

Umbrella IT Services Agreement



BETWEEN

**MEAT & LIVESTOCK AUSTRALIA LIMITED
ABN 39 081 678 364**

AND

**[LEGAL ENTITY NAME]
ABN [ABN]**

PROJECT NO. Click or tap here to enter text.

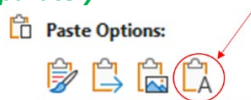
[Project Title]

INTERNAL MLA USE ONLY
Agreement Code: [AGREEMENT CODE]
Agreement Title: [AGREEMENT TITLE]

CONFIDENTIAL

**** Internal MLA note *****

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The MLA Contracts team will delete this internal note before sending out for signing.

Party Details

Service Provider

Name	[LEGAL ENTITY NAME]
ABN	[ABN]
Street Address	[insert]
Postal Address	[insert]
Primary Contact:	
Name	[insert]
Phone	[insert]
Email	[insert]
Administration Contract:	
Name	[insert]
Phone	[insert]
Email	[insert]
Authorised Person (Signatory)*:	
Name	[insert]
Phone	[insert]
Email	[insert]
<p>MLA will input this information into the third party platform Adobe Sign to enable electronic signing of contracts with MLA. Please see Adobe's and MLA's privacy policy (for Adobe found at https://www.adobe.com/au/privacy/policies-business/esign.html and for MLA found at www.mla.com.au/general/privacy/) for more details on how they each handle personal information).</p>	

MLA

MEAT & LIVESTOCK AUSTRALIA LIMITED	
ABN	39 081 678 364
Street Address	Level 1, 40 Mount Street North Sydney NSW 2060
Postal Address	PO Box 1961 North Sydney NSW 2059
Technical Details:	
Name	[insert]

Phone	[insert]
E-mail	[insert]
Administration Contact:	
Name	Contracts Team
Phone	02 9394 8666
E-mail	contracts@mla.com.au

SIGNED AS AN AGREEMENT

Signed for and on behalf of
MEAT & LIVESTOCK AUSTRALIA LIMITED
by its authorised representative:

.....
Name
[Insert Title]

.....
Date

***E-SIGNATURE EXECUTION*- DELETE VERSION WHICH IS
NOT APPLICABLE**

Signed for and on behalf of
[LEGAL ENTITY NAME]
by its authorised representative:

.....
Signature of Authorised Person

.....
Name of Authorised Person

.....
Office Held

.....
Date

***STANDARD EXECUTION* - DELETE VERSION WHICH IS NOT APPLICABLE**

Signed for and on behalf of

[LEGAL ENTITY NAME]

in the presence of:

.....
Signature of Authorised Person

.....
Name of Authorised Person

.....
Office Held

.....
Date

PARTIES

MEAT & LIVESTOCK AUSTRALIA LIMITED ABN 39 081 678 364 of Level 1, 40 Mount Street, North Sydney, New South Wales (MLA)

[LEGAL ENTITY NAME] [ABN] of [Address] (Service Provider)

Background

MLA has agreed to engage the Service Provider to provide the Services and the Service Provider has agreed to accept the engagement on the terms set out in this Agreement.

GENERAL TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

1.1.1. Where commencing with a capital letter:

Acceptance Criteria means the requirements specified in an Acceptance Test Plan which a Service or Deliverable must meet in order to be accepted by MLA;

Acceptance Test Plan means the plan approved by MLA under clause 11.1.3;

AI System means an engineered system that is designed to operate with varying levels of autonomy and that generates predictive outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives or parameters without explicit programming;

Confidential Information means in relation to a party, all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form and, in the case of MLA, includes the MLA Data;

Cyber Report means a comprehensive written report detailing any risks the Service Provider has identified in the previous 6 months relating to privacy, cyber or data security which may impact its ability to comply with its obligations under this Agreement and steps taken to mitigate those risks;

Data Security Incidents has the meaning given to it in clause 8.3.1;

Deliverable means any product or deliverable required to be created or provided by the Service Provider to MLA under a Statement of Work;

Eligible Data Breach has the meaning given in Division 2 of Part IIIC of the *Privacy Act 1988* (Cth).

Ethics Laws means all laws, regulations and industry codes of practice applicable to the Service Provider relating to:

(a) anti-bribery and anti-corruption;

(b) fundamental human rights in particular the prohibitions on child labour, slavery, forced labour and human trafficking, including the *Modern Slavery Act 2018* (Cth); and

(c) anti-money laundering;

Force Majeure Event means any event beyond a party's reasonable control, and in the case of MLA, includes the cessation or a reduction in MLA's funding;

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Harmful Code means any computer program virus or other code that is harmful, destructive, disabling or which assists in or enables theft or alteration of Protected Data;

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, trade marks, designs, circuit layouts, trade secrets, know-how, confidential information, plant breeders' rights, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

Milestone means a milestone specified in a Statement of Work and if Transition-In is applicable to that Statement of Work, any additional milestones set out in the Transition-In Plan;

Milestone Report means a comprehensive written report detailing the progress of the Services and achievement of each milestone;

MLA Data means all data, information, text, drawings embodied in any electronic or tangible medium which:

(a) is supplied by MLA to the Service Provider under this Agreement;

- (b) may be accessed by or on behalf of the Service Provider in the course of performing the Services; or
- (c) is created by the Service Provider in the course of supplying the Services and/or a Deliverable and which identifies or relates to MLA;

MLA Group means Meat & Livestock Australia Limited (ABN 39 081 678 364) and its Related Bodies Corporate Integrity Systems Company Limited (ABN 34 134 745 038) and MLA Donor Company Limited (ABN 49 083 304 867);

MLA Policies means, as at the date of this Agreement, each of MLA's:

- (a) privacy policy accessible via Privacy Policy;
- (b) Anti-bribery and Corruption policy and procedures accessible via ABC Policy; and
- (c) code of business conduct and ethics accessible via Code of Conduct,

as may be amended and notified by MLA to the Service Provider from time to time in accordance with clause 2.2;

MLA's Systems means MLA Group's information technology systems, including but not limited to MLA Group's Microsoft SharePoint, SAP and Optimizely CMS;

Nominated Persons means the persons named in the Statement of Work and such other persons approved in writing by MLA to perform the work in respect of the Services on behalf of the Service Provider;

Open Source Licence means a licence which meets the requirements of the Open Source Definition propagated by the Open Source Institute (www.opensource.org);

Open Source Software means software which is licensed under the terms of an Open Source Licence;

Party Details means the details the parties set out at the start of this Agreement;

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth);

Personnel means the officers, employees, contractors, agents, subcontractors (including employees of subcontractors) and professional advisers of that party;

Project IP means all Intellectual Property Rights brought into existence for the purpose of providing the Services, including the Milestone Reports and any Deliverables;

Protected Data means MLA Data, MLA's Confidential Information and any Personal Information provided

by MLA to the Service Provider obtained or accessed by the Service Provider as part of the Services;

Related Bodies Corporate has the same meaning given to it in the *Corporations Act 2001* (Cth);

Services means the services to be provided by the Service Provider under this Agreement, including but not limited to the services specified in the Statement of Work;

Service Provider Background IP means Intellectual Property Rights owned, licensed or held by the Service Provider and made available by the Service Provider under this Agreement, including but not limited to the Intellectual Property Rights specified in the Statement of Work;

Specifications means any specifications set out in a Statement of Work or otherwise agreed between the parties in writing;

Statement of Work means a statement in the form set out in the schedule, specifying Services to be provided by the Service Provider (and associated specific terms for the provision of those Services), as may be executed from time to time;

Statement of Work Commencement Date means, in respect of a Statement of Work, the commencement date set out in that Statement of Work; and

Transition-In Plan has the meaning given to it in clause 10.1.1.

- 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. CONTRACT STRUCTURE

2.1. Agreement parts

- 2.1.1. This Agreement consists of the following parts:

- (a) these General Terms (which set out the contractual framework under which the

Service Provider will perform the Services); and

- (b) the Statement of Work (which sets out the Services and specific terms associated with the Services which the Service Provider will perform as agreed from time to time);
- (c) if applicable, any special conditions agreed by the parties ("**Special Conditions**"), as set out in this Agreement; and
- (d) if applicable, any Special Conditions agreed by the parties, as set out in a Statement of Work.

2.1.2. If there is any inconsistency between any of the parts of this Agreement, then the General Terms prevail over a Statement of Work, and any Special Conditions to the General Terms prevail over all other parts to the extent of any inconsistency. Any Special Conditions to a Statement of Work prevail over all other parts of this Agreement to the extent of any inconsistency in respect of the Services the subject of the relevant Statement of Work.

2.2. Changes

2.2.1. MLA will notify the Service Provider of any material change to the MLA Policies that the Service Provider must comply with under clause 4.1.1(c) ("**Change Notice**"). If the change is detrimental to the Service Provider and the Service Provider does not agree to the change, the Service Provider must notify MLA in writing within 30 days of receiving a Change Notice, in which case:

- (a) the existing MLA Policies will continue to apply to any current Statements of Work (except for changes which are required to comply with law); and
- (b) the updated MLA Policies will apply to any Statements of Work entered into after the date of the Change Notice, unless otherwise agreed between the parties in writing.

3. APPOINTMENT OF THE SERVICE PROVIDER

3.1. Appointment

3.1.1. MLA appoints the Service Provider to provide the Services on the terms set out in this Agreement, and the Service Provider accepts the appointment.

3.1.2. At any time, the parties may negotiate a new Statement of Work. A Statement of Work will be deemed incorporated into this Agreement and binding on the parties when it is executed by both parties.

3.1.3. The Service Provider acknowledges that (a) MLA is under no obligation to acquire Services exclusively or acquire a minimum amount of Services from the Service Provider or agree any Statement of Work; and (b) a Statement of Work may require the Service

Provider to provide part or all of the Services, and that nothing in this Agreement prevents MLA from appointing a third party to provide part or all of the Services.

3.2. Nominated Persons

The Service Provider:

- (a) must, subject to the terms of this Agreement, cause the Nominated Persons to perform the work in respect of the Services on behalf of the Service Provider;
- (b) undertakes that the Nominated Persons will perform this work to the best of their skill and ability; and
- (c) must provide each Nominated Person with an explanation of their specific obligations under this Agreement and take all reasonable steps to explain those obligations to them.

4. OBLIGATIONS OF THE SERVICE PROVIDER

4.1. Conduct of the Services

4.1.1. The Service Provider must provide the Services:

- (a) in accordance with all relevant laws and regulations and any applicable industry standards or guidelines, including applicable Ethics Laws and any applicable laws regarding AI Systems;
- (b) in accordance with the Milestones and the Specifications and otherwise in compliance with the requirements set out in the Statement of Work, including any requirements to provide the Services from specific locations;
- (c) in accordance with the MLA Policies and all reasonable and lawful directions of MLA from time to time concerning the Services; and
- (d) with due care and skill and in a professional manner consistent with generally accepted industry best practice.

4.1.2. The parties agree that a Milestone is not achieved until it has complied with the Milestone Achievement Criteria and is confirmed complete by MLA (acting reasonably).

4.1.3. The Service Provider must at all times act in the best interests of MLA in providing the Services.

4.1.4. The Service Provider must not provide the Services (or any part thereof) performed from a location outside Australia without the prior written consent of MLA.

4.2. Conflict of interest

The Service Provider must not during the term of this Agreement carry on or be involved in an activity or business which would adversely impact on:

- (a) the Service Provider's ability to perform the Services fairly and independently in accordance with the terms of this Agreement; or
- (b) MLA's ability to use the Project IP.

4.3. Liaison

The Service Provider must:

- (a) liaise with MLA in providing the Services; and
- (b) if requested by MLA, provide reasonable details of the Service Provider's proposed course of action and strategies,

for the purpose of enabling MLA to review the performance of the Service Provider's obligations under this Agreement.

4.4. Service Provider Insurance

4.4.1. The Service Provider must at all times maintain:

- (a) adequate workers' compensation insurance as required by law for its employees;
- (b) professional indemnity insurance for an amount of at least \$2 million; and
- (c) public and product liability insurance for an amount of at least \$5 million.

4.4.2. The Service Provider must, on request by MLA:

- (a) obtain and maintain such additional insurance as is reasonable for the industry in which the Service Provider operates and the Services are to be performed; and
- (b) produce evidence of the currency of the insurance policies referred to in clause 4.4.1.

4.5. Delays

4.5.1. The Service Provider must:

- (a) take all necessary and reasonable steps to prevent or minimise the risk or occurrence of any delays in the provision of the Services or Deliverables, including delays in the achievements of any Milestone; and
- (b) where such delay occurs or is likely to occur, do all things necessary to overcome the delay or likely delay.

4.5.2. As soon the Service Provider becomes aware of any delay or likely delay which may result in any of the Milestones not being met by the due date, the Service Provider must promptly MLA in writing of the delay.

4.5.3. If the Service Provider notifies MLA of a delay pursuant to clause 4.5.2, MLA may but is not obliged

to grant an extension of time for meeting the Milestone. If MLA does not grant the extension of time, the due date for the Milestone remains unchanged.

4.6. Reporting

4.6.1. The Service Provider must:

- (a) provide MLA with a Cyber Report every 6 months during the Term;
- (b) where a Milestone Report is specified as Deliverables in a Statement of Work, provide MLA with the Milestone Reports within 14 days of the achievement of each Milestone and upon completion of the Services under a Statement of Work;
- (c) promptly respond to any request by MLA for an update on the progress of the Services and any other information reasonably requested from MLA from time to time;
- (d) keep MLA fully advised of the progress of the Services and, without limiting the foregoing, promptly notify MLA of any matters which may materially affect the Service Provider's ability to perform the Services; and
- (e) if requested by MLA, meet with MLA at a time and date agreed by the parties during the term of this Agreement to conduct a debrief regarding the Services at no charge.

4.7. Accurate recording keeping

4.7.1. The Service Provider must ensure that it, and its agents and contractors:

- (a) keep complete and accurate records that are separate from any other records of the relevant business:
 - (i) setting out details of all work carried out under this Agreement; and
 - (ii) which otherwise support the Service Provider's compliance with its obligations under this Agreement;
- (b) permit MLA, at reasonable times and on reasonable notice, through its officers, agents or advisers authorised on its behalf, to examine, inspect and take reasonable copies of any such records, and provide all necessary facilities for that purpose; and
- (c) give full and accurate answers to any questions MLA or any of its representatives may have concerning records relating to this Agreement and provide all assistance reasonably requested by MLA in respect of any inquiry into or concerning the Services or this Agreement.

4.8. Audits and investigations

- 4.8.1. MLA may conduct an audit of the Service Provider's physical premises, quality records and other documentation relating to this Agreement from time to time to ensure compliance with the Service Provider's obligations under this Agreement by providing the Service Provider with at least 7 days' notice.
- 4.8.2. The Service Provider agrees to allow MLA's personnel access and to fully co-operate with any compliance audit conducted by MLA.
- 4.8.3. The Service Provider must cooperate with MLA, its representatives or any relevant authorities in the conduct of any investigations relating to the MLA Anti-bribery and Corruption policy and any investigations conducted by the National Anti-Corruption Commission.
- 4.8.4. MLA will conduct an audit or investigation under this clause 4.8 in such a manner to minimise interference with the Service Provider's ability to perform the Services in accordance with the terms of this Agreement and expeditiously, efficiently and during normal business hours.

4.9. Data Security Audit

- 4.9.1. MLA may conduct, or require the Service Provider to conduct a security audit of the Service Provider's physical premises, quality records, policies, procedures and security measures in place to protect Protected Data to ensure the Service Provider's compliance with clauses 7, 8 and 9 of the Agreement by providing the Service Provider at least 7 days' notice, unless MLA reasonably believes that there has occurred or there is an actual risk of a Data Security Incident occurring and MLA will in such circumstances, provide the Service Provider with two days' notice period where practicable.
- 4.9.2. If the results of the security audit indicate that the Service Provider is not complying with clauses 7, 8 or 9 of the Agreement, the Service Provider must immediately take all necessary steps to remedy the non-compliance on being given written notice by MLA.

5. FEES AND PAYMENT

5.1. Fees

- 5.1.1. MLA must pay the Service Provider for providing the Services the fees specified in the Statement of Work, provided that the Services to which each payment relates are completed to the reasonable satisfaction of MLA.
- 5.1.2. Unless otherwise specified in the applicable Statement of Work, the Service Provider must after the end of each period or Milestone specified in the Statement of Work and acceptance and approval by

MLA of the relevant Milestone Report, send to MLA at invoices@mla.com.au in PDF format a correctly rendered tax invoice setting out details of the Services provided, time worked and fees payable in that period, as well as copies of any relevant receipts, in a form acceptable to MLA as set out in MLA's invoicing requirements available at MLA agreements | Meat & Livestock Australia.

- 5.1.3. MLA agrees to pay the Service Provider within 30 days of receiving a valid tax invoice.

5.2. Disputed invoices

- 5.2.1. If MLA disputes an invoice submitted by the Service Provider, MLA is not obliged to pay the disputed portion of the invoice (which may include the entire invoice amount) until the dispute is resolved but MLA must pay all other non-disputed amounts.
- 5.2.2. The Service Provider may not suspend, cancel or withdraw the provision of the Services in whole or in part as a result of a disputed invoice.

6. GST

- 6.1.1. Unless otherwise indicated, amounts stated in this Agreement do not include GST.
- 6.1.2. In relation to any GST payable for a taxable supply by a party under this Agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice.
- 6.1.3. If any party is required under this Agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- 6.1.4. Terms used in this clause 6 which are defined in the GST Act have the same meaning as in the GST Act.

7. CONFIDENTIALITY

7.1. Confidentiality obligations

Subject to this Agreement, each party must during and after the term of this Agreement:

- (a) keep the Confidential Information of the other party confidential;
- (b) use and disclose the Confidential Information of the other party only as contemplated by this Agreement; and
- (c) prior to disclosure to any person of any Confidential Information of another party, ensure that the person is bound by obligations of confidentiality in substantially the same terms as this clause 7.

7.2. Exclusions

The obligations on each recipient of Confidential Information under this Agreement do not apply to any Confidential Information which:

- (a) was in the recipient's possession at the time of disclosure to the recipient and was not acquired in breach of an obligation of confidence or under an obligation of confidence;
- (b) is in the public domain;
- (c) is acquired from a third party, provided that it is not acquired by the third party unlawfully or in breach of an obligation of confidence; or
- (d) is required to be disclosed by law, provided that the receiving party makes reasonable efforts to notify the disclosing party of the impending disclosure in time for the disclosing party to appear and oppose the disclosure.

8. PRIVACY AND DATA

8.1. Personal Information

8.1.1. The Service Provider must:

- (a) comply with the *Privacy Act 1988* (Cth), 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 8.

8.1.2. Without limiting clause 8.1.1:

- (a) where the Service Provider collects Personal Information for or on behalf of MLA, the Service Provider:
 - (i) must only use and disclose that information for the purpose for which it is collected; and
 - (ii) must not publish, disseminate or otherwise use the Personal Information in any way;
- (b) in relation to any Personal Information that the Service Provider provides to MLA under this Agreement, the Service Provider 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 the privacy policy can be found, which is via MLA Privacy Policy;
- (c) in relation to any Personal Information provided to the Service Provider by MLA under this Agreement, the Service Provider must:
 - (i) only store, use, disclose or otherwise handle the information for the specific purposes for which it was provided to the Service Provider under this Agreement; and
 - (ii) co-operate with any reasonable request or direction of MLA which relates to the protection of the information; and
- (d) the Service Provider 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.

8.2. Use of data

8.2.1. Without limiting MLA's other rights under this Agreement, the Service Provider acknowledges that de-identified aggregated data collected as part, or in the course, of the Services and which is incapable of being used to identify, or ascertain the identity of, any person may be:

- (a) used by MLA and its Related Bodies Corporate, for planning, research and development, or marketing purposes, including as part of MLA's digital platform; and
- (b) provided by MLA to third parties for the purposes of projects undertaken by MLA.

8.2.2. The Service Provider must not, without MLA's prior written consent, use any AI System to perform or to support the performance of the Services, or use any of MLA's Confidential Information or Personal Information in any AI Systems, including but not limited to use of an AI System to:

- (a) develop or train models;
- (b) develop policies, strategies, documents, images or other content;
- (c) develop original creative works; or
- (d) verify information.

8.3. Data breaches

8.3.1. If there is an actual or suspected misuse or loss of, interference with, unauthorised access to, modification of, or disclosure of Protected Data ("**Data Security Incident**"), the Service Provider must:

- (a) give MLA a written notice setting out the nature of the incident, immediately after becoming aware of the Data Security Incident;
- (b) promptly provide all information requested by MLA relating to the Data Security Incident; and
- (c) immediately do all things necessary to mitigate the effects of and remediate the Data Security Incident.

8.3.2. The parties agree and acknowledge that MLA will be solely responsible for determining whether a Data Security Incident is an Eligible Data Breach. If MLA has reasonable grounds to believe the Data Security incident is an Eligible Data Breach, the Service Provider must, at no additional cost to MLA:

- (a) cooperate with and provide all reasonable assistance to investigate the Data Security Incident;
- (b) cooperate with MLA to minimise reputational damage or loss of goodwill, including liaising with MLA prior to communicating with the affected individual(s) to minimise disruption or distress to the individual;
- (c) comply with all reasonable directions of MLA in respect of the Data Security Incident;
- (d) use reasonable endeavours by taking remedial action to prevent the risk of serious harm to the relevant individuals in connection with the Eligible Data Breach and must keep MLA informed of any remedial action it is taking; and
- (e) except where clause 8.3.3 applies, must not disclose to any third party, including the Office of the Australian Information Commissioner, the existence or circumstances surrounding the incident without obtaining MLA's prior written approval.

8.3.3. Where the Service Provider is required under the Privacy Laws to, notify the Office of the Australian Information Commissioner or an individual about an Eligible Data Breach, the Service Provider agrees to:

- (a) provide to MLA a prior copy of any announcements or notifications it intends to make at least 2 Business Days before issuing the notification or making the announcement; and

- (b) make any changes to the notifications or announcements as reasonably requested by MLA (provided that those changes would not cause the party to fail to comply with or breach any Privacy Laws).

8.3.4. For the avoidance of doubt, this clause does not preclude MLA from notifying impacted individuals or the Office of the Australian Information Commissioner for the purposes of fulfilling its obligations under Privacy Laws.

9. DATA SECURITY

9.1. Data security

9.1.1. The Service Provider must:

- (a) implement appropriate technical and organisational measures against the unauthorised or unlawful disclosure or processing of Protected Data and against accidental loss or destruction of, or damage to, the Protected Data (including but not limited to any measures set out in the Specifications);
- (b) not use and ensure that its Personnel do not use Protected Data for any other purpose other than directly for the performance of its obligations under this Agreement;
- (c) not make any Protected Data available to a third party other than a subcontractor engaged in accordance with clause 22 and only necessary for the subcontractor to provide the Services and/or Deliverables;
- (d) not sell, licence or otherwise deal with or commercially exploit any Protected Data;
- (e) not cause or permit the transfer of any Protected Data outside of Australia except with the prior written consent of MLA and in accordance with any additional terms MLA may impose on such transfer;
- (f) furnish to MLA copies of such security, audit and control reports generated by the Service Provider's auditors, if any, as are relevant to the Service Provider's custody of Protected Data; and
- (g) on termination or expiry of this Agreement for whatever reason, or upon MLA's written request at any time, at MLA's option:
 - (i) cease to use or process the Protected Data and return and/or procure the return to MLA of; or
 - (ii) destroy and procure the destruction of any and all Protected Data in the Service Provider's possession or control in a machine readable format.

9.2. Data loss

The Service Provider must at all times when performing its obligations under this Agreement use appropriate procedures and care to avoid loss or corruption of data, including Protected Data, including by taking and storing regular off-site back-ups of all Protected Data.

10. TRANSITION-IN PLAN

10.1.1. If a Statement of Work specifies that Transition-In is to apply, then:

- (a) the Service Provider and MLA must agree, prior to the Statement of Work Commencement Date, a plan ("**Transition-In Plan**") setting out the terms on which the Services will be phased-in or transitioned from MLA or a previous supplier to the Service Provider, including the Milestones any applicable fees payable during the period of the Transition-In; and
- (b) the parties must comply with the Transition-In Plan.

10.1.2. The Service Provider must reasonably co-operate with MLA and any outgoing supplier in relation to the transition of the Services to the Service Provider and the implementation of the Transition-In Plan.

11. ACCEPTANCE TESTING, VIRUSES AND THIRD PARTY MATERIALS

11.1. Acceptance Test Plan

11.1.1. If specified in a Statement of Work, the Service Provider must prepare plans for the conduct of acceptance testing for the Deliverables and the Services and provide MLA with the draft plans within the period specified in a Statement of Work ("**Draft Acceptance Test Plan**").

11.1.2. Each Draft Acceptance Test Plan may specify, as relevant:

- (a) the Services and the Deliverables in respect of which the acceptance tests will be conducted;
- (b) the tests that will be conducted;
- (c) the timetable for conducting the acceptance tests;
- (d) the Acceptance Criteria for the Deliverables if not otherwise stated in the relevant Statement of Work; and
- (e) meet any other requirements set out in this Agreement.

11.1.3. Following receipt of a Draft Acceptance Plan in accordance with clause 11.1.1, MLA will:

- (a) give the Service Provider notice that it approves the Draft Acceptance Plan, in which

case the approved plan will be an Acceptance Test Plan; or

- (b) comment on the Draft Acceptance Test Plan, in which case, the parties must meet to discuss MLA's comments and within 10 Business Days after the meeting, the Service Provider must prepare a revised Draft Acceptance Test Plan addressing MLA's comments and submit it to MLA for its approval.

11.1.4. The process set out in clause 11.1.3 applies to any resubmitted Draft Acceptance Test Plan until it is approved by MLA.

11.1.5. Once approved in accordance with clause 11.1.3, either party may propose amendments to the Acceptance Test Plan to the other party. If such amendments are agreed by the parties in writing, the Acceptance Test Plan as amended, will apply to the conduct of acceptance testing for the Deliverables and the Services.

11.2. Testing by Service Provider

11.2.1. Before delivery to MLA of any Services or Deliverables, the Service Provider must test the Deliverable to ensure that it meets the applicable Specifications.

Testing by MLA

11.2.2. Within a reasonable time of delivery to MLA, MLA will carry out acceptance testing of the Services or Deliverables as set out in the Acceptance Test Plans.

11.2.3. The Service Provider agrees to provide all reasonable assistance requested by MLA in relation to acceptance testing by MLA.

MLA's notice of acceptance

11.2.4. The parties agree a Service or Deliverable does not meet the Acceptance Criteria until it is confirmed by MLA (acting reasonably).

Acceptance test failure

11.2.5. If clause 11.2.4 is not satisfied, or MLA is unable to complete acceptance testing due to the fault of the Service Provider or problems relating to the Service or Deliverable, the Service or Deliverable will have failed the acceptance tests and MLA will give the Service Provider a notice setting out reasons for the failure and a further date on which the Service Provider must resubmit the corrected Service or Deliverable to MLA for carrying out of further acceptance tests.

Correction of defects and restart of acceptance tests

11.2.6. On receipt of a notice of failure, the Service Provider must rectify any issues identified in the

notice of failure at its own cost. The Service Provider must resubmit the corrected Service or Deliverable to MLA for acceptance tests by the date set out in the notice of failure. MLA will then conduct further acceptance tests.

Further failure of acceptance test

11.2.7. If a Service or Deliverable fails the acceptance tests carried out under clause 11.2.6, MLA may, at its option, do any of the following:

- (a) extend the acceptance testing period;
- (b) issue a notice of failure under clause 11.2.5, in which case clause 11.2.6 and this clause 11.2.7 will apply to a further round of correction and testing;
- (c) accept the Service or Deliverable or part of it by notice to the Service Provider, notwithstanding the failure, for a reduction of the fees set out in the relevant Statement of Work; or
- (d) if the Service or Deliverable fails acceptance tests carried out under clause 11.2.6 two or more times, reject the Service or Deliverable and terminate the Statement of Work by notice to the Service Provider for breach under clause 17.5.5 of this Agreement.

No deemed acceptance

11.2.8. For the avoidance of doubt, none of the following will give rise to any deemed acceptance of a Service or Deliverable, nor waive any rights MLA has under clause 11 or otherwise:

- (a) MLA's failure to issue a notice of failure;
- (b) use of a Service or Deliverable outside the testing environment; or
- (c) MLA's failure to complete acceptance testing during the acceptance testing period.

11.3. Viruses and harmful code

11.3.1. The Service Provider must:

- (a) use its best endeavours to ensure that no Harmful Code is introduced into:
 - (i) the software and systems used by the Service Provider to provide the Services and any Deliverables;
 - (ii) any Deliverables; or
 - (iii) any software or systems used by MLA in connection with the Services or any Deliverables;
- (b) use current and updated commercially available virus detection software in conformity with the requirements of this Agreement and not less than good industry practice, including real-time scanning;

(c) if it becomes aware of any Harmful Code being introduced into any software or systems used by the Service Provider or MLA or any Deliverables or any malicious attack being made which could affect the Services:

- (i) immediately report that fact to MLA and provide all information reasonably requested by MLA;
- (ii) take all necessary remedial action to avoid or the eliminate the Harmful Code or avoid the malicious attack and prevent re-occurrence (including implementing appropriate processes to prevent further occurrences and to take measures to quarantine the Harmful Code) and at the Service Provider's cost and expense where it is in breach of clause 11.3.1(a); and
- (iii) mitigate and rectify any consequences of the Harmful Code or the malicious attack at the Service Provider's cost and expense where it is in breach of clause 11.3.1(a).

11.4. Embedded third party materials and open source

11.4.1. The Service Provider must not:

- (a) without MLA's prior written approval, incorporate Intellectual Property Rights of any third party into a Deliverable or Service, unless it has:
 - (i) secured for MLA the right to use the third party Intellectual Property Rights in the relevant Deliverable or Service; and
 - (ii) verified that MLA has the right to purchase ongoing maintenance and support for such third party Intellectual Property Rights which comprise software on reasonable terms; or
- (b) incorporate any Open Source Software into any Deliverable without the prior approval of MLA, and subject to any conditions notified by MLA. At a minimum, the following conditions will apply:
 - (i) the Service Provider must procure a licence to MLA of that Open Source Software under the appropriate Open Source Licence;
 - (ii) the Service Provider must provide a copy of the Open Source Licence terms for that Open Source Software to MLA;

- (iii) the Service Provider must deliver a copy of the source code to that Open Source Software to MLA;
- (iv) the Service Provider must ensure that each item of Open Source Software incorporated into, or provided with, a Deliverable is identical to the most recent version of that software made available by the maintainer of that piece of software at the time it is incorporated into, or provided with, that Deliverable, unless otherwise agreed by MLA;
- (v) the Service Provider warrants that the Service Provider's use or supply of any Open Source Software will not cause Intellectual Property Rights owned by MLA or licensed to MLA by a third party to become subject to any Open Source Licence unless otherwise agreed by MLA;
- (vi) the Service Provider must not use or contribute any of MLA's Confidential Information in the course of making modifications to any software the subject of an Open Source Licence or make or purport to make any of MLA's Confidential Information the subject of an Open Source Licence without prior written approval of MLA;
- (vii) the Service Provider will not retain any rights over the Deliverables created for MLA using Open Source Software; and
- (viii) without limiting any other rights or remedies, the Service Provider must defend, at the Service Provider's cost, any claim brought by the owner of the Intellectual Property Rights in the Open Source Software against MLA, to the extent such claim arises out of the Service Provider's use of the Open Source Software in breach of the relevant Open Source Licence.

11.5. ACCESS TO MLA'S SYSTEMS

11.5.1. If MLA provides the Service Provider or the Service Provider's Personnel with access to MLA's Systems, the Service Provider must promptly notify MLA from time to time of the details of:

- (a) the Personnel that need access to MLA's Systems;
- (b) any Personnel who have access and are about to cease employment or engagement with the Service Provider; and

- (c) the Personnel that no longer require access to MLA's Systems.

11.5.2. The Service Provider must ensure that its Personnel with access to MLA's Systems:

- (a) only access MLA's Systems for the purpose for which MLA provided access;
- (b) comply with any policies notified to the Service Provider by MLA in relation to MLA's Systems;
- (c) keep the link, username or password confidential and not allow anyone else to access MLA's Systems using those details;
- (d) promptly notify MLA if there is any actual or suspected:
 - (i) unauthorised use of MLA's Systems including unauthorised use of the Service Provider's link, username or password;
 - (ii) misuse, loss of, or interference MLA's Systems or data held on MLA's Systems; and
 - (iii) unauthorised access, modification or disclosure of data held on MLA's Systems;
- (e) not attempt to circumvent the security of MLA's Systems;
- (f) not use, disclose or seek to intercept data that MLA does not intend the Service Provider to access or use; and
- (g) not knowingly introduce any malicious or disabling code, virus or similar MLA's Systems.

11.5.3. MLA may deny access or suspend or terminate access to MLA's Systems to Service Provider's Personnel under this clause 11.5 at any time including if MLA becomes aware of any potential or actual breaches of this clause.

12. SERVICE LEVELS

12.1.1. If a Statement of Work sets out that any service levels or key performance indicators ("Service Levels") are to apply, then the Service Provider must ensure that it meets or exceeds the relevant Service Levels in the performance of the Services and, if requested to do so, report to MLA on its performance against the Service Levels.

If the Service Provider fails to meet the Service Levels it must, at its own expense:

- (a) take all action reasonably necessary to ensure that such failure does not re-occur and notify MLA in writing of the action taken;

- (b) credit to MLA any Service Credits that apply as specified in the relevant Statement of Work; and
- (c) ensure that it meets the relevant Service Levels by no later than the end of the following calendar month.

12.1.2. The Service Credits do not limit any rights or remedies available to MLA at law for any act or omissions of the Service Provider, including damages and the right to terminate this Agreement.

13. BUSINESS CONTINUITY AND DISASTER RECOVERY

13.1.1. If specified in a Statement of Work, the Service Provider must have, maintain and comply at all times with a business continuity plan which:

- (a) specifies when the business continuity plan is to be activated;
- (b) specifies the steps to be taken to recover the Services and procedures to reduce the impact of any disruptions to the normal performance of business activities, whether such disruptions arise by internal or external causes;
- (c) specifies appropriate disaster recovery procedures and back up facilities in respect of any Protected Data, records, accounts and other documents which relate to the Service Provider's performance of its obligations under this Agreement; and
- (d) without limiting clause 13.1.1(c) above, provides for complete recovery of all necessary computer systems and data; and
- (e) specifies the recovery time objectives.

13.1.2. If clause 13.1.1 is specified in a Statement of Work as applicable the Service Provider must ensure that its subcontractors (if any) engaged to perform any part of the Services have in place similar business continuity plans in respect of the services they will perform in relation to this Agreement.

13.1.3. The Service Provider must immediately notify MLA of any threat or any disruption to the Service Provider's ability to provide the Services or Deliverables and if clause 13.1.1 is specified in a Statement of Work as applicable, implement the relevant recovery, back-up and response activities in the business continuity plan.

14. INTELLECTUAL PROPERTY

14.1. Assignment

14.1.1. The parties agree that all Intellectual Property Rights in any Project IP will be owned by MLA.

14.1.2. The Service Provider assigns all Project IP to MLA as and when it is created, whether developed prior to the date of the Statement of Work, existing as at the

date of the Statement of Work or created afterwards.

14.1.3. Where the Service Provider engages an agent or contractor to provide any of the Services, the Service Provider must ensure that the agent or contractor assigns to MLA all Project IP as and when it is created.

14.1.4. The Service Provider agrees to do all things and sign all forms and documents reasonably required by MLA to give effect to this clause 14.1.

14.2. Licence to use

14.2.1. If the Services involve the use of any materials or content created by third parties in relation to which it is not economic or possible for the Service Provider to provide the assignment under clause 14.1.3, the Service Provider must:

- (a) provide MLA with an estimate for the cost of procuring the rights to use the relevant materials or content and obtain MLA's written consent before incurring any such costs;
- (b) obtain all necessary approvals, permits, licences and authorisations for MLA to use the relevant materials or content;
- (c) conduct reasonable due diligence, and where necessary obtain reasonable warranties, regarding the third party's right to license any Intellectual Property Rights subsisting in the relevant materials or content; and
- (d) clearly identify the relevant materials or content in the Statement of Work and advise MLA of any use limitations prior to providing it to MLA.

14.3. Service Provider Background IP

14.3.1. If the Service Provider makes available any Service Provider Background IP as part of the Services (other than as specified in the Statement of Work) it must give a notice to MLA identifying the Service Provider Background IP and the ownership of it, and details of any restrictions or encumbrances.

14.3.2. The Service Provider warrants that it is the owner of, or is otherwise entitled to provide, the Service Provider Background IP which it makes available under this Agreement.

14.3.3. The Service Provider grants MLA a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to use the Service Provider Background IP to the extent required to enable MLA to use the Project IP.

14.4. Licence to the Service Provider

MLA grants the Service Provider a non-exclusive, royalty free licence (excluding the right to sub-licence) to use the Project IP and the Intellectual Property Rights in the MLA Data solely for the purpose of enabling the Service Provider to provide the Services during the term of this Agreement.

14.5. Restrictions on use of MLA's logo

The Service Provider must not use (including in the Service Provider's publications or materials) any of MLA's logos, trade marks or trade names without MLA's prior written consent.

15. WARRANTY

15.1. Service Provider Warranties

The Service Provider warrants that:

- (a) it holds all necessary licences, authorisations and consents to provide the Services;
- (b) it, its officers and employees, the Nominated Persons and all agents and contractors have the necessary experience, skill and ability to properly provide the Services and the Deliverables on the terms set out in this Agreement;
- (c) the Services will be provided in a professional manner and conform to a standard of competence equal to that normally employed by Service Providers of good standing for services of a magnitude and nature similar to the Services;
- (d) it will provide the Services and the Deliverables in accordance with the Specifications and will comply with all laws;
- (e) all Deliverables are of acceptable quality and free from defects in materials, workmanship and manufacture;
- (f) the provision of the Services and the Deliverables will not infringe any other person's Intellectual Property Rights and that MLA will be entitled to use the Project IP and the Service Provider Background IP without the consent of any other person and without infringing any other person's Intellectual Property Rights; and
- (g) it is compliant with all workers' compensation insurance requirements, superannuation contributions, employment laws and tax payments for and on behalf of its workers.

15.2. No other warranties and ACL guarantees

- (a) The parties agree that all terms, conditions and warranties implied by custom, the general law or statute into this Agreement (including a Statement of Work) are hereby

excluded, except for any statutory guarantees or implied warranties, the exclusion of which would contravene any statute or which would cause this clause to be void or unenforceable (Non-Excludable Condition).

- (b) The Service Provider's liability for breach of any Non-Excludable Condition will be limited (at the Service Provider's option) to resupply of the relevant goods or resupply of the relevant services, or the payment of the cost of resupplying the relevant goods or services.

16. INDEMNITY AND LIABILITY

16.1. Indemnity by the Service Provider

The Service Provider indemnifies MLA against any liability, loss, damage, costs (including legal costs on a solicitor and own client basis) or expense incurred by MLA as a result of:

- (a) any fraud, wilful default, negligent or unlawful act or omission of the Service Provider or any of its personnel in connection with this Agreement;
- (b) a breach of clauses 7, 8 and 9 by the Service Provider;
- (c) a breach of the warranty in clause 15.1(f); and
- (d) the death or injury of any person, or loss or damage to property arising from the performance or non-performance by the Service Provider of its obligations under this Agreement.

16.2. Liability cap

Subject to clauses 15.2 and 16.3, the aggregate liability of one party to the other party under or in respect of a Statement of Work whether in contract, tort (including negligence), statute or any other cause of action (other than the obligation to pay Fees) is limited to the greater of \$100,000 or three times the total Fees paid or unpaid set out in the Statement of Work.

16.3. Exceptions to liability cap

The liability cap in clause 16.2 does not apply to liability for:

- (a) any liability that cannot be excluded by applicable laws; and
- (b) in the case of the Service Provider, the indemnities in clause 16.1.

16.4. Consequential loss

Except in respect of liability described in 16.3, to the extent permitted by law, the liability of a party under this Agreement will not include any

consequential loss or damages. However, this clause does not preclude the recovery by a party of any costs, expenses, losses or damages to the extent they may be fairly and reasonably considered to arise directly and naturally, that is according to the usual course of things, from the breach or other wrongful act or omission giving rise to the relevant liability.

16.5. Contribution

Each party's liability under this Agreement is reduced to the extent that any negligent act or omission or breach of this Agreement by the other party contributed to the relevant liability, loss, damage, cost or expense.

17. TERMINATION AND TERM

17.1. Term

- (a) This Agreement commences on the date the last party signs and continues until terminated in accordance with this clause 17
- (b) A Statement of Work commences on the start date and continues until the end date set out in the applicable Statement of Work unless terminated earlier in accordance with clause 17.5.2.

17.2. Notice for Termination

17.2.1. MLA may, on 1 month's written notice to the Service Provider, terminate this Agreement.

17.2.2. MLA may terminate this Agreement with immediate effect by written notice to the Service Provider if:

- (a) MLA is no longer the declared industry marketing body and/or industry research body for the meat and livestock industry; or
- (b) its funding agreement with the Commonwealth government is terminated.

17.3. Go / No Go decisions

17.3.1. MLA may terminate or suspend a Statement of Work by notice to the Service Provider if a "No Go" decision is made by MLA.

17.3.2. If a "Go/No Go" decision point is referred to in a Statement of Work, the Service Provider:

- (a) must not continue the Services after that point until MLA notifies it that MLA has made a "Go" decision to proceed with the Services after that point; and
- (b) acknowledges that it is not entitled to payment for any Services provided in breach of paragraph (a) above.

17.4. Termination for Default

17.4.1. If either party fails, within 14 days after receipt of notice, to remedy any breach of its material obligations under this Agreement the other party

may, by written notice to the breaching party immediately terminate this Agreement.

17.4.2. If MLA terminates this Agreement under clause 17.4.1 or a Statement of Work under clause 17.5.5, MLA may recover from the Service Provider damages, losses, costs and expenses suffered by MLA (subject to the limits in clause 16).

17.5. Termination of Statement of Work

17.5.1. If this Agreement is terminated under this clause 17, any existing Statements of Work will automatically terminate on the date this Agreement is terminated.

17.5.2. MLA may terminate a Statement of Work for the Services at any time with 30 days' written notice to the Service Provider.

17.5.3. For the avoidance of doubt, termination of a Statement of Work does not terminate this Agreement and this Agreement remains in full force and effect.

17.5.4. If the Services are terminated under clause 17.5.2 after execution has commenced, MLA agrees to pay a pro-rated amount of the fees in the relevant Statement of Work based on the Services provided up to the date of termination (the amount being a percentage of the relevant Services successfully completed up to date of termination), including any third party costs which MLA had agreed to in writing and to which the Service Provider is committed at the time that the termination is notified to the Service Provider, subject to the Service Provider providing evidence of such third party costs being incurred.

17.5.5. If a party fails, within 14 days after receipt of notice, to remedy any breach of its material obligations under a Statement of Work, the other party may, by written notice to the breaching party, terminate the Statement of Work.

17.6. Return of Protected Data and Project IP

On termination of this Agreement (or earlier on MLA's request), the Service Provider must:

- (a) promptly deliver the Project IP to MLA and permanently delete from all computer systems under the control of the Service Provider all Project IP which is in electronic form; and
- (b) return or destroy all Protected Data to MLA in accordance with clause 9.1.1(g),

except that the Service Provider may retain any records in relation to the provision of the Services to the extent required for the Service Provider to comply with its record retention obligations under applicable laws.

18. DISENGAGEMENT

18.1. Disengagement Plan

18.1.1. If a Statement of Work specifies that a plan is required for the orderly transition of the Services and Deliverables on termination of this Agreement or is otherwise requested by MLA ("**Disengagement Plan**"), the Service Provider must, in conjunction with MLA, develop a draft Disengagement Plan and provide it to MLA for review and approval within such period specified in that Statement of Work. The Service Provider must make all changes to the draft Disengagement Plan which are reasonably requested by MLA.

18.1.2. Unless otherwise agreed by MLA, the Disengagement Plan must specify:

- (a) the relationships, responsibilities and obligations of the parties on termination of this Agreement;
- (b) the procedures, processes and timetable to facilitate the orderly transfer of responsibility for the Services and Deliverables; and
- (c) if applicable, the orderly migration of Protected Data from the Service Provider's systems to MLA or a replacement supplier.

18.1.3. The Service Provider must regularly review and, with the consent of MLA, update any Disengagement Plan to ensure it remains consistent with this Agreement and facilitates the most efficient transition of the Services.

18.2. Disengagement Services

18.2.1. On termination of this Agreement, the Service Provider must:

- (a) cooperatively work with MLA and comply with MLA's reasonable directions in order to allow MLA to source and appoint a replacement supplier;
- (b) use its best endeavours to ensure an effective and orderly undertaking of a transition of the provision of the Services and/or Deliverables to MLA or MLA's nominated replacement supplier;
- (c) perform all obligations set out in the Disengagement Plan; and
- (d) continue to provide the Services and/or Deliverables for the period set out in the Disengagement Plan and in accordance with the terms of this Agreement.

19. FORCE MAJEURE

19.1. Event

19.1.1. Neither party is liable for any breach of its obligations under this agreement to the extent that

the breach resulted from a Force Majeure Event provided that it:

- (a) promptly notifies the other party (with appropriate details); and
- (b) takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.

19.1.2. If a Force Majeure Event continues for more than 90 days, the unaffected party may, by written notice to the other party, terminate the affected Statement of Work with immediate effect.

20. DISPUTE RESOLUTION

20.1. Dealing with disputes

20.1.1. Prior to commencing proceedings for a dispute arising out of or in connection with this Agreement ("**Dispute**"):

- (a) the party claiming that a Dispute has arisen must notify the other party (giving details of the Dispute); and
- (b) within 10 business days after the receipt of a notice under clause 20.1.1(a), senior executives of both parties must meet to attempt to resolve the Dispute through good faith negotiation for at least 30 days; and
- (c) if the parties are unable to resolve the Dispute under clause 20.1.1(b), the parties must:
 - (i) refer the Dispute to mediation in accordance with the then current Resolution Institute Mediation Rules;
 - (ii) cooperate to enable the mediator to mediate the Dispute within 30 days of the mediator's appointment; and
 - (iii) pay the fees of the mediator in equal proportion.

20.1.2. If the parties are unable to resolve the Dispute under clause 20.1.1(c), any party may, after giving written notice to the other party, commence legal proceedings.

20.1.3. This clause 20 does not apply if either party commences legal proceedings for urgent interlocutory relief.

21. RELATIONSHIP OF THE PARTIES

21.1. No partnership

Nothing in this Agreement creates an agency, partnership, joint venture or employment relationship between MLA and the Service Provider or any of their respective employees, agents or contractors.

21.2. No holding out

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

21.3. MLA Group

MLA may enter into this Agreement on behalf of members of the MLA Group. The parties agree that:

- (a) MLA enters into this Agreement on its own behalf and as agent for each member of the MLA Group so that each member of the MLA Group may exercise, enforce and claim the benefit of all rights granted in this Agreement;
- (b) MLA may claim and recover any loss suffered by a member of the MLA Group under this Agreement on behalf of that member; and
- (c) any breach of MLA's obligations under this Agreement by a member of the MLA Group will be taken to be a breach by MLA.

22. SUBCONTRACTORS

22.1. Engagement & Notification

The Service Provider may engage any agents or subcontractors to assist the Service Provider in any part of the Services. The Service Provider will promptly notify MLA of the engagement of any agents or subcontractors.

22.2. Terms

22.2.1. If the Service Provider engages an agent or a contractor to assist the Service Provider in providing the Services, the terms of engagement must contain terms requiring the agent or contractor to:

- (a) undertake obligations of confidentiality in substantially the same terms as clause 7;
- (b) comply with the MLA Policies;
- (c) assign to MLA the Intellectual Property Rights in any materials created under the engagement;
- (d) comply with all of the terms of this Agreement that are relevant to the agent or subcontractor's role in providing the Services;
- (e) allow MLA to conduct audits of the agent or contractor in accordance with clause 4.8 or 4.9 (as applicable); and
- (f) maintain such insurance in such amounts as MLA may specify.

22.2.2. The Service Provider will remain liable for the acts or omissions of the agent or contractor as if those acts or omissions were those of the Service Provider.

23. MISCELLANEOUS

23.1. Notices

23.1.1. 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 electronic mail to the last notified email address of the addressee, specified in the Party Details.

23.1.2. A notice will be deemed to have been received:

- (a) if delivered in person, on receipt;
- (b) if sent by pre-paid registered post, three (3) business days after the notice is sent; or
- (c) if sent by electronic mail, within 4 hours of being sent, unless the sender receives notification that the electronic mail has not been delivered.

23.2. Inconsistencies

If a clause which specifically deals with a subject matter applying to specific types of services in these General Terms is inconsistent with a clause that applies more generally to all types of services in these General Terms, the clause containing terms specific to the particular subject matter will prevail to the extent of any inconsistency.

23.3. Amendment

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

23.4. Assignment

23.4.1. The Service Provider may only assign a right under this Agreement with the prior written consent of MLA.

23.4.2. For the purposes of clause 23.4.1, the Service Provider is deemed to have assigned its rights under this Agreement if the management or control of the Service Provider is transferred to any person other than those persons who manage or control the Service Provider as at the date of this Agreement.

23.5. Entire agreement

23.5.1. This Agreement embodies the entire understanding and agreement between the parties as to its subject matter.

23.5.2. 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.

23.6. Further assurance

23.6.1. 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.

23.6.2. The Service Provider agrees that:

- (a) either party may execute this Agreement by applying the signatures of its respective authorised representatives to any counterpart electronically; and
- (b) the Service Provider will not challenge the validity or enforceability of this Agreement on the basis that the signatures of MLA's authorised representatives were applied electronically.

23.6.3. The Service Provider acknowledges that MLA may retain only an electronic version of this Agreement executed by the parties.

23.7. Governing law and jurisdiction

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

23.7.2. 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.

23.8. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument.

23.9. Clause survives termination

The rights and obligations of the parties which by their nature are intended to survive termination of this Agreement will survive the expiry or termination of this Agreement for any reason.

24. TRUSTS

24.1. Service Provider Trust Warranties

24.1.1. If the Service Provider is entering into this Agreement in its capacity as trustee of the trust, the Service Provider represents and warrants to MLA that:

- (a) the trust has been duly established;
- (b) the Service Provider is the only trustee of the trust;
- (c) no action has been taken or proposed to remove the Service Provider as trustee of the trust or to terminate the trust;

- (d) the Service Provider, as trustee of the Trust, has the power under the trust deed to enter into and perform the Service Provider's obligations under this Agreement and the Service Provider has entered into this agreement in the Service Provider's capacity as trustee of the trust;
- (e) the Service Provider has a right to be fully indemnified out of the trust fund in respect of the Service Provider's obligations under this Agreement, and the trust fund is sufficient to satisfy that right of indemnity;
- (f) the Service Provider has not exercised its powers under the trust deed to release, abandon or restrict any power conferred on it by the trust deed; and
- (g) the Service Provider has carefully considered the purpose of this Agreement and considers that entry into this agreement is for the benefit of the beneficiaries and the terms of this Agreement are fair and reasonable.

24.2. Right of Indemnity

24.2.1. The Service Provider agrees to exercise the Service Provider's right of indemnity from the trust fund and the beneficiaries of the trust in respect of the Service Provider's obligations under this Agreement.

24.3. Obligations as Trustee

24.3.1. The Service Provider agrees to observe the Service Provider's obligations as trustee of the trust and to ensure that:

- (a) the Service Provider is not removed or replaced as trustee;
- (b) the trust is not terminated or the trust deed varied;
- (c) the Service Provider's right of indemnity from the trust fund is not impaired or restricted in any way;
- (d) the Service Provider's ability to observe the Service Provider's obligations under this agreement is not impaired or restricted in any way; and
- (e) the trust fund is not mixed with other property.

24.4. Provision of Trust Documents

24.4.1. The Service Provider agrees to, on request by MLA, provide MLA with copies of the trust deed and any other documents constituting or relating to the trust.

24.5. Notification of Amendments

24.5.1. The Service Provider agrees to notify MLA of any amendments made to the trust deed, prior to the execution of such amendments.

Schedule – Statement of Work

Statement of work

Umbrella IT services agreement



[Note: This is an example statement of work template and should be left blank.]

Service Provider

NAME	[LEGAL ENTITY NAME]
ABN	[ABN]
Street Address	
Postal Address	
Project Leader:	
Name	
Phone	
Email	
Administration Contact:	
Name	
Phone	
Email	
Finance Contact:	
Name	
Phone	
Email	
Authorised Person (Signatory)*:	
Name	[Note: This section must contain contact details of a representative of the Service Provider that is authorised to sign this Agreement on behalf of the entity.]
Mobile	
Email	

*MLA will input this information into the third party platform Adobe Sign to enable electronic signing of contracts with MLA. Please see Adobe's and MLA's privacy policy (for Adobe found at <https://www.adobe.com/au/privacy/policies-business/esign.html>, and for MLA found at www.mla.com.au/general/privacy/ for more details on how they each handle personal information).

Service Provider Purchase Order Number*

* This is only applicable for organisations that require a purchase order number to be noted on any MLA issued invoices.

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MLA

MEAT & LIVESTOCK AUSTRALIA LIMITED	
ABN	39 081 678 364
Street Address	Level 1, 40 Mount Street North Sydney NSW 2060
Postal Address	PO Box 1961 North Sydney NSW 2059
Technical Details:	
Name	
Phone	
E-mail	
Administration Contact:	
Name	Contracts Team
Phone	02 9394 8666
E-mail	contracts@mla.com.au

Name of Agreement	
Date of Agreement	

The Date of Agreement is the date on which the last party signs the Umbrella IT Services Agreement.

This is a Statement of Work under the Umbrella IT Services Agreement described above which sets out the Services and specific terms associated with the Services which the Service Provider has agreed to perform.

[Internal MLA note: Please insert specific start and completion dates for the project in the table below. MLA does not accept entries that say "Upon Contract Execution".]

Project Details

Project No.			
Project Title			
Start date		Completion date	

Purpose and description

--

Objectives

The Service Provider will achieve the following objective(s) to MLA's reasonable satisfaction:

--

Additional details about the Services

Provide additional details about the Services. This section must not be used to add additional legal terms. Nothing in this section amends any of the other terms in this Agreement.

--

Deliverables

--

Location at which Services will be performed

[Select from the drop down menu]

Agents or subcontractors

Subject to the obligations relating to agents and subcontractors, MLA consents to the engagement of the following agents or subcontractors:

Name of Agent / Subcontractor	Organisation Name including ACN or ABN

Service Provider Nominated Person(s)

Contact Name:	
Phone:	
Email:	
Contact Name:	
Phone:	
Email:	
Contact Name:	
Phone:	
Email:	

[Internal MLA note: Please liaise with MLA's Commercialisation team when completing the below section.]

Service Provider Background IP

Note: Service Provider to list all IP owned or licensed by them (and its permitted agents/ sub-contractors) that it is providing/using in the Project. If none, please note 'N/A' below.

Description	Licences & Encumbrances (if any)	Owner
1.		
2.		
1.		
2.		
1.		
2.		

[Internal MLA note: Please liaise with MLA's Commercialisation team when completing the below section.]

Third Party IP

Note: Service Provider to list all IP owned by a third party that it is providing/using in the Project. If none, please note 'N/A' below.

Description	Licences & Encumbrances (if any)	Owner
1.		
2.		
1.		
2.		
1.		
2.		

Transition In

Select an option to indicate whether Transition-In is applicable to this Statement of Work:

- ☐ Yes (Note: If applicable, please select Yes and insert and amend details below).
- ☐ No (Note: If not applicable, please select No).

If applicable, the parties agree that the Service Provider must develop a Transition-In Plan in accordance with clause 10.1.1 of the Agreement. The Service Provider must submit a Transition-In Plan to MLA for MLA's approval by [insert timeframe, e.g. within 10 days of the Statement of Work Commencement Date].

Acceptance Test Plan

Select an option to indicate whether an Acceptance Test Plan is applicable to this Statement of Work:

- ☐ Yes (Note: If MLA requires the Services Provider to prepare an Acceptance Test Plan, please select Yes and insert or amend details below).
- ☐ No (Note: If MLA does not require the Service Provider to prepare an Acceptance Testing Plan, please select No).

If applicable, the parties agree that the Service Provider must develop an Acceptance Test Plan in accordance with clause 11.1 of the Agreement. The Service Provider must submit a Draft Acceptance Test Plan to MLA for MLA's approval by [insert timeframe, e.g. within 30 days of the Statement of Work Commencement Date].

Business Continuity and Disaster Recovery

Select an option to indicate whether a business continuity and disaster recovery plan is applicable to this Statement of Work:

- ☐ Yes (Note: If MLA requires the Service Provider to maintain a business continuity plan, please select Yes and insert or amend details below).
- ☐ No (Note: If MLA does not require the Service Provider to maintain a business continuity plan, please select No).

If applicable, the parties agree that the Service Provider must maintain a business continuity plan in accordance with clause 13 of the Agreement.

Milestones

The parties agree:

- (a) to the following milestones; and
- (b) a Milestone is not achieved until it has complied with the Milestone Achievement Criteria and is confirmed complete by MLA (acting reasonably).

Note: If there is a Go / No Go decision point at the end of a Milestone, you should tick the relevant box below and the following should be set out in the Milestone Achievement Criteria (together with the description of and criteria for achievement of the relevant Milestone):

- (a) criteria or information required for the Go / No Go decision; and
- (b) the timeframe in which the Go / No Go decision must be made.

Note: If preparing an Acceptance Test Plan or Transition-In or Disengagement Services are applicable to this Statement of Work, consider specifying the acceptance of the Acceptance Test Plan, Transition-In Plan and/or Disengagement Plan as a milestone in the table below.

Milestone Achievement Criteria		Due Date	Go / No Go decision point?
1			<input type="checkbox"/>
2			<input type="checkbox"/>
3			<input type="checkbox"/>

Milestone Achievement Criteria		Due Date	Go / No Go decision point?
4			<input type="checkbox"/>
5			<input type="checkbox"/>
6			<input type="checkbox"/>
7			<input type="checkbox"/>
8			<input type="checkbox"/>
9			<input type="checkbox"/>
10			<input type="checkbox"/>

Service Levels

Select an option to indicate whether Service Levels are applicable to this Statement of Work:

- ☐ Yes (Note: If is applicable, please select Yes and insert Service Level methodology below).
- ☐ No (Note: If not applicable, please select No).

[If applicable, insert Service Level methodology here.]

Service Availability Target

[Internal MLA note: Please see the UITSA Service Level Guidance Note available on the MLA Legal SharePoint page for assistance completing this section if required.]

Disengagement

Select an option to indicate whether a Disengagement Plan is applicable to this Statement of Work:

- ☐ Yes (Note: If is applicable, please select Yes and insert and amend details below).
- ☐ No (Note: If not applicable, please select No).

If applicable, the parties agree that the Service Provider must develop a Disengagement Plan in accordance with clause 18.1 of the Agreement. The Service Provider must submit a draft Disengagement Plan to MLA for MLA's approval by [insert timeframe, e.g. on the first anniversary of the Statement of Work Commencement Date].

Fees and payment (exclusive of GST)

***PER-DIEM CONTRACT* - DELETE VERSION WHICH IS NOT APPLICABLE**

[Internal MLA note: Complete this section if the Service Provider is engaged to provide Services for a specified period of time or number of days at a daily rate. For example, this approach may be appropriate where the Service Provider is engaged to perform a role rather to deliver a project or outcome.]

Total Funds:	0.00	(GST exclusive)
Daily rate:	0.00	
Number of days:	0.00	

Cash flow

Nominated Person	Daily rate	Max days	Max expenses	Max fees	Total
	0.00	0.00	0.00	0.00	0.00
TOTAL					

***PERFORMANCE BASED* - DELETE VERSION WHICH IS NOT APPLICABLE**

[Internal MLA note: Complete this section if the Service Provider is engaged to deliver a project or specified outcomes and payment is tied to those outcomes.]

Total Budget	Professional fees	0.00
		0.00
		0.00
Total Funds		AUD 0.00 (GST exclusive)

Cash flow

Payment Date	Milestone	Fees	Expenses	Capital	Total
30 days after contract execution	1	0.00	0.00	0.00	0.00
	2	0.00	0.00	0.00	0.00
	3	0.00	0.00	0.00	0.00
	4	0.00	0.00	0.00	0.00
	5	0.00	0.00	0.00	0.00
	6	0.00	0.00	0.00	0.00
	7	0.00	0.00	0.00	0.00
	8	0.00	0.00	0.00	0.00
TOTAL					AUD 0.00

Invoicing

For the purpose of clause 9.2 of the terms, the Service Provider must issue tax invoices for Funds to the MLA Group selected below:

- ☐ Integrity Systems Company Limited (ABN 34 134 745 038)
- ☐ Meat & Livestock Australia Limited (ABN 39 081 678 364)

Invoices must comply with MLA's invoicing requirements available at www.mla.com.au/about-mla/mla-agreements.

Licence fees

Note: The table below will be applicable IT service provided is a recurring service for which service fees are paid on a regular basis (e.g. software as a service "SAAS"), the table below will be applicable.

Description of service	Number of users	Monthly / Annual charges

STATEMENT OF WORK

Signed for and on behalf of
MEAT & LIVESTOCK AUSTRALIA LIMITED
by its authorised representative:

.....
Name
[Insert Title]

.....
Date

***STANDARD EXECUTION* - DELETE VERSION WHICH IS NOT APPLICABLE**

Signed for and on behalf of
[LEGAL ENTITY NAME]
in the presence of:

.....
Signature of witness

.....
Signature of Authorised Person

.....
Name of witness

.....
Name of Authorised Person

.....
Office Held

.....
Date

***E-SIGNATURE EXECUTION* - DELETE VERSION WHICH IS NOT APPLICABLE**

Signed for and on behalf of
[LEGAL ENTITY NAME]
by its authorised representative:

.....
Signature of Authorised Person

.....
Name of Authorised Person

.....
Office Held

.....
Date