.4 Where the Commonwealth consults with AGWA in accordance with clause 14.3 and the Board of AGWA considers that the proposed 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 AGWA; or
 - (d) be contrary to the public interest;

then the Directors must notify the Commonwealth.

15. ACCESS TO RECORDS AND USE OF INFORMATION

- 15.1 The Minister and the Finance Minister are entitled to access to the accounts and records of AGWA in accordance with Section 41 of the PGPA Act.

- 15.2 In addition to access under the PGPA Act, the Commonwealth and any duly authorised representative may, for the purpose of monitoring compliance by AGWA with the Act and this Agreement, have access to:
- (a) premises occupied by or under the control of AGWA; and
 - (b) data, records, accounts and other financial material and any property of the Commonwealth in the possession or under the control of AGWA.
- 15.3 AGWA must grant this access, on request:
- (a) during Business Hours – at any time on reasonable notice in writing; and
 - (b) outside Business Hours – on 48 hours notice given to AGWA and marked for the attention of the Chief Executive Officer of AGWA.
- 15.4 AGWA must provide access to all its accounts and records relating to the Act and this Agreement (other than any legally privileged material) and otherwise co-operate fully with the Commonwealth or any duly authorised representative for the purposes of this clause 15.1.
- 15.5 Each party must, in respect of Confidential Information given by the other party:
- (a) use that Confidential Information only for the purposes of administering or enforcing the Act or this Agreement; and
 - (b) not disclose that Confidential Information to any person 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.
- 15.6 A party will not be in breach of this clause to the extent that it is legally obliged to make a particular use or disclosure of Confidential Information.
- 15.7 The Commonwealth will not be in breach of clause 15.5 in respect of Confidential Information given by AGWA and held by the Commonwealth where a request is made by Parliament (including a committee of Parliament) for that information to be given to Parliament, provided that the Commonwealth notifies Parliament of the confidential nature of the information and requests Parliament hold and deal with that information on an *in camera* basis.
- 15.8 AGWA grants the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence to use, reproduce, modify, adapt, distribute, communicate and publish all or part of any report or plan provided to the Commonwealth under this Agreement, excluding:
- (a) any Confidential Information; and

(b) any material, including any image or text, identified by AGWA as being material in which a third party owns all or part of the copyright.

16. NOTIFICATION OF SIGNIFICANT ISSUES

16.1 In addition to the duties of AGWA under section 19(1) of the PGPA Act, AGWA must also give the Commonwealth reasonable notice if it becomes aware of any significant issues that may affect or have affected AGWA or any of its subsidiaries.

17. ACKNOWLEDGEMENT OF FUNDING

17.1 Unless otherwise agreed with the Commonwealth, AGWA must ensure that all significant publications and publicity by AGWA in relation to matters on which Funds are expended must acknowledge the provision of Australian Government funding.

18. AUTHORISATION OF PERSONS TO ACT

18.1 The rights, functions and powers of the Commonwealth under the Act or this Agreement may be exercised and performed on behalf of the Commonwealth by the Minister or a delegate of the Minister (who may be an officer of the Department).

18.2 Performance of an obligation of the Commonwealth under the Act or 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.

19. RELATIONSHIP

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

20. FURTHER ACTION

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

21. RESOLUTION OF DISPUTES

- 21.1 Except where a party seeks urgent interlocutory relief, the parties agree not to commence any legal proceedings in respect of any dispute arising under the Act and this Agreement which cannot be resolved by informal discussion (“Dispute”) until the procedures set out in this clause 21 have been followed.
- 21.2 The parties agree that any Dispute arising during the course of this Agreement will be dealt with as follows:
- (a) the party claiming that there is a Dispute will send the other party a written notice setting out the nature of the Dispute and requesting a meeting between the parties to discuss that Dispute; and
 - (b) the parties will have 20 Business Days (or such longer period as may be agreed to in writing by the parties to the Dispute) from the date of service of the notice within which to hold a meeting of one duly authorised representative of each party, and those representatives must use reasonable efforts to resolve the Dispute.
- 21.3 If the Dispute is not resolved by the parties at the meeting referred to in clause 21.2(b) the parties must refer the Dispute to mediation, which must be conducted in Canberra (or elsewhere as agreed in writing between the parties), in accordance with the Institute of Arbitrators and Mediators of Australia Rules for the Mediation of Commercial Disputes (in operation from time to time), except to the extent that such rules conflict with this clause 21, in which case this clause 21 shall prevail to the extent of the inconsistency.
- 21.4 If the parties have not agreed upon the mediator and the mediator’s remuneration within 5 Business Days after the Dispute is referred to mediation in accordance with clause 21.3:
- (a) the mediator is the person appointed by; and
 - (b) the remuneration of the mediator is the amount or rate determined by the Chair of the Institute of Arbitrators and Mediators Australia (Chair), or the Chair’s nominee.
- 21.5 The mediator’s remuneration must be paid by the parties in equal proportions.
- 21.6 The mediation is confidential and the parties each acknowledge and agree that:
- (a) written statements prepared by the mediator or the parties; and

(b) any discussions between the participants to the mediation, before or during the mediation, cannot be used or relied upon by either party in any subsequent legal proceedings.

21.7 Despite the existence of a Dispute, both parties must, unless requested in writing by the other party not to do so, continue to perform their respective obligations under the Act and this Agreement.

21.8 If there is no resolution of the Dispute within 20 Business Days of the commencement of the mediation (or such extended time as the parties may agree in writing before the expiration of that period), then either party may commence legal proceedings in respect of the Dispute.

22. ASSIGNMENT

22.1 AGWA must not assign or novate this Agreement or any right or obligation under this Agreement unless AGWA:

- (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 AGWA's obligations under this Agreement.

23. ENTIRE AGREEMENT

23.1 This Agreement:

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

24. VARIATION

24.1 Except as expressly permitted under this Agreement, this Agreement may be varied only by agreement in writing signed by each party.

25. WAIVER

25.1 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.

26. SEVERABILITY

26.1 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.

27. GOVERNING LAW AND JURISDICTION

- 27.1 The interpretation of this Agreement is governed by the law applicable in the Australian Capital Territory.
- 27.2 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.

28. NOTICE

- 28.1 A party giving notice or notifying under this Agreement must do so in writing or by electronic communication as defined in the *Electronic Transactions Act 1999 (Cth)*:
 - (a) directed to the recipient's address specified in this clause, as varied by any notice; or
 - (b) hand delivered or sent by prepaid post to facsimile or electronic communication to that address.
- 28.2 The parties' addresses are:

Commonwealth	Mr Travis Power Food & Agricultural Policy Branch Agricultural Policy Division Department of Agriculture
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	<p>GPO Box 858</p> <p>CANBERRA ACT 2601</p> <p>Email: travis.power@agriculture.gov.au</p> <p>Cc: RDCGovernance@agriculture.gov.au</p>
Australian Grape and Wine Authority	<p>Andreas Clark</p> <p>Australian Grape and Wine Authority</p> <p>PO Box 2733</p> <p>KENT TOWN SA 5071</p> <p>Fax: (08) 8228 2066</p> <p>Email: andreas.clark@agwa.net.au</p> <p>Cc: research@agwa.net.au</p>

28.3 A notice given in accordance with clause 28.1 is taken to be received:

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

29. INTERPRETATION

29.1 In this Agreement, unless the contrary intention appears:

- (a) the words "includes" and "including" are not words of limitation;
- (b) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (c) the singular includes the plural and vice versa and words importing a gender include other genders;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;

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

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

SIGNING PAGE

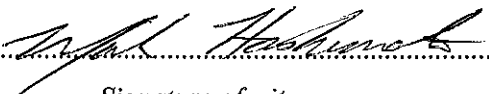
EXECUTED as an agreement

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA

by
the Hon. Barnaby Joyce MP
Minister for Agriculture


.....
Signature

in the presence of


.....
Signature of witness

27 MAY 2015

.....
Date signed

Melinda Hashimoto
.....
Name of witness

SIGNED for and on behalf of the
**AUSTRALIAN GRAPE AND WINE
AUTHORITY**

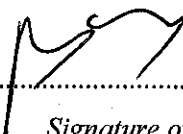
by

BRIAN WALSH
.....
Name of signatory


.....
Signature

CHAIR
.....
Position of signatory

in the presence of


.....
Signature of witness

2 JUNE 2015

.....
Date signed

ANDREW CLARK
.....
Name of witness