

LIVESTOCK EXPORT COLLABORATIVE FUNDING PROGRAM TERMS

MLA and Livecorp (through the Livestock Export Program (LEP)) have established the Livestock Export Collaborative Funding Program (“**Co-Funding Program**”) to support Exporters of Australian livestock (cattle, sheep and goats) to international markets.

These terms form an agreement between you (“**Exporter**”) and Meat and Livestock Australia Limited ABN 39 081 678 364 (“**MLA**”) and govern your participation in the Co-Funding Program.

By submitting an application and Activity Proposal as outlined in the [Guidelines](#), you agree to these terms. An agreement will only be formed when you receive an email confirmation from LEP that your application to participate in the Co-Funding Program has been accepted and approved.

OPERATIVE TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

1.1.1. Where commencing with a capital letter:

Activities mean the activities described in the Activity Proposal;

Activity Proposal means the Co-Funding Program Activity Proposal as set out in the Guidelines;

Commencement Date means the date in which Exporter receives a notification from MLA confirming acceptance of the Activity Proposal;

ESCAS means the Exporter Supply Chain Assurance System;

Exporter Background IP means Intellectual Property owned, licensed or held by the Exporter and made available by the Exporter under this agreement;

Funds means the amount specified in the Activity Proposal but no more than the funding limit specified in the Guidelines;

Intellectual Property means all patents, patent applications, trade marks, service marks, designs, plant breeder’s rights, copyright, know-how, trade secrets, eligible layout rights, domain names, internet addresses, rights in confidential information and all and any other intellectual property rights whether registered or unregistered and rights to apply for any of the same;

Guidelines mean the Co-Funding Program Guidelines which govern the applications process for participation in the Co-Funding Program;

Licence means a livestock export licence issued by the Australian Government, Department of Agriculture and Water Resources under the Australian Meat and Live-stock Industry Act 1997 and the Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998.

Objectives mean the objectives described in the Activity Proposal;

Nominated Persons means the persons named in the Activity Proposal and such other persons approved in writing by MLA to undertake the Activities on behalf of the Exporter;

Project IP means the Intellectual Property which arises under the agreement, including out of the Activities;

Safe Work Method Statement means a statement about the safety processes and procedures devised by the Exporter with reference to the risk framework detailed in the annexure;

Site means any sites at which it carries out any part of the Activities; and

Term means from the Commencement Date to 30 days after acceptance by MLA of the final milestone in accordance with the Activity Proposal.

1.1.2. Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2. Presumptions of interpretation

Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa; and
- (b) a person includes an individual, a body corporate and a government.

1.3. Successors and assigns

A person includes the trustee, executor, administrator, successor in title and assign of that person. This clause must not be construed as permitting a party to assign any right under this agreement.

2. EXPORTER'S OBLIGATIONS

2.1. Activities

2.1.1. The Exporter must ensure that its Activity Proposal complies with the requirements set out in the Guidelines.

2.1.2. The Exporter must:

- (a) undertake the Activities to meet the Objectives; and
- (b) provide the reports specified in the Guidelines and Activity Proposal, in the manner and in accordance with the timing set out in the Activity Proposal.

2.2. Nominated Persons

The Exporter must:

- (a) ensure that the Nominated Persons have, as a minimum, the skills, qualifications and experience specified in the Activity Proposal and are lawfully entitled to undertake the Activities;
- (b) ensure that only the Nominated Persons undertake the Activities on behalf of the Exporter;
- (c) not replace any Nominated Person without MLA's prior written approval such approval not to be withheld where the proposed replacement has at least the same or similar ability, experience and qualifications as the person they are replacing;
- (d) undertakes that the Nominated Persons will perform this work to the best of their skill and ability; and
- (e) must provide each Nominated Person with a copy of this agreement and take all reasonable steps to explain it to them.

2.3. Directions

The Exporter must comply with all reasonable and lawful directions of MLA from time to time concerning the Activities.

2.4. Comply with all laws

The Exporter must comply with all relevant laws and regulations when performing the Exporter's obligations under this agreement including all obligations in relation to the personal information of the Nominated Persons.

2.5. Insurance and benefits

2.5.1. The Exporter must at all times maintain:

- (a) adequate workers' compensation insurance as required by law for its employees and any other insurance or benefits required by law in respect of the Nominated Persons; and
- (b) public liability insurance for an amount of at least \$10 million.

2.5.2. The Exporter must, on request by MLA, produce evidence of the currency of the insurance policies referred to in clause 2.5.1.

2.6. Privacy

2.6.1. The Exporter must:

- (a) comply with the *Privacy Act 1988*, including its Australian Privacy Principles;
- (b) not disclose any personal information under or in connection with this agreement to any entities located outside of Australia without MLA's prior written consent; and
- (c) ensure that all of its subcontractors comply with this clause 2.6.

2.6.2. Without limiting clause 2.6.1:

- (a) in relation to any personal information that the Exporter provides to MLA under this agreement, the Exporter warrants that it has:
 - (i) before providing the personal information to MLA, notified all individuals to whom the personal information relates that it will be disclosing their personal information to MLA for the purposes of this agreement and obtained any required consent to such disclosure; and
 - (ii) provided the individuals with the location of where [MLA's privacy policy](#) can be found;
- (b) in relation to any personal information provided to the Exporter by MLA under this agreement, the Exporter must:
 - (i) only store, use, disclose or otherwise handle the information for the specific purposes for which it was provided to the Exporter under this agreement; and
 - (ii) co-operate with any reasonable request or direction of MLA which relates to the protection of the information; and
- (c) the Exporter must promptly notify MLA of any complaint that it receives concerning the personal information under this agreement and comply with any reasonable directions of MLA in relation to such complaint.

2.7. Work Health and Safety

- 2.7.1. The Exporter acknowledges that MLA has granted the Funds to the Exporter for its expertise in conducting the Activities under the agreement.
- 2.7.2. In conducting the Activities the Exporter must ensure that the Exporter's directors, officers, employees, agents, subcontractors and consultants exercise all due skill, care and precautions to the standard expected of a suitably qualified, experienced and skilled consultant in conducting similar Activities which are safe and without risks to persons or property.
- 2.7.3. The Exporter acknowledges that it is solely responsible for all preparation and co-ordination required for the conduct of the Activities at a Site.
- 2.7.4. Without limiting any other clauses in this agreement, the Exporter must comply with, and ensure that its directors, officers, employees, agents, subcontractors and consultants comply with, all Laws, Codes of Practice and Australian Standards relating to work health and safety and that are applicable to the agreement or the conduct of the Activities under the agreement.
- 2.7.5. Without limiting clause 2.7.4, the Exporter must:
 - (a) implement, maintain and comply with adequate processes and procedures to manage health and safety risks arising from the conduct of the Activities under this agreement;
 - (b) conduct a risk assessment prior to conducting the Activities under the agreement and, if requested, submit to MLA for its records a Safe Work Method Statement, and at any time thereafter when those risk assessments are no longer valid. The Exporter must comply with the risk assessment in the conduct of the Activities under the agreement;

- (c) ensure that the Exporter, and all persons conducting the Activities under the control or direction of the Exporter, are inducted, trained, informed and appropriately supervised during the conduct of the Activities;
 - (d) ensure that the Exporter, and all persons under the control and direction of the Exporter are trained, competent and properly licensed or authorised to operate plant and equipment, and that such plant and equipment is properly maintained and records retained;
 - (e) ensure that the Exporter, and all persons under the control and direction of the Exporter are properly informed, trained and supervised in the use of hazardous substances or dangerous goods;
 - (f) ensure that the Exporter consults with its workers and other relevant persons in relation to work health and safety matters relevant to the Activities to be performed under the agreement, including providing appropriate means of communication to discuss health and safety matters;
 - (g) ensure that the Exporter, and all persons under the control and direction of the Exporter, are provided with all necessary personal protective equipment for the Activities to be performed safely under the agreement.
- 2.7.6. The Exporter must provide MLA, at MLA's discretion, with access to and copies of such documents and information as may be necessary to establish the Exporter's compliance with its work health and safety obligations under the agreement.
- 2.7.7. Without limiting the requirements of clause 2.7.5, the Exporter must provide MLA with details of any near misses, incidents, injuries, damage to property and plant and the environment, including the occurrence of any such events to the Exporter or its directors, officers, employees, agents, subcontractors and consultants arising from the Activities performed under the agreement.
- 2.7.8. The Exporter must, within 7 days of any event listed in clause 2.7.7 provide a written report to MLA giving complete details of the event, including results of investigations into causes, and any recommendations or strategies for prevention in the future.
- 2.7.9. If the Exporter is required by any laws to give notice of any event specified in clause 2.7.7 to a regulatory authority, the Exporter must at the same time or as soon practicable afterwards provide a copy of that notice to MLA.
- 2.7.10. Failure by the Exporter to comply with any work health and safety provisions of the agreement is a material breach of the agreement.
- 2.7.11. To the extent not prohibited by law, the Exporter will indemnify MLA against any damage, expense, loss or liability suffered or incurred arising out of or in connection with the failure by the Exporter to discharge its work health and safety obligations imposed by law or under the agreement.
- 2.7.12. Where the Exporter is not performing the Activities in compliance with the agreement, or is performing the Activities in such a way as to endanger the health and safety of any persons, or is likely to cause damage to plant, equipment materials or the environment, the Exporter must immediately stop work and remedy that breach. MLA may suspend the Activities until such time as the Exporter satisfies it that the work will be resumed in conformity with applicable work health and safety laws, codes and standards. During any periods of suspension, MLA is not required to make payment whatsoever to the Exporter and the Exporter will not be entitled to any recovery of any moneys arising out of or in connection with any suspension directed by MLA under this clause.

- 2.7.13. If the Exporter fails to rectify any breach identified in clause 2.7.12 for which the performance of the Activities have been suspended, or if the Exporter's performance has involved recurring breaches, MLA may at its option terminate the contract immediately, in whole or in part, without further obligation to the Exporter. In the event of this occurrence, MLA's liability will be limited to payment for the Activities performed and costs reasonably incurred by the Exporter up to the time of termination or an earlier suspension of Activities.

3. FUNDING

3.1. Funding

Subject to clause 3.2, MLA must provide the Funds to the Exporter, provided MLA is satisfied that the Exporter has performed the Activities (including provision of reports) to which the instalment relates.

3.2. Suspension of funding

In addition to its rights under clause 12, MLA may suspend payment of any of the Funds if the Exporter:

- (a) does not deliver a report in accordance with the Activity Proposal; or
- (b) is in breach of any of its obligations under this agreement;

until the report has been delivered or the breach is rectified, as the case may be, to the reasonable satisfaction of MLA.

3.3. Payment

Unless otherwise specified in the Activity Proposal, MLA must, subject to this clause 3, pay the Funds referred to in clause 3.1 in the following manner:

- (a) the Exporter must after the end of each period or completion of a milestone or Activity specified in the Activity Proposal (to MLA's reasonable satisfaction) provide to MLA an invoice setting out details of the Activities performed in that period: and
- (b) MLA must pay the invoice within 1 month after receipt of it.

3.4. GST

In relation to any goods and services tax (**GST**) payable for a taxable supply (as defined under GST law) by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice (as defined under GST law).

4. ACCOUNTS AND RECORDS

4.1. Record keeping

The Exporter must ensure that it:

- (a) keeps complete and accurate books and records that are separate from any other books and records of the Exporter's business (including any particular accounts specified by MLA):
 - (i) setting out details of the Activities carried out under this agreement;
 - (ii) the expenditure of monies in relation to the Activities and the Nominated Persons; and
 - (iii) recording the deposit and expenditure of the Funds;
- (b) permit MLA, at any time and without prior notice, through its officers, agents or advisers authorised by it, to examine and inspect any material in the possession of the Exporter which is relevant to this agreement, including any books and records, and provide all necessary facilities for that purpose;
- (c) give full and accurate answers to any questions MLA or any of its representatives may have concerning books or records relating to this agreement and provide all assistance reasonably requested by MLA in respect of any inquiry into or concerning the Activities or this agreement; and
- (d) retain for a period of seven years after termination or expiration of this agreement all books and records relating to the Activities and the Funds.

4.2. MLA may carry out audits

MLA may arrange for the carrying out of an audit of the books and records of the Exporter and the books and records of the Exporter's agents and contractors at the cost of MLA, unless the audit reveals any overpayment of more than 2% by MLA or noncompliance by the Exporter with the terms of this agreement, in which case the Exporter must promptly reimburse MLA the cost of the audit.

4.3. Exporter to allow access

The Exporter must cooperate with MLA, or its officers, agents or advisers (including auditors), in the conduct of an audit and, for that purpose, must:

- (a) allow access to the Exporter's premises at reasonable times and on reasonable notice;
- (b) procure access to the premises of all agents and contractors at reasonable times and on reasonable notice;
- (c) require the Exporter's employees, agents and contractors to produce books and records related to this agreement and allow any such documentation to be inspected and copied; and

- (d) provide full and accurate answers to any questions asked in relation to that documentation.

4.4. Clause survives termination

Clauses 4.1 to 4.3 apply for the term of this agreement and for a period of seven years from the date of expiration or termination.

5. WARRANTY

The Exporter warrants that:

- (a) it holds a valid Licence;
- (b) the delivery of the Activities and the Project IP will not infringe any other person's Intellectual Property rights and that MLA will be entitled to use the Project IP and the Exporter Background IP as permitted under this agreement without the consent of any other person and without infringing any other person's Intellectual Property rights;
- (c) the Nominated Persons have the necessary experience, skill and ability to properly conduct the Activities on the terms set out in this agreement; and
- (d) the Activities will be conducted in a professional manner and with due skill and care.
- (e) it is compliant with all workers compensation insurance requirements, superannuation contributions and tax payments for and on behalf of its workers.

6. ANTI-BRIBERY AND CORRUPTION

6.1. Exporter hereby represents and warrants that it and any of its owners, affiliates, officers, directors, employees and agents involved in providing the Services, will comply with MLA's 'Anti-Bribery and Corruption Policy and Procedures' and 'Code of Business Conduct & Ethics'. In carrying out the Services, neither Exporter nor any of its owners, affiliates, officers, directors, employees or agents will offer, promise or give anything of value (including so-called 'facilitation payments'), directly or indirectly, to:

- (a) any government official in order to influence official action or otherwise obtain an improper advantage;
- (b) any other person while knowing that all or any portion of the money or thing of value will be offered or given to a government official in order to influence official action or otherwise obtain an improper advantage; or
- (c) any other person in order to induce them to perform their work duties disloyally or otherwise improperly.

Neither Exporter nor any of its owners or affiliates is directly or indirectly owned or controlled, in whole or in part, by any government entity or government official and no owner, partner, officer, director or employee of Exporter or of any parent or subsidiary company of Exporter is or will become a Government Official during the term of this Agreement, unless such person obtains MLA's prior written approval.

- 6.2. The Exporter acknowledges receipt of MLA's '[Anti-Bribery and Corruption Policy and Procedures](#)' and '[Code of Business Conduct & Ethics](#)'.

7. CONFIDENTIALITY

MLA must, during or after the term of this agreement, keep confidential and not disclose to any person any report provided by the Exporter under this agreement or other confidential information of the Exporter without first obtaining the Exporter's written consent.

8. INTELLECTUAL PROPERTY

8.1. Ownership

- 8.1.1. Project IP will be owned by the Exporter as and when it is created.

8.2. Exporter Background IP

- 8.2.1. During the Term of this agreement the Exporter must make available the Exporter Background IP to be provided by it and provide a notice to MLA identifying the Exporter Background IP and details of any encumbrances.
- 8.2.2. The Exporter warrants that it is the owner of, or is otherwise entitled to provide, the Exporter Background IP which it makes available under this agreement.
- 8.2.3. The Exporter grants MLA a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence any third party) to use the Exporter Background IP to the extent required to enable MLA to use the Project IP as permitted under this agreement.

8.3. Licence to MLA

The Exporter grants to MLA a non-exclusive, royalty free, perpetual, irrevocable and transferable licence (including the right to sub-licence), to use the Project IP for any purpose.

9. MLA MATERIAL

Any material or information provided by MLA under this agreement remains the property of MLA. During the term of the agreement, the Exporter has a non-exclusive, non-transferable licence to use those materials and that information for the purposes of this agreement.

10. RELATIONSHIP OF THE PARTIES

10.1. No partnership

Nothing in this agreement creates an agency, partnership, joint venture or employment relationship between MLA and the Exporter or any of their respective employees, agents or contractors. In particular the parties agree that each Nominated Person:

- (a) remains subject to the agreement or understanding (whether in writing or not) that Nominated Person has with the Exporter; and

- (b) has no direct relationship with MLA under law, contract or otherwise whether as an employee, consultant or in any other capacity.

All responsibilities and obligations with regard to each Nominated Person which arise by virtue of this agreement remain with the Exporter.

10.2. No holding out

Neither the Exporter nor any person acting on behalf of the Exporter may hold itself out as being entitled to contract or accept payment in the name of or on account of MLA.

10.3. Exclusion

MLA's only liability is as expressly stated in this agreement. To the extent permitted by law, all other liability is excluded.

11. INDEMNITY

The Exporter indemnifies MLA against all damages, losses, costs and expenses incurred by MLA arising out of:

- (a) any breach by the Exporter of this agreement;
- (b) any act or omission of the Exporter, its employees, the Nominated Persons and all agents and contractors in connection with this agreement; or
- (c) any claim arising out of or in any way relating to the Exporter:
 - (i) employing or engaging a Nominated Person;
 - (ii) replacing or removing any Nominated Person from the performance of the Activities;
 - (iii) terminating the employment or engagement of any Nominated Person; or
 - (iv) a decision by MLA not to approve a proposed Nominated Person.

12. TERM AND TERMINATION

12.1. Term

This agreement commences with effect from the Commencement Date and, subject to earlier termination in accordance with clauses 12.2 and 12.3, continues for the Term.

12.2. Notice

MLA may, on 1 months' notice to the Exporter, terminate this agreement.

12.3. Default

If the Exporter:

- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- (b) has its Licence suspended or revoked for any reason;
- (c) fails, within 7 days after receipt of notice, to remedy any breach of its obligations under this agreement which is capable of remedy;
- (d) breaches any provision of this agreement which is not capable of remedy; or
- (e) persistently breaches its obligations under this agreement,

MLA may, by notice to the Exporter, terminate this agreement and recover from the Exporter all damages, losses, costs and expenses suffered by MLA.

12.4. Obligations

If MLA terminates this agreement:

- (a) MLA is not required to pay any outstanding amount of the Funds; and
- (b) MLA may recover from the Exporter any part of the Funds which have not been spent by the Exporter in accordance with this agreement.

13. DISPUTE RESOLUTION

13.1. Dealing with disputes

13.1.1. The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.

13.1.2. If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 13 and the parties acknowledge that compliance with these provisions is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except in the case of applications for urgent interlocutory relief or a breach by the other party of this clause 13.

13.2. Resolution by management

13.2.1. If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party.

13.2.2. If the dispute is not resolved within 1 month of submission of the dispute to them, or such other time as they agree, the provisions of clause 13.3 will apply.

13.3. Conciliation

- 13.3.1. Disputes must be submitted to conciliation in accordance with and subject to the Institute of Arbitrators Australia Rules for the Conduct of Commercial Conciliations.
- 13.3.2. A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within 1 month of submission to conciliation, or such other time as the parties agree.

14. MISCELLANEOUS

14.1. Notices

- 14.1.1. A notice under this agreement must be in writing and may be given to the addressee by:
 - (a) delivering it to the address of the addressee;
 - (b) sending it by pre-paid registered post to the address of the addressee; or
 - (c) sending it by facsimile to the facsimile number of the addressee,specified in the Activity Proposal and the notice will be deemed to have been received by the addressee on receipt.
- 14.1.2. A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

14.2. Amendment

This agreement may only be varied by the written agreement of the parties.

14.3. Assignment

- 14.3.1. The Exporter may only assign a right under this agreement with the prior written consent of MLA.
- 14.3.2. For the purposes of clause 14.3.1, the Exporter is deemed to have assigned its rights under this agreement if the management or control of the Exporter is transferred to any person other than those persons who manage or control the Exporter as at the date of this agreement.

14.4. Entire agreement

- 14.4.1. This agreement embodies the entire understanding and agreement between the parties as to its subject matter.
- 14.4.2. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

14.5. Further assurance

Each party must promptly execute all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

14.6. Governing law and jurisdiction

14.6.1. This agreement is governed by and must be construed in accordance with the laws of New South Wales.

14.6.2. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

14.7. Legal costs

The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and signing of this agreement and all documents incidental to it.