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Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses

**This version of the Government and Plant Industry Cost Sharing Deed in
respect of Emergency Plant Pest Responses is current as at**

3 January, 2024

**You should note that this Deed can be varied with the approval of all the
Parties (see clause 17). Please contact Plant Health Australia to confirm
whether this document is the most current version before relying on the
information contained in it.**

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PARTIES

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Australian Ginger Industry Association Inc. (ABN 97 981 376 529)

Australian Grape and Wine Inc. (ABN 45 903 873 163)

Australian Honey Bee Industry Council Inc. (ABN 63 939 614 424)

Australian Lychee Growers Association Inc. (ABN 45 591 381 594)

Australian Macadamia Society Ltd. (ABN 19 010 689 415)

Australian Mango Industry Association Ltd. (ABN 50 713 775 301)

Australian Melon Association Inc. (ABN 36 990 325 012)

Australian Olive Association Ltd. (ABN 57 072 977 489)

Australian Processing Tomato Research Council Inc. (ABN 33 014 204 969)

Australian Sweetpotato Growers Inc. (ABN 82 577 850 667)

Australian Table Grape Association Inc. (ABN 69 953 034 946)

Australian Tea Tree Industry Association Ltd. (ABN 48 077 019 204)

Australian Truffle Industry Association Inc. (ABN 57 816 021 891)

Australian Walnut Industry Association Inc. (ABN 26 468 336 213)

AUSVEG Ltd. (ABN 25 107 507 559)

Avocados Australia Ltd. (ABN 87 105 853 807)

Canned Fruit Industry Council of Australia Ltd. (ACN 051 989 336)

Cherry Growers of Australia Inc. (ABN 77 797 945 686)

Chestnuts Australia Inc. (ABN 11 727 740 190)

Citrus Australia Ltd. (ABN 75 130 238 792)

Cotton Australia Ltd. (ABN 24 054 122 879)

Dried Fruits Australia Inc. (ABN 88 658 293 079)

Grain Producers Australia Ltd. (ABN 66 675 415 182)

Greenlife Industry Australia Ltd. (ABN 59 634 584 017)

Hazelnut Growers of Australia Inc.

Onions Australia Inc. (ABN 26 558 335 296)

Passionfruit Australia Inc. (ABN 98 212 907 857)

Pistachio Growers Association Inc. (ABN 24 020 078 504)

Queensland Fruit and Vegetable Growers Ltd. (Growcom) (ABN 51 090 816 827)

Raspberries and Blackberries Australia (ABN 42 861 675 811)

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BACKGROUND

- A. The Parties wish to establish a mechanism to facilitate the making of rapid responses to, and the control and eradication of, Emergency Plant Pests (**EPPs**) including:
- (a) facilitating immediate reporting of suspected EPPs by providing financial disincentives for any failure to report;
 - (b) facilitating an early and comprehensive response to an EPP, in order to define the nature of the EPP and eradicate it;
 - (c) providing to parties which fund a response to an EPP a role in decision making about the response and its funding;
 - (d) defining funding responsibilities up to certain limits for each EPP including providing a framework wherein:
 - (i) the beneficiaries of the eradication of an EPP pay an appropriate and equitable proportion of the costs of mounting a response;
 - (ii) no one person or organisation is made better or worse off¹ as a result of reporting an Incident or suspected Incident; and
 - (iii) there is appropriate accountability by each Party to all of the Parties which fund a response to an EPP.
- B. The Parties wish to establish that mechanism in the manner set out in this Deed having regard to agreed principles for proportional funding and an agreed framework for Cost Sharing. In so doing, the Parties acknowledge:
- (a) the responsibilities of the State and Territory agencies in managing the eradication of EPPs within their jurisdictions;
 - (b) the need for goodwill and cooperation between all Parties in the operation of the mechanism; and
 - (c) the fact that it is not intended that Cost Sharing principles apply to consequential loss suffered by a Party.

¹ A person or organisation will be no better or worse off as a consequence of reporting an Incident when compared to other persons or organisations affected by the Incident or the Response Plan.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the contrary intention appears:

Affected means:

- (a) In respect of Government Parties:
 - (i) In relation to an EPP:
 - A. the Australian Government;
 - B. the State and Territory governments in the territory of which the EPP may arise; and
 - C. the State and Territory governments that may be required to contribute to Shared Costs if the EPP arises in another territory.
 - (ii) In relation to a Response Plan:
 - A. the Australian Government;
 - B. the State and Territory governments in the territory of which the Response Plan will be conducted; and
 - C. the State and Territory governments that may be required to contribute to Shared Costs if the Response Plan is conducted in another territory.
 - (iii) In relation to ORCs in the absence of a Response Plan: the Government Parties that would be considered to be 'Affected' by the EPP(s) that is/are the subject of the Incident or outbreak.
- (b) In respect of Industry Parties:
 - (i) In relation to an EPP:
 - A. that is a Plant Pest: the Industry Parties whose members' Crops are or may be affected by the Plant Pest; or
 - B. that is a Vector: the Industry Parties whose members' Crops are or may be affected by both the Vector and the Plant Pest which together form a known Complex; or
 - C. that is both a Plant Pest and a Vector: the Industry Parties identified under paragraphs (b)(i)A and (b)(i)B.
 - (ii) In relation to a Response Plan: the Industry Parties that are considered to be 'Affected' by the EPP(s) that is/are the subject of the Response Plan.

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- (iii) In relation to ORCs in the absence of a Response Plan: the Industry Parties that would be considered to be 'Affected' by the EPP(s) that is/are the subject of the Incident or outbreak.

For the avoidance of doubt, an Industry Party will not be 'Affected' if its members are or may suffer financial or other consequences from the implementation of a Response Plan but its members' Crops are not and will not be affected by the EPP for which the Response Plan is developed.

For the avoidance of doubt, an Industry Party is considered to be Affected by an Incident or an outbreak of an EPP relating to Bees if the Incident or outbreak will or may affect pollination of the Crops of the members of that Industry Party.

For the avoidance of doubt, an Industry Party is considered to be Affected by an Incident or an outbreak of an EPP in relation to a Fungus if the Incident or outbreak will or may affect the Fungus directly or will or may affect the host tree and this will or may in turn affect the Fungus.

Agreed Limit means the amount determined as set out in clauses 9.5.2 or 9.5.3, as it may be adjusted in accordance with clauses 9.8 and 9.9.

Australian Chief Plant Protection Officer or ACPPO means the individual holding the position of the Australian Chief Plant Protection Officer of the Commonwealth of Australia.

Bees means bees of a type commercially cultivated in Australia for the production of honey and/or provision of pollination services.

Biosecurity means a set of measures designed to protect a Crop, Crops or a sub-group of Crops from Plant Pests and Vectors at national, regional and individual farm levels.

Categorisation Group means the group convened according to Part 4 of Schedule 8 that will advise on the categorisation of Plant Pests and Vectors.

Chief Plant Health Manager or CPHM means the individual holding the position of Chief Plant Health Manager (or the equivalent role) of a State or Territory.

Commencement Date means the date determined in accordance with clause 2.1.2.

Complex means the combination of a Vector and:

- (a) a Plant Pest that meets the definition of an EPP; or
- (b) an established Plant Pest:
 - (i) that would meet the definition of an EPP other than for the fact that it is considered to be established in Australia; and
 - (ii) that was determined previously, by the NMG in accordance with this Deed, to not be feasible to eradicate.

Confidential Information means all know-how and commercially valuable or sensitive information (in whatever form) disclosed by a Party to one or more other Parties for the purposes of this Deed, but does not include information that:

- (a) is already in the public domain or, after the date of this Deed, becomes part of the public domain otherwise than as a result of an unauthorised disclosure by the receiving Party or its representatives;
- (b) is or becomes available to the receiving Party from a third party lawfully in possession of that information and which has the lawful power to disclose such information to the receiving Party on a non-confidential basis; or
- (c) was in the lawful possession of the receiving Party without restrictions as to its use or was developed independently by the receiving Party (as shown by its written records or other evidence) prior to the date of disclosure to it under this Deed.

Consensus means, in respect of a decision to be taken on an issue, that none of those persons present when the decision is taken are opposed to it, although:

- (a) persons present during the discussion may have expressed contrary views;
- (b) achieving the consensus may have required a measure of compromise to ensure a workable outcome;
- (c) some may abstain from participating in the decision; and
- (d) some entitled to be present may not be present.

Consultative Committee on Emergency Plant Pests or **CCEPP** means the committee of technical representatives of the Parties convened according to Parts 2 and 3 of Schedule 8.

Cost Sharing is the process of proportional funding of Shared Costs by Government Parties and Industry Parties, as described in this Deed.

Crop, Crops or sub-group of Crops includes plants, plant products, forests and Fungi, and also includes Bees and their hives.

Cropping Sector means a Crop, Crops or a sub-group of Crops represented by an Industry Party. Any Cropping Sector represented by an Industry Party is deemed to be a national Cropping Sector.

Department means the Australian Government department responsible for the subject matter of this Deed.

Efficiency Advocate is a person appointed to assist with the implementation of a Response Plan in accordance with the requirements of this Deed and the agreed Response Plan. The intent is to provide assurance to the Parties that a Cost Shared response is being conducted as described in this Deed and the agreed Response Plan, and in an effective and efficient manner.

Emergency Containment means a set of measures (which may include the use of Quarantine) that are implemented by a Lead Agency in response to an Incident in order to try to:

- (a) restrict an EPP (or a Plant Pest or a Vector reasonably believed to be an EPP) to a defined area; and
- (b) preserve the opportunity for eradication of that EPP, Plant Pest or Vector.

Emergency Plant Pest or EPP means a Plant Pest or a Vector that is:

- (a) included in Schedule 13; or
- (b) otherwise determined by the NMG (on the advice of the CCEPP) to meet at least one of the following criteria:
 - (i) in respect of a Plant Pest:
 - A. is a known Plant Pest which has not previously been identified as present in Australia (or which has previously been eradicated from Australia), the economic consequences of an occurrence of which would be economically or otherwise harmful for Australia, and for which it is considered to be in the national interest to be free of the Plant Pest; or
 - B. is a variant form of an established Plant Pest which can be distinguished by appropriate investigative and diagnostic methods and which, if established in Australia, would have a national impact; or
 - C. is a newly identified Plant Pest of unknown or uncertain origin which is considered likely to have an adverse economic impact nationally if established in Australia; or
 - D. is a Plant Pest already found in Australia that:
 - 1. is restricted to a defined area through the use of regulatory measures intended to prevent further spread of the pest out of the defined area or into an endangered area; and
 - 2. has been detected outside the defined area; and
 - 3. is not a native of Australia; and
 - 4. is not the subject of any instrument for management which is agreed to be effective risk mitigation and management at a national level; and
 - 5. is considered likely to have an adverse economic impact such that an emergency response is required to prevent an incident of national importance; or

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- (ii) in respect of a Vector:
- A. it is a known Vector which has not previously been identified as present in Australia or has previously been eradicated from Australia; and
 - B. it forms a known Complex that, if established, would be economically or otherwise harmful for Australia; and
 - C. it is considered to be in the national interest to be free of that Complex.

Emergency Plant Pest Strategy is a published strategy for the management of one or more EPPs which is set out or referred to in Part 2 of Schedule 5.

Emergency Response Phase has the meaning given in clause 5.2.

Farm Gate Value means the value of produce produced on farm and sold at the first point of sale (e.g. the local silo for grain) less the estimated or actual transport costs from farm gate to first point of sale. For the purposes of this Deed, Farm Gate Value is the equivalent of LVP.

Feral means a plant that is not native to a location, that has escaped from cultivation or domestication and that can reproduce in the wild without human intervention. For the avoidance of doubt, Feral plants do not include weeds.

Formal Notification to the CCEPP occurs when a State or Territory CPHM notifies the Chair of the CCEPP, either orally or in writing, that an Incident has occurred within that State or Territory. Written notification must be used to confirm oral advice and must be in the form agreed from time to time by the Parties.

Funding Weight means, when there are two or more Affected Industry Parties, the proportional impact, expressed as a percentage of the total impact, of an EPP on each Affected Industry Party.

Fungi means truffles and mushrooms of a type which are commercially cultivated in Australia.

Government Party means any of the Commonwealth and the State and Territory Parties that are signatories to this Deed, and **Government Parties** means two or more of them, as determined by the context.

Incident means:

- (a) a confirmed occurrence of, or reasonably held suspicion of the occurrence of, an EPP; or
- (b) the occurrence of an uncategorised Plant Pest or Vector which is reasonably believed to be an EPP (not including circumstances in which an investigation comes to a provisional finding or diagnosis that the Plant Pest or Vector is already established in Australia).

Incident Definition Phase has the meaning given in clause 5.1.

Industry Party means any member of Plant Health Australia that both represents a Cropping Sector and is a signatory to this Deed, and **Industry Parties** means two or more of them, as determined by the context.

Industry Party Delegate means a person who represents an Affected Industry Party at an EPP control centre.

Lead Agency means the agency of a State or Territory responsible for leading the conduct of the response to an Incident within their State or Territory. For clarity, there may be more than one Lead Agency (each from a different State or Territory) for an Incident.

Local Value of Production or **LVP** means the annual Farm Gate Value of the Crop, Crops or sub-group (included in Part 3.3 of Schedule 6) of Crops represented by a particular Industry Party, as calculated at 1 July (each year) as an average taken over the most recent three year period, using:

- (a) the Australian Bureau of Statistics (ABS) data for the most recent, and two preceding, years; or
- (b) if ABS data is not available, the most recently published Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) data; or
- (c) if the relevant data has not been published by either ABS or ABARES, a source of data determined by the Board of Plant Health Australia.

Meeting means participation in meetings which includes participation by:

- (a) telephone;
- (b) videoconference; or
- (c) any other means of communication that the chair of the meeting determines to be suitable.

National Emergency Plant Pest Management Group or **NMG** means the group with the constitution and role set out in Part 1 of Schedule 8.

National EPP Training Program means the program delivered by Plant Health Australia to train people who may participate in activities under this Deed.

Operative Date has the meaning given in clause 2.1.1.

ORCs in the absence of a Response Plan means Owner Reimbursement Costs that the NMG has agreed to Cost Share in accordance with clause 9.1.2.

Owner means, as applicable:

- (a) the owner(s) of a Crop, Crops or a sub-group of Crops;
- (b) the owner(s) of a property;
- (c) any person, other than a mortgagee not in possession, having or claiming any right, title or interest in a crop or a property; or

-
- (d) the authorised representative(s) of any of the persons listed in paragraphs (a) to (c).

Owner Reimbursement Costs or **ORCs** has the meaning given in Part 4.4 of Schedule 6.

Party means an entity that:

- (a) has executed this Deed, or has executed a Deed of Accession in accordance with clause 3; and
- (b) has not withdrawn from or been removed from this Deed,

and **Parties** means two or more such entities, as determined by the context.

Plant Health means the health (including with respect to germination, growth and further reproduction) of living plants and parts thereof, including seeds and germplasm.

Plant Pest means any species, biotype or strain of invertebrate pest or pathogen that meets each of the following criteria:

- (a) It is injurious to Plant Health, Unprocessed Plant Products, Bees or Fungi.
- (b) It is discrete, identifiable and genetically stable.
- (c) It is not a genetically modified organism.

PLANTPLAN means the Australian Emergency Plant Pest Response Plan, the most current version of which is referred to in Part 1 of Schedule 5.

Proof of Freedom Phase has the meaning given in clause 5.3.

Proportional Share means each Affected Party's maximum dollar share of an applicable Agreed Limit or Reimbursement Limit, determined as set out in clause 9.7, as applicable.

Quarantine means restraints on the activities that may be undertaken at an affected property, being restraints that are designed to prevent the spread of:

- (a) an EPP; or
- (b) a Plant Pest or a Vector that is reasonably believed to be an EPP.

Those restraints may include:

- (c) restrictions on access to, and removal of materials from, an affected property; and
- (d) movement controls on plants, plant products, people, machinery and other items.

Reimbursement Limit means the amount determined as set out in clause 9.6, as it may be adjusted in accordance with clauses 9.8 and 9.9.

Relevant Parties means, in respect of the taking of a decision or action:

- (a) the Government Parties that may be affected by the decision or action; and

-
- (b) the Industry Parties, the members of which may be affected by the decision or action.

Representative means a person who, or the person from time to time occupying a position that, a Party has notified Plant Health Australia, in writing, as being authorised to act on behalf of that Party in respect of an Incident, an EPP or a Response Plan. A Representative will be taken to be authorised to act on behalf of a Party in respect of all Incidents, EPPs and Response Plans unless the Party notifies Plant Health Australia of any limitations to that authorisation.

Required Insurance means those insurances specified in clause 28.

Response Plan means an integrated plan for undertaking a response to one or more EPPs that is:

- (a) in accordance with Part 1 of Schedule 4, developed by one or more State or Territory CPHM(s), endorsed by the CCEPP and approved by the NMG; and
- (b) subject to Cost Sharing in accordance with this Deed.

The Response Plan may include Emergency Containment actions so as to enable the payment of Owner Reimbursement Costs and Cost Sharing if considered appropriate by the CCEPP and approved by the NMG.

Response Plan Completion Date means the date the NMG makes a determination pursuant to clause 5.2.4(b)(i), 5.3.4(a), 5.3.4(b)(i), 5.3.4(c) or 5.4.4 which results in cessation of the Response Plan.

Shared Costs means those costs that are shared by the Parties as described in clause 9.

Transition to Management means the undertaking of activities to transition the management of an EPP from seeking to achieve eradication of the EPP under a Response Plan to management of the EPP outside of this Deed.

Transition to Management Phase has the meaning given in clause 5.4.

Unanimous means that all Parties or persons entitled to vote on an issue have voted in the same fashion in respect of that issue. **Unanimously** has a corresponding meaning.

Unprocessed Plant Products means unprocessed material of plant origin (including grain) and are products where the biosecurity risk remains unchanged. For the purposes of this definition, a plant product is not considered to have been processed as a consequence of it having been harvested, sorted, transported or stored if those processes have occurred whilst the product remains owned by the grower of the plants from which the product is produced.

Upper Limit on Expenditure has the meaning given in Part 2.1 of Schedule 10.

Vector means any species, biotype or strain of invertebrate pest that meets each of the following criteria:

- (a) It carries and transmits a Plant Pest to a Crop.

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- (b) It is discrete, identifiable and genetically stable.
 - (c) It is not a genetically modified organism.

1.2 Interpretation

- 1.2.1 The principles set out in Schedule 1 will apply to the interpretation and application of this Deed, unless the context requires otherwise.

2 TERM OF THIS DEED

2.1 Commencement Date, Operative Date and ending date

- 2.1.1 This Deed commenced on 26 October, 2005 (**Operative Date**), and is legally enforceable from that date against:

- (a) the Parties; and
- (b) subject to clause 3, former Parties.

- 2.1.2 This Deed will commence, and will be legally enforceable in respect of its applicability to a particular EPP or Incident (**Commencement Date**), when the Deed has been executed by:

- (a) Plant Health Australia;
- (b) each of the Affected Government Parties; and
- (c) all of the Industry Parties which are Affected Parties in respect of that particular EPP or Incident,

and will be binding in respect of all matters related to management of a particular EPP or Incident on all Parties which are signatories following that date.

- 2.1.3 This Deed will continue until the Parties agree to terminate the Deed in accordance with clause 17.2.

2.2 Review

- 2.2.1 The terms of this Deed will be reviewed by the Parties in light of experience of its operation. The review is to commence no more than five years from the Operative Date with subsequent reviews to commence each five years.

2.3 Continuing provisions

- 2.3.1 If this Deed has ended, either by termination, rescission or otherwise, the following provisions survive and the Parties will continue to be bound by them:

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- (a) clauses 3.3.1(a), 3.4.7, 3.5.3, 10, 12.1, 12.4, 17.3, 19, 20, 25, 27, 28 and 29; and
 - (b) such other provisions of this Deed as are necessary to give full force and effect to those clauses including (but not limited to) interpretational clauses and clauses containing definitions.
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3 ADMISSION, WITHDRAWAL AND REMOVAL OF PARTIES AND REPRESENTATION OF A CROP, CROPS OR A SUB-GROUP OF CROPS

3.1 Application for Admission

3.1.1 A body that:

- (a) is nationally representative of one or more Crops or sub-group of Crops; and
- (b) is, or is becoming, a member of Plant Health Australia,

may, by application in writing to Plant Health Australia, apply to become an Industry Party to this Deed. An application must:

- (c) not be conditional on amendment of the Deed; and
- (d) identify the Crop, Crops or sub-group of Crops that the applicant represents; and
- (e) provide details of the membership and purposes of the body.

Plant Health Australia must:

- (f) circulate the application to the existing Parties;
- (g) coordinate inquiries or discussion between the applicant and the existing Parties; and
- (h) advise the existing Parties of the outcomes of any inquiries or discussions with an applicant representative body.

3.2 Admission

3.2.1 Admission of a party which is not an original Party to this Deed may occur if the existing Parties (other than any Party which is representative of the same Crop or Crops as the applicant), each of which is entitled to one vote, vote in favour of that admission in accordance with clause 3.2.2:

- (a) at a Meeting of the Parties to be convened by Plant Health Australia not more than 6 months after receipt of the application; or

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- (b) by circulation of a resolution issued by Plant Health Australia not more than 6 months after receipt of the application.
- 3.2.2 The resolution to admit a new Party to this Deed will be passed if both:
- (a) all votes received at the Meeting or in response to the circulated resolution are in favour of the admission; and
- (b) the votes received at the Meeting or in response to the circulated resolution include votes from all Government Parties and at least 75% of Industry Parties.
- 3.2.3 If a circulated resolution referred to in clause 3.2.1(b) fails, the resolution must then be put to a Meeting of the Parties pursuant to clause 3.2.1(a) for further consideration. If the resolution is passed at the Meeting, then the new Party will be admitted in accordance with clause 3.2.
- 3.2.4 A body will become a Party upon its execution of a Deed of Accession to this Deed in the form of the Deed at Part 1 of Schedule 12.

3.3 **Withdrawal of a Party from the Deed**

- 3.3.1 Any Party other than Plant Health Australia may, by not less than 6 months' notice in writing to each other Party, withdraw from this Deed provided that if it does so:
- (a) it will remain liable for:
- (i) liabilities accrued to other Parties up to the date on which the notice takes effect (i.e. the date specified in the notice, being a date not less than 6 months after the date of service of the notice on all Parties); and
- (ii) any obligations in respect of Cost Sharing:
- A. arising pursuant to a Response Plan; or
- B. of ORCs in the absence of a Response Plan;
- which, in either case, have been agreed by the withdrawing Party prior to the date on which the notice is served by it; and
- (b) the remaining Parties will continue to be bound by the Deed, to the extent that performance of their obligations is not rendered impossible by the withdrawal of the withdrawing Party from the Deed.
- 3.3.2 If a Party gives a notice of withdrawal from the Deed under clause 3.3.1, Plant Health Australia must, within 60 days of the date on which it receives the notice of withdrawal, convene a Meeting of the remaining Parties to consider the implications for the Deed of the withdrawal of the withdrawing Party, including any necessary changes to future Cost Sharing arrangements.

3.4 Replacement of an Industry Party

3.4.1 An Industry Party that:

- (a) is proposing to cease to exist; or
- (b) has changed, or is proposing to change, its structure, nature or legal identity so that, in either case, it will no longer be able to represent its Crop, Crops or a sub-group of Crops nationally,

must, by written notice, advise Plant Health Australia of the relevant facts and of its withdrawal from this Deed. The Industry Party may, with the agreement of the body concerned, nominate a body that is or will shortly be capable of representing the Crop, Crops or a sub-group of Crops in respect of this Deed (**Replacement Body**).

3.4.2 The Replacement Body may, by application in writing, apply to Plant Health Australia to become a party to this Deed to represent the Crop, Crops or a sub-group of Crops in place of the existing Industry Party. The Replacement Body must agree to:

- (a) assume responsibility for the liabilities accrued by the existing Industry Party to the other Parties up to the date that the Replacement Body becomes a Party;
- (b) meet the reasonable costs of Plant Health Australia in inquiring into the application; and
- (c) accept any obligations in respect of Cost Sharing:
 - (i) arising pursuant to a Response Plan; or
 - (ii) of ORCs in the absence of a Response Plan,for which, in either case, the existing Industry Party would have been liable if it had remained a Party.

3.4.3 Plant Health Australia must:

- (a) circulate to the existing Parties the written notice from the Industry Party and the application from the Replacement Body;
- (b) inquire into or discuss the application with the existing Industry Party and the Replacement Body; and
- (c) advise the existing Parties of the outcomes of any inquiries and discussions with the Industry Party and the Replacement Body.

3.4.4 The Replacement Body will become a Party, and the existing Industry Party will cease to be a Party, if the existing Parties (other than the withdrawing Industry Party), each of which is entitled to one vote, vote in favour of that replacement in accordance with clause 3.4.5:

- (a) at a Meeting of the Parties to be convened by Plant Health Australia not more than 6 months after receipt of the application; or
- (b) by circulation of a resolution issued by Plant Health Australia not more than 6 months after receipt of the application,

provided that the Replacement Body and Plant Health Australia (on behalf of the other Parties) execute a Deed of Accession to this Deed in the form set out at Part 2 of Schedule 12 in which the Replacement Body takes on the obligations and liabilities of the withdrawing Industry Party.

3.4.5 The resolution to accept the Replacement Body to this Deed will be passed if both:

- (a) all votes received at the Meeting or in response to the circulated resolution are in favour of the acceptance of the Replacement Body; and
- (b) the votes received at the Meeting or in response to the circulated resolution include votes from all Government Parties and at least 75% of Industry Parties.

3.4.6 If a circulated resolution referred to in clause 3.4.4(b) fails, the resolution must then be put to a Meeting of the Parties pursuant to clause 3.4.4(a) for further consideration. If the resolution is passed at the Meeting, then the Replacement Body may become a Party in accordance with clauses 3.1 and 3.2.

3.4.7 The Industry Party being replaced will remain liable for any liabilities accrued to other Parties prior to the date of its withdrawal, except to the extent that they are met by the Replacement Body.

3.5 **Removal**

3.5.1 If an Industry Party:

- (a) fails to comply with the terms of this Deed; or
- (b) in the view of all other Parties, is no longer representative of its nominated Crop, Crops or a sub-group of Crops,

the other Parties may remove that unqualified Industry Party from participation in this Deed by terminating it as a Party to the Deed, provided that the unqualified Industry Party is:

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- (c) advised, in writing by Plant Health Australia, of the reasons for the proposed removal; and
 - (d) afforded the opportunity to make written submissions to, and to be heard by, the other Parties.
- 3.5.2 Termination of the unqualified Industry Party as a Party must be by Unanimous agreement of all Parties other than the unqualified Industry Party, upon which agreement the unqualified Industry Party will cease to be a Party to this Deed.
- 3.5.3 The Industry Party terminated pursuant to clauses 3.5.1 and 3.5.2 will remain liable for:
- (a) liabilities accrued to other Parties up to the date on which it is terminated as a Party; and
 - (b) any obligations in respect of Cost Sharing:
 - (i) arising pursuant to a Response Plan; or
 - (ii) of ORCs in the absence of a Response Plan;which, in either case, have been agreed by the terminated Industry Party prior to the date of its termination.
- 3.5.4 The other Parties will not be liable for any loss caused to or suffered by the terminated Industry Party resulting from its termination as a Party pursuant to clause 3.5.2.

3.6 **Representation of a Crop, Crops or sub-group of Crops**

- 3.6.1 For the purposes of Cost Sharing, an Industry Party will be taken to represent the Crop, Crops or sub-group of Crops which it notified Plant Health Australia that it represented when becoming a Party to the Deed, as set out in Part 3 of Schedule 7.
- 3.6.2 An Industry Party may, by application in writing to Plant Health Australia, apply to represent a Crop, Crops or sub-group of Crops:
- (a) that is not yet represented (whether a newly emerged Crop or not); or
 - (b) that is represented by an existing Industry Party.
- 3.6.3 An application must identify, and provide evidence of the applicant Industry Party's qualification to represent, the Crop, Crops or sub-group of Crops. If the Crop, Crops or sub-group of Crops is/are already represented by one or more existing Industry Parties, Plant Health Australia must give notice of the application to that Party or Parties and invite it or them to submit, within 2 months of the date of receipt of the notice, a response to the application.

Plant Health Australia must circulate the application and any response to all other Parties.

- 3.6.4 The applicant Industry Party will be taken to represent the Crop, Crops or sub-group of Crops if the other Parties (other than any Industry Party which already represents the Crop, Crops or sub-group of Crops the subject of the application), each of which is entitled to one vote, vote in favour of that change of representation in accordance with clause 3.6.5:
- (a) at a Meeting of the Parties to be convened by Plant Health Australia not more than 6 months after receipt of the application; or
 - (b) by circulation of a resolution issued by Plant Health Australia not more than 6 months after receipt of the application.
- 3.6.5 The resolution to change the representation of a Crop, Crops or sub-group of Crops will be passed if both:
- (a) all votes received at the Meeting or in response to the circulated resolution are in favour of the change of representation; and
 - (b) the votes received at the Meeting or in response to the circulated resolution include votes from all Government Parties and at least 75% of Industry Parties.
- 3.6.6 If a circulated resolution referred to in clause 3.6.4(b) fails, the resolution must then be put to a Meeting of the Parties pursuant to clause 3.6.4(a) for further consideration. If the resolution is passed at the Meeting, then the applicant Industry Party will be taken to represent the Crop, Crops or sub-group of Crops the subject of its application.
- 3.6.7 If the application is approved, the name of the Party and the Crop, Crops or sub-group of Crops which it is to represent must be added by Plant Health Australia to the table setting out the Crop, Crops or sub-group of Crops represented by Industry Parties at Part 3 of Schedule 7.
- 3.6.8 An Industry Party may, by notice in writing to Plant Health Australia, state its intention to resign its right to represent a Crop, Crops or sub-group of Crops. Plant Health Australia must circulate the notice to all Parties. The resignation takes effect, unless withdrawn by notice in writing to Plant Health Australia, 6 months from the date on which the notice of intention to resign was received by Plant Health Australia (or such later date as may be specified in the notice). In that case, Plant Health Australia must amend the list of the Crop, Crops or sub-groups of Crops represented by Industry Parties at Part 3 of Schedule 7.
- 3.6.9 An Industry Party which gives a notice of resignation of its right to represent a Crop, Crops or sub-group of Crops under clause 3.6.8 will remain liable for:

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- (a) liabilities accrued to other Parties up to the date on which the notice takes effect (i.e. the date specified in the notice, being a date not less than 6 months after the date of service of the notice on Plant Health Australia); and
 - (b) any obligations in respect of Cost Sharing:
 - (i) arising pursuant to a Response Plan; or
 - (ii) of ORCs in the absence of a Response Plan;

which, in either case, have been agreed by that Industry Party prior to it giving the notice.

3.7 Requirement for Parties to maintain membership of Plant Health Australia

- 3.7.1 In order for a Government Party or Industry Party to remain a Party to this Deed, that Party must continue to be a member of Plant Health Australia.
- 3.7.2 If a Government Party or an Industry Party ceases to be a member of Plant Health Australia (**Non Member Party**), Plant Health Australia must give that Non Member Party a notice (**Notice of Intention to Terminate**) that:
 - (a) sets out an intention to terminate the Non Member Party as a Party to this Deed; and
 - (b) invites the Non Member Party to make submissions to the other Parties as to why it should not be terminated as a Party to this Deed.
- 3.7.3 If the Non Member Party wishes to respond to the Notice of Intention to Terminate, it must respond in writing to Plant Health Australia within 28 days of receipt of the Notice of Intention to Terminate.
- 3.7.4 If Plant Health Australia receives a response pursuant to clause 3.7.3 within 28 days, it must circulate that response to the other Parties, and the Parties must consider that response within a further 28 day period. Plant Health Australia must determine the means by which that consideration will be undertaken.
- 3.7.5 In the event that the Non Member Party either:
 - (a) does not respond to the Notice of Intention to Terminate within 28 days; or
 - (b) responds to the Notice of Intention to Terminate within 28 days but, following circulation of the response to the other Parties and their consideration of it, all the other Parties other than Plant Health Australia have not within a further 28 days and by Unanimous agreement, determined to take another course,

Plant Health Australia must:

- (c) give the Non Member Party a notice of termination of it as a Party to this Deed; and
- (d) take such administrative steps as are necessary to give effect to that termination,

and clauses 3.5.3 and 3.5.4 will apply.

4 REPORTING OF EMERGENCY PLANT PESTS

4.1 Obligation to advise of an EPP within 24 hours

4.1.1 For the purposes of Cost Sharing under this Deed, each Government Party undertakes:

- (a) to give Formal Notification to the CCEPP within 24 hours of becoming aware of an Incident; and
- (b) to take all reasonable steps to ensure that persons within their jurisdiction (including public and private plant health personnel and public and private laboratories) advise that Government Party within 24 hours of becoming aware of an Incident, so that that Government Party can give Formal Notification to the CCEPP in accordance with clause 4.1.1(a).

4.1.2 Each Industry Party undertakes to take reasonable steps to advise its members and other participants (as considered appropriate by the Industry Parties) in respect of their Crop, Crops or a sub-group of Crops to notify the applicable State or Territory authority within 24 hours of becoming aware of an Incident so that the applicable authority can notify the relevant CPHM who can give Formal Notification to the CCEPP in accordance with clause 4.1.1(a).

4.2 Effect of failure of a Government Party to advise of an EPP within 24 hours

4.2.1 Payment to a Government Party pursuant to this Deed for action taken by that Party in accordance with this Deed (**Claimant**) will not be made unless:

- (a) the Claimant gave Formal Notification to the CCEPP in accordance with clause 4.1.1(a);
- (b) the NMG determines on the advice of the CCEPP that a Claimant has in particular circumstances acted appropriately and that, despite the requirements of clause 4.1 (for notification within 24 hours of becoming aware of an Incident), payment should otherwise be made to the Claimant; or

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- (c) it relates only to Cost Sharing of Owner Reimbursement Costs.
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5 PHASES OF AN EMERGENCY PLANT PEST RESPONSE

5.1 Incident Definition Phase

- 5.1.1 This is the investigation period that commences following Formal Notification to the CCEPP.
- 5.1.2 The Incident Definition Phase will continue until the NMG (on advice from the CCEPP):
- (a) agrees to a Response Plan submitted by the CCEPP, following a determination by the NMG that:
 - (i) the Incident relates to an EPP; and
 - (ii) eradication of the EPP is feasible; or
 - (b) determines that the Incident:
 - (i) does not relate to an EPP; or
 - (ii) does relate to an EPP but that eradication of the EPP is not feasible.
- 5.1.3 Emergency Containment measures may be implemented during the Incident Definition Phase.

5.2 Emergency Response Phase

- 5.2.1 This is the period that may follow the Incident Definition Phase, if the NMG agrees to a Response Plan.
- 5.2.2 The aim of the Emergency Response Phase is to implement the Response Plan so as to eradicate the EPP.
- 5.2.3 The Emergency Response Phase will commence on agreement by the NMG of a Response Plan.
- 5.2.4 The Emergency Response Phase will continue until either:
- (a) the CCEPP determines that the emergency response should enter a Proof of Freedom Phase in accordance with clause 5.3.3; or
 - (b) the NMG determines (on advice from the CCEPP) that eradication of the EPP is not feasible and either:

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- (i) that the emergency response should come to an end, in which case the Response Plan will be terminated; or
 - (ii) that the emergency response should enter a Transition to Management Phase in accordance with clause 5.4.2, in which case the Response Plan will be modified to include provisions for the Transition to Management Phase.

5.3 **Proof of Freedom Phase**

5.3.1 This is the period that may follow the Emergency Response Phase.

5.3.2 The aim of the Proof of Freedom Phase is to undertake activities to confirm that the EPP has been eradicated.

5.3.3 The Proof of Freedom Phase will commence if the CCEPP determines that the eradication activities set out in the Response Plan have been successfully completed and the emergency response should enter the Proof of Freedom Phase.

5.3.4 The Proof of Freedom Phase will continue until the NMG determines (on advice from the CCEPP):

- (a) that the EPP has been eradicated, in which case the Response Plan will come to an end;
- (b) that eradication of the EPP is no longer feasible and either:
 - (i) that the emergency response should come to an end, in which case the Response Plan will be terminated; or
 - (ii) that the emergency response should enter a Transition to Management Phase in accordance with clause 5.4.2, in which case the Response Plan will be modified to include provisions for the Transition to Management Phase; or
- (c) that the Proof of Freedom Phase should end, in which case the NMG may also determine that the Response Plan should come to an end.

5.4 **Transition to Management Phase**

5.4.1 This is the period that may follow the Emergency Response Phase or the Proof of Freedom Phase.

5.4.2 The Transition to Management Phase will commence if it has been determined by the NMG (on advice from the CCEPP) that the emergency response should enter a Transition to Management Phase. The NMG may only make such a determination if it considers that:

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- (a) Transition to Management is achievable within a defined and reasonable timeframe:
 - (i) not exceeding 12 months; or
 - (ii) exceeding 12 months, but only if the NMG (on the advice from the CCEPP) determines that there are exceptional circumstances.

5.4.3 If:

- (a) a Transition to Management Phase has commenced;
- (b) Transition to Management was to be completed within 12 months; and
- (c) the NMG (on advice from the CCEPP) determines that there are exceptional circumstances,

the NMG (on advice from the CCEPP) may extend the timeframe in which Transition to Management is considered achievable to a defined and reasonable timeframe exceeding 12 months.

5.4.4 The Transition to Management Phase will continue until the NMG determines (on advice from the CCEPP) either:

- (a) that Transition to Management has been completed; or
- (b) that the Transition to Management Phase should end,

and, in either case, the Response Plan will come to an end.

5.5 **New outbreaks**

5.5.1 If there is an Incident which cannot be directly linked to a previous Incident, it will be treated as a new Incident and the four Phases described above may apply.

6 DEVELOPING A RESPONSE PLAN

6.1 Procedure

6.1.1 A Response Plan proposed for submission to the NMG must be developed by the Lead Agency(s) in consultation with the CCEPP and in accordance with the following principles:

- (a) the Response Plan development and approval process must not impede the initiation of a rapid response by the Lead Agency(s) to an outbreak of an EPP;

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- (b) the Response Plan must reflect the nature and circumstances of the EPP and Incident, including control of Plant Pests and Vectors in Feral, neglected and unmanaged plants or settings when the CCEPP advises that such measures are integral to the Response Plan;
 - (c) key strategies and core operational components of the Response Plan (including those which may be subject to Cost Sharing and those which may not) must be identified in first version of the Response Plan submitted to the NMG but some components may remain to be developed in accordance with a timetable to be agreed by the CCEPP;
 - (d) the Response Plan must clearly identify any proposed significant variations to or departures from the current version of PLANTPLAN, so as to enable consideration of those variations or departures by the NMG as required by clause 6.2.1(a); and
 - (e) all key strategies and core operational activities should be included in the Response Plan and must clearly identify which of them are to be the subject of Cost Sharing.
- 6.1.2 Once agreed by the NMG, the Response Plan will commit the Lead Agency(s) to the key strategies and core operational activities contained in the Response Plan, subject to any variations which may be:
- (a) subsequently agreed by the NMG (on advice of the CCEPP); or
 - (b) required to be made in order to comply with the legislation of a State or Territory in which the Incident occurs.
- 6.1.3 The content of the Response Plan must be prepared in accordance with Part 1 of Schedule 4.
- 6.1.4 The CPHM(s) of the Lead Agency(s) must provide the proposed Response Plan to the CCEPP as soon as possible.
- 6.1.5 The CCEPP, once it agrees that the proposed Response Plan is in a suitable form, must submit the proposed Response Plan to the NMG for approval as soon as possible.

6.2 **Standards**

- 6.2.1 A Response Plan must (except as agreed by the NMG) conform to:
- (a) PLANTPLAN, referred to in Part 1 of Schedule 5; and
 - (b) any applicable Emergency Plant Pest Strategy, referred to in Part 2 of Schedule 5.

7 CATEGORIES OF EMERGENCY PLANT PESTS

7.1 The four categories of EPPs

7.1.1 EPPs will be categorised into four categories in accordance with Part 1 of Schedule 3.

7.1.2 An EPP that is a Vector will be treated as the same category of EPP as the Plant Pest with which it forms a Complex.

7.2 Determination of applicable category and Funding Weights for an uncategorised EPP

7.2.1 Any Party may request Plant Health Australia to obtain a categorisation of an uncategorised:

- (a) Plant Pest or Vector reasonably believed by the Party to be an EPP; or
- (b) EPP listed in Schedule 13.

7.2.2 Upon receipt of such a request, Plant Health Australia must:

- (a) if it is satisfied that it may be an EPP;
- (b) and once it has sufficient information to enable categorisation, refer the information to the Categorisation Group for categorisation.

7.2.3 In the circumstances set out in clause 7.2.2, Plant Health Australia must convene a Categorisation Group which must:

- (a) if it has sufficient information to enable categorisation:
 - (i) determine whether it is an EPP; and
 - (ii) if it is an EPP, the category of EPP and the Funding Weights, in accordance with the procedure at Schedule 3; or
- (b) if it does not have sufficient information to enable it to determine if it is an EPP or to enable categorisation:
 - (i) request that information from Plant Health Australia or such Party(s) as may be able to supply it; and
 - (ii) upon receipt of that additional information, determine whether it is an EPP and, if so, the category and Funding Weights of the EPP, in accordance with the procedure at Schedule 3.

7.2.4 Following determination by the Categorisation Group pursuant to clause 7.2.3(a) or (b):

- (a) that it is an EPP;
- (b) the category of EPP; and
- (c) the applicable Funding Weights,

the Relevant Parties must determine if there is Unanimous agreement in respect of the determination of the Categorisation Group in accordance with Part 2 of Schedule 3 and whether that EPP should be included in Schedule 13. If they so determine, Plant Health Australia must amend Schedule 13 accordingly and forward a copy to all Parties.

7.3 **Review of a category or Funding Weights, or removal from Schedule 13**

7.3.1 Any Party that:

- (a) is dissatisfied with a determination of:
 - (i) a category of an EPP listed in Schedule 13; or
 - (ii) the Funding Weights of an EPP listed in Part 2 of Schedule 6; or
- (b) believes that a Plant Pest or Vector should be removed from Schedule 13,

may request Plant Health Australia to obtain a review of the category or Funding Weights of a categorised EPP, or to remove a Plant Pest or Vector from Schedule 13. The Parties must follow the process for review of the category or Funding Weights of an EPP, or for removal of a Plant Pest or Vector from Schedule 13, set out at Part 2 of Schedule 3.

7.3.2 If Plant Health Australia determines that the request for review of the category or Funding Weights of an EPP, or for removal of a Plant Pest or Vector from Schedule 13, includes sufficient information, it must within 30 days seek the relevant review by a Categorisation Group.

7.3.3 If Plant Health Australia determines that the request for review of the category or Funding Weights of an EPP, or for removal of a Plant Pest or Vector from Schedule 13, does not contain sufficient information, it must so advise in writing the Party which lodged the request. That Party may seek reconsideration of the matter at a General Meeting of Plant Health Australia. If a motion for reconsideration is passed by ordinary resolution, Plant Health Australia must, within 30 days of the resolution, seek reconsideration of the matter by a Categorisation Group.

7.3.4 The Categorisation Group must:

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- (a) if it is satisfied that the request contains sufficient information to consider the request, determine (as applicable):
 - (i) any change to the category or the Funding Weights of the EPP;
or
 - (ii) whether the Plant Pest or Vector should remain listed as an EPP in Schedule 13,

in accordance with the procedure at Schedule 3, having regard to the criteria set out in Part 3 of Schedule 3; or
 - (b) if it is not satisfied that the request contains sufficient information to enable it to consider the matter:
 - (i) request the required information from Plant Health Australia or such Party(s) as may be able to supply it; and
 - (ii) upon receipt of sufficient additional information, proceed to consider the matter in accordance with clause 7.3.4(a).

7.3.5 Following review of the category or Funding Weights of an EPP, or proposed removal from Schedule 13 of a Plant Pest or Vector, by the Categorisation Group, the Relevant Parties must determine if there is Unanimous agreement in respect of the determination of the Categorisation Group in accordance with Part 2 of Schedule 3.

8 MANAGEMENT OF A RESPONSE PLAN

8.1 Implementation

8.1.1 A Response Plan must be implemented by the Lead Agency(s) in accordance with:

- (a) applicable legislation; and
- (b) the terms of the Response Plan.

8.1.2 For the avoidance of doubt, the relevant Lead Agency(s) must, to the extent not inconsistent with applicable legislation, take action in accordance with the agreed Response Plan.

8.2 Qualification of Personnel

8.2.1 The Parties must:

- (a) whenever possible, use personnel in an emergency response who have received training in respect of their responsibilities and the

principles of EPP responses, including those roles listed in Part 2 of Schedule 4; and

- (b) have appropriate numbers of their personnel receive training in respect of their responsibilities and the principles of EPP responses, including training under the National EPP Training Program.

9 PRINCIPLES OF COST SHARING

9.1 Cost Sharing – Incident Definition Phase

9.1.1 The State(s) and/or Territory(s) in which an Incident has occurred will meet the cost of the Incident Definition Phase except that, once a Response Plan has been agreed, Cost Sharing principles will apply in respect of:

- (a) Owner Reimbursement Costs from:
 - (i) the date of first notification of the Incident to the relevant State(s), Territory(s) or the Commonwealth; or
 - (ii) such earlier date as may be determined by the NMG on the advice of the CCEPP; and
- (b) investigation and diagnostic costs if approved by the NMG, on the advice of the CCEPP (having regard to the 'normal commitments' principles developed in accordance with clause 14), as being relevant and reasonable.

9.1.2 If an Incident has occurred but there is no agreed Response Plan (because the NMG made a determination that a Response Plan will not be implemented under this Deed), the NMG may determine that Owner Reimbursement Costs should be subject to Cost Sharing in accordance with this Deed.

9.2 Cost Sharing – Incident Definition, Emergency Response, Proof of Freedom and Transition to Management Phases

9.2.1 Subject to this Deed, the Parties must share the costs of:

- (a) the implementation of a Response Plan that has been agreed by the NMG; and
- (b) ORCs that are payable in the absence of a Response Plan in accordance with an agreement by the NMG pursuant to clause 9.1.2,

in the following proportions:

| Category of EPP | Government Funding | Industry Funding |
|------------------------|---------------------------|-------------------------|
| Category 1 | 100% | 0% |
| Category 2 | 80% | 20% |
| Category 3 | 50% | 50% |
| Category 4 | 20% | 80% |

9.2.2 Cost Sharing of costs arising from the implementation of a Response Plan, will apply in respect of:

- (a) salaries and wages;
- (b) operating expenses;
- (c) capital costs; and
- (d) Owner Reimbursement Costs,

as determined in accordance with Part 4 of Schedule 6.

9.2.3 Cost Sharing of costs arising from the payment of ORCs in the absence of a Response Plan, will apply in respect of:

- (a) Owner Reimbursement Costs paid by a State or Territory Government Party to an Owner, as determined in accordance with, as applicable, Part 4 of Schedule 6, Schedule 17 and any relevant Guidelines issued by Plant Health Australia that are referred to in Schedule 17 (provided that references to matters being done in accordance with or in respect of a Response Plan will be read as applying equally to the circumstances in which the Parties have agreed to Cost Sharing of costs arising from the payment of ORCs in the absence of a Response Plan);
- (b) the costs paid by a Party to an assessor for undertaking a valuation of ORCs; and
- (c) costs incurred by Plant Health Australia (above normal operating expenses) in respect of the payment of ORCs in the absence of a Response Plan.

9.2.4 The "Government Funding" referred to in clause 9.2.1 will be shared between Government Parties in the manner set out in Part 1 of Schedule 6.

9.2.5 The "Industry Funding" referred to in clause 9.2.1 will be shared between Industry Parties in the manner set out in Parts 2 and 3 of Schedule 6.

9.3 **Cost Sharing – Uncategorised Plant Pest or Vector or EPP listed in Schedule 13**

9.3.1 When an Incident has been reported to the CCEPP in respect of:

- (a) an uncategorised:
 - (i) Plant Pest or Vector believed by the NMG to be an EPP; or
 - (ii) EPP listed in Schedule 13; and
- (b) the NMG, prior to categorisation of the Plant Pest or Vector or EPP listed in Schedule 13, determines that:
 - (i) a Response Plan is to be implemented; or
 - (ii) Owner Reimbursement Costs should be subject to Cost Sharing in the absence of a Response Plan,

the Parties will engage in Cost Sharing as if the uncategorised Plant Pest, Vector or EPP listed in Schedule 13 were a Category 3 EPP unless:

- (c) the NMG determines that there are significant public health issues, in which case the Parties will engage in Cost Sharing as if the uncategorised Plant Pest, Vector or EPP listed in Schedule 13 were a Category 1 EPP; or
- (d) in respect of a Vector, the Plant Pest component of the relevant Complex is categorised, in which case the Vector will be treated as the same category as the Plant Pest component of the Complex,

until further determination by the NMG having regard to advice provided by the Categorisation Group.

9.3.2 If, following a request for categorisation being submitted in accordance with clause 7.2:

- (a) the Categorisation Group subsequently determines that:
 - (i) the category is other than the category under which it has been treated pursuant to clause 9.3.1; or
 - (ii) the Funding Weights are other than those which have been applied pursuant to paragraph 2.2.4 of Schedule 6; and
- (b) the Relevant Parties adopt that revised category or those revised Funding Weights, pursuant to clause 7.2.4,

the Parties will only make adjustments between them in respect of funds paid by way of Cost Sharing prior to the date of that final determination of the

category and/or Funding Weights by the Categorisation Group if that adjustment is agreed by the NMG.

9.4 **Changing Cost Sharing proportions**

- 9.4.1 The Affected Parties may agree, in respect of a specific Response Plan, or specific ORCs in the absence of a Response Plan, that the proportions for Cost Sharing will be different to those set out in clause 9.2 provided that:
- (a) a Party is not bound to meet any change in its liability arising from a change in the proportions of Cost Sharing until that change has been approved in writing by it or its Representative;
 - (b) a change in the proportions of Cost Sharing will only take effect in respect of a Party from the date of signature by it or its Representative of the written approval (unless the written approval signed by it or its Representative provides otherwise); and
 - (c) a change in the proportions of Cost Sharing will only apply to that specific Response Plan or those specific ORCs in the absence of a Response Plan (unless the written approval signed by the Parties or their Representatives provides otherwise).

9.5 **Agreed Limit**

- 9.5.1 The amount that may be eligible for Cost Sharing under a Response Plan must not exceed the Agreed Limit, unless agreed in writing by the Affected Parties.

Agreed Limit when there is only one Affected Industry Party

- 9.5.2 In respect of a Response Plan when there is only one Industry Party which is an Affected Party (**Affected Industry Party**), the Agreed Limit that will apply to that Response Plan will, unless another amount is agreed in writing by the Affected Parties, be the lesser of:
- (a) 2% of the LVP of the Crop(s) represented by the Affected Industry Party; or
 - (b) if the Parties have agreed to the inclusion in Part 3.3 of Schedule 6 of a sub-group of the Crops represented by the Affected Industry Party, 2% of the LVP of the relevant sub-group(s) of Crops; or
 - (c) subject to clause 33, \$20 million; or
 - (d) the amount set out in Schedule 14 by the Operative Date or the amount:
 - (i) nominated to Plant Health Australia in writing by the Affected Industry Party in respect of the relevant Crop(s); and

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- (ii) approved by a general meeting of members of Plant Health Australia,

every 12 months after the Operative Date.

Agreed Limit when there is more than one Affected Industry Party

9.5.3 In respect of a Response Plan when there is more than one Industry Party which is an Affected Party (**Affected Industry Parties**), the Agreed Limit that will apply to that Response Plan will, unless another amount is agreed in writing by the Affected Parties, be:

- (a) 1% of the sum of the LVPs of the Crops represented by the Affected Industry Parties; or
- (b) if the Parties have agreed to the inclusion in Part 3.3 of Schedule 6 of a sub-group of the Crops represented by any of the Affected Industry Parties, 1% of the sum of the LVP of the Crops represented by the Affected Industry Parties, but only using the LVP of the relevant sub-group(s) when applicable.

9.6 Reimbursement Limit

9.6.1 The amount that may be eligible for Cost Sharing of ORCs in the absence of a Response Plan may not exceed the lesser of:

- (a) 2% of the Agreed Limit that would apply if a Response Plan were agreed in respect of that Incident; and
- (b) \$2.5 million,

(the **Reimbursement Limit**), unless otherwise agreed in writing by the Affected Parties.

9.7 Maximum Proportional Share

Maximum Proportional Share when there is only one Affected Industry Party

9.7.1 For the purposes of Cost Sharing when there is only one Affected Industry Party, the maximum Proportional Share that each Affected Party may be required to contribute to Cost Sharing will be:

- (a) its share (as determined in accordance with clause 9.2):
 - (i) of the Agreed Limit determined under clause 9.5.2; or
 - (ii) of the Reimbursement Limit determined under clause 9.6; or
- (b) such greater amount as it has agreed in writing to contribute. That agreement in writing (including if it is in the Response Plan) must be

explicitly worded as an agreement to the increase of the Agreed Limit, Reimbursement Limit or maximum Proportional Share for the purposes of clauses 9.5.2 and 9.7.1 of this Deed.

Maximum Proportional Share when there is more than one Affected Industry Party

- 9.7.2 For the purposes of Cost Sharing when there is more than one Affected Industry Party, the maximum Proportional Share that each Affected Party may be required to contribute to Cost Sharing will be:
- (a) its share (as determined in accordance with clause 9.2):
 - (i) of the Agreed Limit determined under clause 9.5.3; or
 - (ii) of the Reimbursement Limit determined under clause 9.6; or
 - (b) such greater amount as it has agreed in writing to contribute. That agreement in writing (including if it is in the Response Plan) must be explicitly worded as an agreement to the increase of the Agreed Limit, Reimbursement Limit or maximum Proportional Share for the purposes of clauses 9.5.3 and 9.7.2 of this Deed.

9.8 Expenditure threshold for review of the Agreed Limit

- 9.8.1 In the determination of a Response Plan, the CCEPP must propose and the NMG must approve an expenditure threshold that would trigger a review of the Agreed Limit. This expenditure threshold must not be set higher than 90% of the Agreed Limit. If no threshold is set, it will be taken to be 90% of the Agreed Limit.
- 9.8.2 If expenditure on the Response Plan reaches the threshold referred to in clause 9.8.1, the NMG must meet to determine whether the Agreed Limit will be revised or other action taken as set out in clause 9.9.1.

9.9 If the Agreed Limit or Reimbursement Limit may be exceeded

- 9.9.1 If the NMG believes that the cost of a Response Plan may exceed the Agreed Limit, it must promptly determine whether:
- (a) the Agreed Limit should be increased, in which case it must convene a Meeting of Affected Parties to consider the recommended increase;
 - (b) the Response Plan should be continued;
 - (c) the Proportional Shares of the Affected Parties should be altered;
 - (d) any other appropriate alterations should be made to the Response Plan; or

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- (e) the Response Plan should be transformed into a long term control program in which case the Response Plan will cease.

9.9.2 If a Lead Agency believes that the cost of ORCs in the absence of a Response Plan may exceed the Reimbursement Limit, it must immediately advise the NMG which will apply a process similar to that described in clause 9.9.1.

9.10 **Cost Sharing in respect of an unrepresented cropping sector with LVP greater than \$20 million**

9.10.1 If an Incident occurs that only concerns a cropping sector that:

- (a) has an LVP that, subject to clause 33, is greater than \$20 million; and
- (b) is not represented by a Party to this Deed,

the mechanisms set out in this Deed will not apply to that Incident (and, for clarity, Cost Sharing will not apply in respect of any response to that Incident that may be taken by any Party).

9.10.2 If an Incident occurs that:

- (a) concerns one or more Cropping Sectors that is or are represented by a Party or Parties to this Deed; and
- (b) also concerns a cropping sector that:
 - (i) has an LVP that, subject to clause 33, is greater than \$20 million; and
 - (ii) is not represented by a Party to this Deed,

the mechanisms set out in this Deed may be applied by the Affected Parties to respond to that Incident but:

- (c) Cost Sharing will not apply in respect of any Owner Reimbursement Costs paid by a Government Party to members of the unrepresented cropping sector;
- (d) Cost Sharing will not apply in respect of any other costs incurred by a Party in respect of the unrepresented cropping sector except to the extent that those costs are incurred for the benefit of a Cropping Sector represented by a Party to this Deed; and
- (e) the unrepresented cropping sector will not be entitled to be represented at any of the meetings or fora convened pursuant to this Deed.

9.11 **Cost Sharing in respect of an unrepresented cropping sector with LVP less than \$20 million**

9.11.1 If an Incident occurs that:

- (a) only concerns a cropping sector that:
 - (i) has an LVP that, subject to clause 33, is less than \$20 million; and
 - (ii) is not represented by a Party to this Deed; or
- (b) concerns such an unrepresented cropping sector and also concerns one or more Cropping Sectors that is or are represented by a Party or Parties to this Deed,

then:

- (c) the mechanisms set out in this Deed may be applied by the Affected Parties to respond to that Incident; and
- (d) Cost Sharing may apply in respect of any response to that Incident that may be taken by the Affected Parties, including in respect of:
 - (i) Owner Reimbursement Costs paid by a Government Party to members of the unrepresented cropping sector; and
 - (ii) any other costs incurred by a Party in respect of the unrepresented cropping sector,

but the unrepresented cropping sector will not be entitled to be represented at any of the meetings or fora convened pursuant to this Deed.

9.12 **Additional costs that are subject to Cost Sharing**

9.12.1 The principles for Cost Sharing will also apply to:

- (a) the costs of dealing with Plant Pests and Vectors in Feral, neglected and unmanaged plants or settings and associated control measures, forming part of a Response Plan when the CCEPP has advised, and the NMG has agreed, that such measures are required as part of the Response Plan;
- (b) the costs incurred by the NMG (or by a Party on behalf of the NMG) pursuant to clause 12.3;
- (c) the costs of a financial auditor incurred by a Lead Agency pursuant to clause 12.4; and
- (d) other costs as agreed by the Relevant Parties.

9.13 **Plant Health Australia costs**

9.13.1 While Plant Health Australia is neither a Government Party nor an Industry Party, the principles of Cost Sharing will apply to costs incurred by it that are additional to its ordinary operating costs and are in respect of implementing:

- (a) a Response Plan; or
- (b) the provisions relating to Cost Sharing of ORCs in the absence of a Response Plan.

9.14 **No litigation on Owner Reimbursement Costs**

9.14.1 The Parties:

- (a) noting that Owner Reimbursement Costs assessed in accordance with Part 4.4 of Schedule 6 may be reviewed under paragraph 4.4.6 of Schedule 6; and
- (b) noting the importance for the operation of this Deed of finalising the costs of a Response Plan, and the costs of ORCs in the absence of a Response Plan, in a timely way to facilitate Cost Sharing,

agree, in the absence of manifest error, to be bound by the amount assessed and paid in accordance with Part 4.4 of Schedule 6.

10 FUNDING RESPONSE COSTS

10.1 **General obligation of the Parties**

10.1.1 When:

- (a) a Response Plan; or
- (b) Cost Sharing of ORCs in the absence of a Response Plan,

has been agreed by the NMG and is implemented, each Affected Party must, in accordance with this clause 10, meet its Cost Sharing obligations as detailed in clause 9.

10.1.2 Reimbursement (of net payments) between Parties is to be made on a no less than three monthly basis (or such other longer period as agreed by the NMG).

10.1.3 For the purposes of Cost Sharing, an Industry Party will be taken to represent each of the Crops identified as being represented by that Party at Part 3 of Schedule 7.

10.2 **Initial funding by Parties**

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- 10.2.1 Each Party must initially meet its own costs arising from its involvement in implementing an agreed Response Plan or payment of ORCs in the absence of a Response Plan.
- 10.3 **Progressive Cost Sharing**
- 10.3.1 During the course of implementation of a Response Plan, or payment of ORCs in the absence of a Response Plan, the Affected Parties must implement Cost Sharing principles in the manner detailed in Part 2 of Schedule 7.
- 10.4 **Mechanism for Industry Party to meet its Cost Sharing obligations**
- 10.4.1 Each Industry Party must take reasonable steps to ensure that its growers of the Crop, Crops or a sub-group of Crops of which it is representative meet the Cost Sharing obligations of that Crop, Crops or a sub-group of Crops.
- 10.4.2 If an Industry Party is not able to meet its Cost Sharing obligations either directly, or from funds held on its behalf, the Commonwealth will initially meet that Industry Party's Cost Sharing obligations.
- 10.4.3 Each Industry Party will meet its Cost Sharing obligations to the Commonwealth, arising as a consequence of the Commonwealth meeting Industry Party obligations pursuant to clause 10.4.2, in the manner set out in Part 1 of Schedule 7.
- 10.5 **Mechanism for determining Shared Costs**
- 10.5.1 The manner of determining the costs to which the principles of Cost Sharing will be applied will be as set out in Part 2 of Schedule 7.
- 10.6 **Determination of final costs of responding to an Incident**
- 10.6.1 All Affected Parties must, within 6 months of the Response Plan Completion Date, provide information to Plant Health Australia to enable it to determine the total cost of the implementation of the Response Plan and the wider costs incurred by them in responding to the Incident. Each Affected Party must provide available detailed information of all costs (including Shared Costs and non-Shared Costs) incurred by that Party associated with responding to that Incident being:
- (a) salaries and wages;
 - (b) operating expenses;
 - (c) capital costs;
 - (d) Owner Reimbursement Costs; and

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- (e) estimated consequential losses (but only for the purpose of allowing the Parties to understand the wider cost of responding to the Incident).

10.7 **GST**

10.7.1 If GST is imposed on any supply under or in connection with this Deed by one Party (**Supplying Party**) to another Party (**Receiving Party**):

- (a) subject to subclause (b), the Receiving Party must pay the Supplying Party the amount of GST imposed on the Supplying Party (in addition to, and at the same time as, any other amount payable under this Deed by the Receiving Party to the Supplying Party in relation to the supply);
- (b) the Supplying Party must issue to the Receiving Party a tax invoice in relation to the supply, in a form that would enable the Receiving Party to claim any input tax credits to which it may be entitled in relation to the amount of GST paid; and
- (c) for the purposes of this clause 10.7 the following terms have the meanings given in the A New Tax System (Goods and Services) Tax Act 1999: GST, supply, input tax credit and tax invoice.

11 **CONSULTATION**

11.1 **The NMG**

11.1.1 The NMG is constituted, has the role, and must meet and conduct its affairs in the manner set out in Part 1 of Schedule 8.

11.2 **The CCEPP**

11.2.1 The CCEPP is constituted, has the role, and must meet and conduct its affairs in the manner set out in Parts 2 and 3 of Schedule 8.

11.3 **The Categorisation Group**

11.3.1 The Categorisation Group is constituted, has the role, and must meet and conduct its affairs in the manner set out in Part 4 of Schedule 8.

11.4 **Representation of Industry Parties**

11.4.1 When an Industry Party is an Affected Party, its Representative will be involved in all Meetings and consultation between the Affected Parties.

11.4.2 Representatives of Industry Parties must:

- (a) in the case of the CCEPP, be nominated in writing by each Industry Party to Plant Health Australia by the Operative Date and every twelve months thereafter during the term of the Deed;
- (b) complete training under the National EPP Training Program in respect of their responsibilities and the principles of EPP responses;
- (c) be authorised in writing by the Industry Party to represent that Industry Party for one or more nominated roles in the manner contemplated by this Deed;
- (d) report regularly to, and consult appropriately (to the extent that time permits) with, their Industry Party; and
- (e) sign a Confidentiality Deed Poll in the form of Schedule 9 prior to participation in any activities pursuant to this Deed.

11.4.3 The CPHM must invite the Affected Industry Party(s) to provide one or more (in the CPHM's discretion) Industry Party Delegate(s) to contribute to the operations and decision making process within EPP control centres. The Industry Party(s) must nominate one or more suitably qualified person(s) to contribute to the response. The Industry Party Delegate(s) must be authorised to provide an Industry Party view in the decision making processes of the EPP control centres. Industry Party Delegates must comply with clauses 11.4.2(b), (c), (d) and (e) and work as a part of the team at the EPP control centre.

11.5 Plant Health Australia

11.5.1 Plant Health Australia must monitor and report to its members on:

- (a) resource usage in the implementation of a Response Plan;
- (b) Deed policy issues;
- (c) the implementation of Biosecurity measures; and
- (d) the implementation of the provisions of this Deed relating to Owner Reimbursement Costs.

11.5.2 In consultation with its members, Plant Health Australia will initiate and manage the reviews of the Deed specified in clause 2.2.1.

11.6 Representation of Government Parties

11.6.1 When a Government Party is an Affected Party, its Representative will be involved in all Meetings and consultation between the Affected Parties.

11.6.2 Representatives of Government Parties must:

- (a) in the case of the CCEPP, be advised in writing by each Government Party to Plant Health Australia by the Operative Date and every twelve months thereafter during the term of the Deed;
- (b) complete training under the National EPP Training Program in respect of their responsibilities and the principles of EPP responses;
- (c) be authorised in writing by their Government Party to represent that Government Party for one or more nominated roles in the manner contemplated by this Deed;
- (d) report regularly to, and consult appropriately (to the extent that time permits) with, appropriate agencies within that Government Party; and
- (e) confirm that they have signed an appropriate form of confidentiality Deed Poll (which may be in the form of Schedule 9) prior to participation in any activities pursuant to this Deed.

12 ACCOUNTING FOR RESPONSE COSTS

12.1 Keeping accounts

12.1.1 The Lead Agency(s) must keep, in auditable form, details of financial expenditure in respect of:

- (a) each Response Plan; and
- (b) any ORCs in the absence of a Response Plan,

for which it is/they are responsible and to which they seek to apply Cost Sharing.

12.1.2 All Parties must be able to identify and provide substantiation of claims in respect of costs for which they seek to apply Cost Sharing.

12.1.3 Each Government Party must develop, within 6 months of the date of execution of the Deed by it, a financial management preparedness plan which details how accounting and reporting will be managed for the implementation of a Response Plan and the recording of costs which may become Shared Costs (including how normal costs will be distinguished). Once developed, each Party must provide a copy of its plan to Plant Health Australia, which will review it for consistency with the plans of other Parties and advise of any inconsistencies or matters not in accordance with the Deed.

12.1.4 Plant Health Australia must coordinate and collate claims for reimbursement of money spent by any Party that has submitted a claim for Cost Sharing.

12.1.5 Each Party that submits a claim for Cost Sharing must provide such information as required by Plant Health Australia, to satisfy it that:

- (a) the money has been spent by that other Party; and
- (b) the costs are eligible for Cost Sharing under this Deed.

12.1.6 Plant Health Australia must maintain records of funds receivable and payable by Parties by way of Cost Sharing pursuant to clause 10 of this Deed.

12.2 **Reporting**

12.2.1 The Lead Agency(s) must provide a written report at each relevant Meeting of the CCEPP:

- (a) in the form of Schedule 10, which sets out the budgeted, committed and actual expenditure on the Response Plan; and
- (b) in such form as may be agreed from time to time by the Parties, which sets out the status of any current Incident which is not the subject of a Response Plan, including details of any ORCs that have been or are expected to be incurred.

12.2.2 The CCEPP must promptly forward a copy of all reports received by it to the NMG.

12.3 **Efficiency and effectiveness of a Response Plan**

12.3.1 In pursuing its role during a Response Plan, the NMG may obtain, from independent sources of its choosing, advice about the efficiency of the Response Plan to assist its deliberations in accordance with Part 1 of Schedule 11.

12.3.2 Plant Health Australia may develop a methodology for use by the NMG and any Efficiency Advocate to enable the conduct of cost/benefit analyses in respect of Response Plans.

12.4 **Financial audit**

12.4.1 The Lead Agency must arrange for an external financial audit of the Response Plan ledger account following the Response Plan Completion Date, when the criteria set out in Part 2 of Schedule 11 are met by the Response Plan. The financial auditor must be engaged to:

- (a) report jointly to the Lead Agency and the NMG; and
- (b) provide a formal sign off in respect of any claims for, or payments made in respect of, Cost Sharing,

having regard to the matters set out in Part 2 of Schedule 11.

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- 12.4.2 When there is more than one Lead Agency involved in respect of a Response Plan, and those Lead Agencies do not agree on an external auditor, Plant Health Australia will nominate the financial auditor to perform the tasks set out in clause 12.4.1.
- 12.4.3 When a Lead Agency seeks Cost Sharing in respect of ORCs in the absence of a Response Plan, it must arrange for an external financial audit of the claimed costs, using the processes set out in clauses 12.4.1 and 12.4.2.

13 BIOSECURITY

- 13.1.1 The Parties acknowledge the need for a program of risk reduction measures, complementary to the Deed, to reduce the risk of the entry and spread of EPPs including Biosecurity measures for implementation and maintenance at national, regional and individual premises levels.
- 13.1.2 The Parties commit to an on-going process of risk mitigation, recognising that all Parties are adversely affected by Incidents. The Parties recognise natural incursions may not be prevented, but movements of materials, containers, machinery, mail or passengers are areas where incursion risks must be routinely examined and minimised.
- 13.1.3 Plant Health Australia is developing, and will manage, a National Plant Pest Risk Mitigation Program. It will include consultative mechanisms to facilitate Government Parties and Industry Parties working together to develop and agree all aspects of the program including, and consistent with the Plant Health Australia Biosecurity Planning Guide:
- (a) Crop Biosecurity statements that commit the members of each Industry Party to Biosecurity, that identify the current version of that Industry Party's Biosecurity plan or state when a plan will be in place, and describe how each Industry Party will promote improvements to existing Biosecurity measures used with respect to that Crop, including a commitment to on-farm Biosecurity (included at Schedule 15);
 - (b) Government Biosecurity statements /strategies outlining Biosecurity policies and programs relevant to their responsibilities including Feral, neglected and unmanaged plants and Plant Pests and Vectors, and public health and environmental policies (included at Schedule 15);
 - (c) application of legislative support when appropriate; and
 - (d) a national communications program that will raise community awareness of the importance of Biosecurity measures.

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- 13.1.4 Each Party must report to Plant Health Australia in July of each year any material changes to the content of, or to the Party's commitment to, the Party's Biosecurity statement, and state any reduction in resources available for its implementation and identify any legislative obstacles to the operation of an Industry's Biosecurity measures.
- 13.1.5 The National Plant Pest Risk Mitigation Program will be reviewed annually by Plant Health Australia, in conjunction with the Parties, as part of Plant Health Australia's annual review process.
- 13.1.6 Progress in implementation of Biosecurity strategies for Government Parties and Industry Parties will be reviewed by Plant Health Australia, in conjunction with the Parties, commencing in October 2005 and again commencing in October 2006.
- 13.1.7 The Parties agree that:
- (a) substantial advantages may arise for both plant and animal industries from a mutual approach to Biosecurity and risk mitigation;
 - (b) separately from cost sharing arrangements, Plant Health Australia is to investigate with relevant animal industries, animal health authorities, and human health and environmental groups and agencies, options for a cooperative, holistic approach to Biosecurity and risk management and mitigation strategies, including alternative future sustainable funding mechanisms; and
 - (c) Plant Health Australia must report within 24 months of the Operative Date to the Parties on the feasibility and utility of a cooperative, holistic approach.

14 COMMITMENT OF GOVERNMENT PARTY RESOURCES TO EPP RESPONSE CAPACITY

- 14.1.1 The Parties agree that, for at least the first 12 months of operation of the Deed following the Operative Date, the manner of determination of the costs to be shared set out in Part 4 of Schedule 6 will be maintained.
- 14.1.2 During that period the Parties will work to determine existing and required resource commitments and to define the costs that a State or Territory consider to be "normal" and which should be considered as a baseline above which other costs are to be shared.
- 14.1.3 Any change to the interim arrangement set out in Part 4 of Schedule 6 may only be adopted with the agreement of all Parties.

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- 14.1.4 The Parties note the development of performance standards for Australia's plant health services will be required and agree that, once settled, these will apply to activities under this Deed.

15 OBLIGATIONS IN RESPECT OF PERSONNEL

- 15.1.1 Each Party must ensure that any of its personnel (including its officers, employees and contractors) who participate in the NMG, the CCEPP, a Categorisation Group or other functions under this Deed do so in accordance with the terms of this Deed.

16 AMENDMENT OF SCHEDULES

- 16.1.1 If:
- (a) a process is conducted pursuant to this Deed and the final step of the process requires Plant Health Australia to make an amendment to a Schedule; or
 - (b) a Party gives Plant Health Australia a notice pursuant to clause 31.1.1 and Plant Health Australia is satisfied that:
 - (i) the notice requires the making of an amendment to a Schedule; and
 - (ii) the making of the amendment will not concern or affect the rights or obligations of another Party,

Plant Health Australia may make the amendment by providing to all Parties a copy of the amended Schedule (version numbered and dated for identification purposes), together with a statement of the particulars of the process or notice.

- 16.1.2 A Party may lodge an objection to the amended Schedule by giving a notice pursuant to clause 31.1.1 which must:
- (a) set out the reasons for the objection; and
 - (b) be received by Plant Health Australia no later than 30 days after the date of despatch of the amended Schedule by Plant Health Australia.
- 16.1.3 On receipt of an objection pursuant to clause 16.1.2, Plant Health Australia must:
- (a) promptly notify all Parties of the objection; and

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- (b) submit the objection to the next meeting of the Board of Plant Health Australia, the decision of which in respect of the objection will be final.
- 16.1.4 Plant Health Australia must promptly notify the Parties of the decision of the Board and, if the Board upholds the objection, that the amended Schedule is withdrawn and has no effect.
- 16.1.5 If the Board of Plant Health Australia rejects an objection to an amended Schedule, the amendment to the Schedule takes effect 30 days after the date of the decision by the Board of Plant Health Australia.
- 16.1.6 If there is no objection to a notification of an amendment to a Schedule, the amendment to the Schedule takes effect 30 days after the date of its despatch by Plant Health Australia pursuant to clause 16.1.1.

17 VARIATION OR TERMINATION

17.1 Varying or terminating Deed

- 17.1.1 Subject to clause 2.3, if at any time during the term of this Deed the Parties wish to vary or terminate this Deed, they must negotiate in good faith in regard to:
- (a) that variation or termination; and
 - (b) the effect of that variation or termination upon the existence and operation of the EPP Program and any Response Plan being undertaken.

17.2 Variation or termination in writing

- 17.2.1 Subject to clause 16, no variation or termination to this Deed will be of any force or effect unless the same is confirmed in writing, signed by each Party, and then such variation or termination will be effective only to the extent for which it has been made or given.
- 17.2.2 Each Party must advise Plant Health Australia, in a 'Nomination of Authorised Signatory' notice substantially conforming with Part 1 of Schedule 16, the details of the person authorised by the Party from time to time to approve on behalf of the Party a variation or termination to this Deed.
- 17.2.3 The Parties may vary the Deed by the following process:
- (a) Plant Health Australia is to serve a notice on each Party setting out the proposed variation(s) together with a brief statement of its purpose;

-
- (b) each Party may signify its approval of the proposed variation(s) by returning a duly completed notice of 'Approval of Variation to Provisions' substantially conforming with Part 2 of Schedule 16; and
 - (c) the variation(s) takes effect from the date on which Plant Health Australia gives notice to the Parties that it has received duly authorised Approval of the Variation to Provisions notices from all Parties.

17.2.4 The Parties may terminate the Deed by consent by means of a Deed of termination which they all execute.

17.3 **Position of Plant Health Australia**

17.3.1 In the event that any of the payments referred to in this Deed which should be made to Plant Health Australia are not made and the non-payment:

- (a) materially affects Plant Health Australia's ability to meet its obligations under the Deed; and
- (b) is not due to the default of Plant Health Australia,

Plant Health Australia will not be required, nor liable in respect of any failure, to meet any obligation which would otherwise arise pursuant to this Deed, unless or until such time as Plant Health Australia receives the outstanding payment(s) in accordance with this Deed.

18 **SEVERABILITY**

In interpreting a provision of this Deed, the provision must, to the extent possible, be read so as to ensure that it is not illegal, invalid or unenforceable. If any provision or part of it cannot be so read, the provision or part of it will be deemed to be void and severable and the remaining provisions of this Deed will, provided that they can be applied in accordance with the spirit of the Deed, not in any way be affected or impaired.

19 **WAIVER**

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right given to that Party under this Deed does not operate as a waiver of that power or right, nor will it entitle a Party to claim that another Party is estopped from exercising the power or rights. A single exercise of a power or right will not be construed as precluding any other or further exercise of it or the exercise of any other power or right under this Deed. A power or right may only be waived in writing, signed by the Party or Parties to be bound by the waiver.

20 PROPER LAW

20.1 Jurisdiction of the Courts

20.1.1 This Deed and the transactions contemplated by it will be construed and take effect in accordance with and governed by the laws of the Australian Capital Territory, Australia and its form, execution, validity, construction and effect will be determined in accordance with the laws of the Australian Capital Territory and the Parties hereby submit themselves to the jurisdiction of the courts in and of the Australian Capital Territory and the Federal Court of Australia and the respective courts of appeal therefrom.

20.2 High Court of Australia

20.2.1 The submission to the jurisdiction of the courts of the Australian Capital Territory and to the Federal Court of Australia is exclusive except in so far as the High Court of Australia has jurisdiction to hear any matter involving the Commonwealth or any constitutional matter.

20.3 State and Territory Laws apply to the conduct of a Response Plan

20.3.1 Nothing in this Deed and nothing in this clause 20 is to be construed as requiring the conduct of a Response Plan by a State or Territory agency in a manner contrary to the laws applying in that State or Territory.

21 FURTHER ASSURANCE

Each Party must, at its own expense, on the request of any other Party, sign and execute all deeds, documents, notices, instruments and schedules, and do and perform all acts and things which are reasonable and necessary in order to carry out and give effect to the terms and conditions of this Deed and the transactions contemplated by it, whether before or after the execution of the Deed by all of the Parties.

22 COUNTERPARTS

This Deed may be executed in any number of counterparts and all of such counterparts when so executed will be an original but all of which taken together will be deemed to constitute one and the same instrument.

23 AGENCY

No Party to this Deed has, except as otherwise specified in this Deed, any right to act on behalf of, represent itself as agent for, or otherwise bind, any other Party.

24 ENTIRE AGREEMENT

This Deed constitutes the entire agreement between the Parties in relation to the subject matter of this Deed. Any prior arrangements, agreements, representations or undertakings are superseded and each Party acknowledges that it has not relied on any arrangement, agreement, representation or understanding which is not expressly set out in this Deed.

25 MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION

25.1 Notice of Disputes

25.1.1 In the event of any disagreement or dispute arising between any or all of the Parties as to the interpretation, implementation or enforcement of any term of this Deed, any Party concerned may send a notice to all of the Parties setting out the details of that dispute (**Notice of Dispute**).

25.1.2 A Party which serves a Notice of Dispute may withdraw it by giving written notice to all Parties.

25.2 Resolution of Disputes

25.2.1 Following receipt of a Notice of Dispute each Party must enter into good faith discussions with other Parties with a view to resolving the dispute.

25.2.2 If the Parties have not resolved the matter the subject of the Notice of Dispute within 28 days of the date of despatch of the Notice of Dispute to the Parties, any Party may require that the matter be referred for mediation or alternative dispute resolution by notice to all of the parties (**Notice of ADR**). Decisions reached by alternative dispute resolution should be final and binding on the Parties.

25.2.3 Each Party which receives a Notice of ADR which wishes to be involved in the dispute resolution process (**Concerned Party**) must, within seven days of receipt of the Notice of ADR, so advise the sender in writing.

25.2.4 If a Notice of ADR has been served by one of the Parties, the Concerned Parties must seek to agree on a suitably qualified person to undertake the mediation or alternative dispute resolution within fourteen days of the date of despatch of the Notice of ADR.

25.2.5 If the Concerned Parties are unable to agree Unanimously on the selection of such person within fourteen days of the date of despatch of the Notice of ADR, the matter must be referred to the President of the Law Society of the Australian Capital Territory at that time, for that President or his or her nominee to appoint a suitably qualified person who has not previously acted for any of the Concerned Parties to conduct the mediation or alternative dispute resolution.

-
- 25.2.6 Any costs or expenses associated with the mediation or alternative dispute resolution must be paid by the Concerned Parties in equal shares unless recommended otherwise by the person conducting the mediation or alternative dispute resolution process.

26 EXERCISE OF FUNCTIONS AND POWERS

The obligations of the Commonwealth and the States and Territories under this Deed are subject to any statutory or common law requirements applying to the exercise of statutory or executive powers or duties which must be exercised in the performance of those obligations.

27 PROTECTION OF PERSONAL INFORMATION

27.1 Use of Personal Information

27.1.1 Each Party agrees to:

- (a) use Personal Information as defined in the *Privacy Act 1988* (**Act**) held or controlled by it in connection with this Deed only for the purposes of fulfilling its obligations under this Deed;
- (b) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Deed is protected against loss and unauthorised access, use, modification or disclosure;
- (c) comply with the Australian Privacy Principles contained in the Act, and any equivalent principles applied by State or Territory privacy legislation in respect of activities within the applicable State or Territory, (**Principles**) to the extent that the content of those Principles apply to the types of activities the Party is undertaking under this Deed, as if the Party were an agency as defined in the Act;
- (d) cooperate with any reasonable demands or inquiries made by the Commonwealth on the basis of the exercise of the functions of the Privacy Commissioner under the Act including, but not limited to, a request from the Commonwealth to comply with a guideline concerning the handling of Personal Information, and any equivalent demands, inquiries or requests made under applicable State or Territory privacy legislation in respect of activities within the applicable State or Territory;
- (e) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing to observe, the Principles and other obligations referred to in this clause 27;

-
- (f) comply as far as practicable with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information, and any equivalent guidelines made under applicable State or Territory privacy legislation or by a State or Territory privacy commissioner in respect of activities within the applicable State or Territory; and
 - (g) comply with any reasonable direction of the Commonwealth to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Party that the Privacy Commissioner considers breaches the obligations in this clause 27, and any equivalent direction made by a State or Territory privacy commissioner in respect of activities within the applicable State or Territory.

27.2 **Meaning of Personal Information**

27.2.1 In this clause 27, 'Personal Information' means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

28 **INSURANCE**

28.1.1 Plant Health Australia must:

- (a) take out in respect of itself, its employees, contractors and agents all appropriate insurance (including any workers' compensation as required by law) and public risk insurance relating to the performance of its obligations under this Deed (**Required Insurance**); and
- (b) promptly provide to any other Party on request proof of the currency of such insurance.

29 **CONFIDENTIALITY**

29.1.1 A Party must not copy, reproduce, divulge, publish or circulate (or authorise or permit anyone else to copy, reproduce, divulge, publish or circulate) any of the Confidential Information disclosed or communicated to it by any other Party except:

- (a) to or for such of its employees or Representatives as may require access to the Confidential Information on a strict need-to-know basis in the proper performance of the Deed; or
- (b) to the extent necessary to permit the Commonwealth or a State or Territory to report to that Party's Parliament or its committees or to

the relevant Minister or his or her staff, or to such of the Party's government agency(s) or instrumentality(s) to which it is required to disclose such information; or

- (c) as is reasonably necessary for the conduct of legal proceedings by a Party; or
- (d) as required by law.

30 CONFLICT OF INTEREST

30.1 Plant Health Australia obligations

- 30.1.1 Plant Health Australia warrants that, to the best of its knowledge after making diligent inquiry, at the date of this Deed no conflict of interest exists or is likely to arise for the performance of its obligations under this Deed by itself or by its officers, employees, agents or contractors.
- 30.1.2 If during the term of this Deed a conflict of interest arises, or appears likely to arise, Plant Health Australia undertakes to notify the other Parties immediately in writing and to take such steps as the other Parties may reasonably require to resolve or otherwise deal with the conflict.
- 30.1.3 Plant Health Australia must not, and must ensure that its officers, employees, agents or contractors do not, engage in any activity or obtain any interest during the term of this Deed that is likely to conflict with or restrict the conduct of the Deed by Plant Health Australia fairly and independently.

31 NOTICES

31.1 Service of Notices

- 31.1.1 Any notice, request or other communication to be given or served by a Party or Parties on another Party or other Parties pursuant to this Deed (**Notice**) must be in writing and addressed to the contact officer of the Party or Parties at the physical, postal or email address set out in Schedule 2, or to such other person or address as may be advised by a Party to the other Parties from time to time.

31.2 Deemed time of service of Notices

- 31.2.1 A Notice will be deemed to have been duly served:
 - (a) if delivered by hand, upon delivery;
 - (b) if in the form of a letter sent by pre-paid ordinary post within Australia, upon the expiration of seven business days after the date on

which it was sent, provided that deemed receipt of a Notice by letter may be rebutted by proof of non-receipt;

- (c) if in the form of a letter posted to or from a place outside Australia, upon delivery; and
- (d) if sent by email, when the sender receives a return receipt from the intended recipient's email system indicating that the email has been received.

32 INTELLECTUAL PROPERTY

32.1.1 This Deed will not affect the ordinary operation of principles of Intellectual Property. However, each Party which creates (or the personnel of which create) materials for the purposes of this Deed in which Intellectual Property rights subsist (including materials created for the NMG, the CCEPP or the Categorisation Group) grants a royalty free, perpetual, irrevocable licence to the other Parties to use those materials for the purposes of undertaking the activities contemplated by the Deed.

33 ADJUSTMENT OF THRESHOLDS

33.1.1 In this clause 33, "CPI" means the weighted average of the All Groups Price Index Numbers for the eight capital cities of the States and Territories of Australia published from time to time by the Australian Bureau of Statistics (ABS) or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.

33.1.2 The amount of \$20 million set out in clauses 9.5.2(c), 9.10.1(a), 9.10.2(b)(i) and 9.11.1(a)(i) will be adjusted as at 1 July each year after 30 June 2020 using the change in the CPI over the four quarters that have been most recently published by the ABS at that date.

[Note: For example, at 30 June 2021, the figure of \$20 million in the clauses referred to in clause 33.1.2 would be increased by the increase in the CPI over the period from 1 April 2020 to 30 March 2021.]

EXECUTED as a DEED

Signed sealed and delivered on [insert date]
by **PLANT HEALTH AUSTRALIA LIMITED**
(ABN 97 092 607 997) in the presence of:

)
)
) EXECUTED

Director

(name printed)

Director/Secretary

(name printed)

Signed sealed and delivered on [insert date]
by **THE COMMONWEALTH OF AUSTRALIA**
(ABN 24 113 085 695) by its authorised
officer in the presence of:

)
)
) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **THE STATE OF QUEENSLAND (ABN 78**
342 684 030) by its authorised officer in the
presence of:

)
)
) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **THE NEW SOUTH WALES DEPARTMENT
OF PRIMARY INDUSTRIES (ABN 51 734
124 190-004)** for and on behalf of **THE
STATE OF NEW SOUTH WALES** by its
authorised officer in the presence of:

)
)
)
)
) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **THE STATE OF VICTORIA (ABN 90 719
052 204)** by its authorised officer in the
presence of:

)
)
) EXECUTED _____

Witness: _____

(witness name printed)

The Common Seal of the **MINISTER FOR
AGRICULTURE, FOOD AND FISHERIES** of
the State of South Australia was affixed on
[insert date] in the presence of:

)
)
) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **THE CROWN IN RIGHT OF THE STATE
OF TASMANIA (ABN 58 259 330 901)** by its
authorised officer in the presence of:

)

)

)

) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **THE STATE OF WESTERN AUSTRALIA
(ABN 18 951 343 745)** by its authorised
officer in the presence of:

)

)

) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **THE NORTHERN TERRITORY OF
AUSTRALIA (ABN 84 085 734 992)** by its
authorised officer in the presence of:

)

)

) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **THE AUSTRALIAN CAPITAL TERRITORY**
(ABN 37 307 569 373) by its authorised
officer in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **APPLE AND PEAR AUSTRALIA LTD.**
(ACN 101 551 348) in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN BANANA GROWERS'**
COUNCIL INC. (ABN 60 381 740 734) in the
presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN CANE GROWERS’
COUNCIL LTD. (ABN 26 051 583 549)** in the
presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **CITRUS AUSTRALIA LTD. (ABN 75 130
238 792)** in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **COTTON AUSTRALIA LTD. (ABN 24 054
122 879)** in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN HONEY BEE INDUSTRY**
COUNCIL INC. (ABN 63 939 614 424) in the
presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN MANGO INDUSTRY**
ASSOCIATION LTD. (ABN 50 713 775 301) in
the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSVEG LTD. (ABN 25 107 507 559)** in
the presence of: in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AVOCADOS AUSTRALIA LTD. (ABN 87
105 853 807)** in the presence of:

)

)

) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **GRAINS COUNCIL OF AUSTRALIA INC.
(ABN 66 675 415 182)** in the presence of:

)

)

) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **QUEENSLAND FRUIT AND VEGETABLE
GROWERS LTD. (GROWCOM) (ABN 51 090
816 827)** in the presence of:

)

)

) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **RICEGROWERS' ASSOCIATION OF
AUSTRALIA INC. (ABN 65 191 537 636)** in
the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **STRAWBERRIES AUSTRALIA INC. (ABN
53 635 363 679)** in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **SUMMERFRUIT AUSTRALIA LTD. (ABN
51 105 962 196)** in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN MACADAMIA SOCIETY**
LTD. (ABN 19 010 689 415) in the presence
of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **ALMOND BOARD OF AUSTRALIA INC.**
(ABN 31 709 079 099) in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN DRIED FRUIT**
ASSOCIATION INC. (ABN 88 658 293 079)
in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN OLIVE ASSOCIATION LTD.**
(ABN 57 072 977 489) in the presence of:

)
)
) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIA PROCESSING TOMATO**
RESEARCH COUNCIL INC. (ABN 33 014
204 969) in the presence of:

)
)
) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN TABLE GRAPE**
ASSOCIATION INC. (ABN 69 953 034 946)
in the presence of:

)
)
) EXECUTED _____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN WALNUT INDUSTRY
ASSOCIATION INC. (ABN 26 468 336 213)**
in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **CANNED FRUIT INDUSTRY COUNCIL OF
AUSTRALIA LTD. (ACN 051 989 336)** in the
presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **CHERRY GROWERS OF AUSTRALIA INC.
(ABN 77 797 945 686)** in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN ONION INDUSTRY
ASSOCIATION INC. (ABN 26 558 335 296)**
in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **PISTACHIO GROWERS ASSOCIATION
INC. (ABN 24 020 078 504)** in the presence
of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **CHESTNUTS AUSTRALIA INC. (ABN 11
727 740 190)** in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN FOREST PRODUCTS
ASSOCIATION LTD. (ABN 11 727 740 190)**
in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN GINGER INDUSTRY
ASSOCIATION INC. (ABN 97 981 376 529)**
in the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **RASPBERRIES AND BLACKBERRIES
AUSTRALIA INC. (ABN 42 861 675 811)** in
the presence of:

)
)
) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **HAZELNUT GROWERS OF AUSTRALIA**
INC. in the presence of:

)
)
) EXECUTED_____

Witness: _____

(*witness name printed*)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN MELON ASSOCIATION**
INC. (ABN 36 990 325 012) in the presence
of:

)
)
) EXECUTED_____

Witness: _____

(*witness name printed*)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN SWEETPOTATO GROWERS**
INC. (ABN 82 577 850 667) in the presence
of:

)
)
) EXECUTED_____

Witness: _____

(*witness name printed*)

Signed sealed and delivered on [insert date])
by **AUSTRALIAN LYCHEE GROWERS**)
ASSOCIATION INC. (ABN 45 591 381 594)) EXECUTED
in the presence of:

Witness:

(*witness name printed*)

Signed sealed and delivered on [insert date])
by **AUSTRALIAN TEA TREE INDUSTRY**)
ASSOCIATION LTD. (ABN 48 077 019 204)) EXECUTED _____
in the presence of:

Witness: _____

(*witness name printed*)

Signed sealed and delivered on [insert date])
by **AUSTRALIAN TRUFFLE GROWERS**)
ASSOCIATION INC. (ABN 57 816 021 891)) EXECUTED _____
in the presence of:

Witness: _____

(*witness name printed*)

Signed sealed and delivered on [insert date]
by **AUSTRALIAN GRAPE AND WINE INC.**
(ABN 45 903 873 163) in the presence of:

)

)

) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **GREENLIFE INDUSTRY AUSTRALIA LTD.**
(ABN 59 634 584 017) in the presence of:

)

)

) EXECUTED_____

Witness: _____

(witness name printed)

Signed sealed and delivered on [insert date]
by **PASSIONFRUIT AUSTRALIA INC. (ABN**
98 212 907 857) in the presence of:

)

)

) EXECUTED_____

Witness: _____

(witness name printed)