

# Market Development Partnerships



## Legal terms 2023-24

## TERMS

### 1. MARKET DEVELOPMENT APPLICATIONS

#### Market Development Applications

- 1.1 You must undertake the Activities to meet your Objectives.
- 1.2 For each Activity you propose to conduct, you must submit a Market Development Application online using the template available on the Market Development Partnerships Program website, for approval by MLA. You will not be able to submit a Market Development Application until all fields in the template have been completed.
- 1.3 MLA will review the Market Development Application and may either approve or reject it in its sole discretion. The portion of the Funds payable by MLA in respect of an approved Activity will be the “MLA Contribution” shown in the Market Development Application.
- 1.4 Each Market Development Application must be submitted and approved by MLA before you commence the corresponding Activity. MLA will not pay any portion of the Funds to you in respect of any Activity that is commenced by you without MLA’s prior approval.

#### Activity Start Dates and End Dates

- 1.5 You must nominate an Activity Start Date and an Activity End Date as part of each Market Development Application. You may revise these dates at any time.
- 1.6 Email reminders will be sent 2 weeks and 1 week before the Invoice Due Date for the relevant Market Development Application.

### 2 ACTIVITY REPORTS

- 2.1 For each Activity undertaken, once completed, you must submit an Activity Report using the online form available on the Market Development Partnership Program website, for approval by MLA.
- 2.2 MLA will review the Activity Report and may either approve or reject it in its sole discretion. The portion of the Funds payable by MLA in respect of an approved Activity will be the “MLA Contribution” shown in your online MDP activity Report.

#### Specific requirements for all Activities

- 2.3 You acknowledge that
  - (a) making an Animal Raising Claim you must be able to substantiate such claims in accordance with applicable legal requirements.

#### Comply with all laws

- 2.3 You must comply with all relevant laws and regulations when performing your obligations under this agreement, including conducting the Activities and for any product claims that you make.

#### Insurance and benefits

- 2.5 You must at all times maintain:
  - (a) adequate workers’ compensation insurance as required by law for your employees;
  - (b) public liability insurance for an amount of at least \$10 million on a per occurrence basis; and
  - (c) product liability insurance of at least \$10 million in aggregate.
- 2.6 You must, on request by MLA, produce evidence of the currency of the insurance policies referred to in clause 2.5.

### 3 FUNDING

#### Payment of Funding

- 3.1 Subject to this clause 3 and provided you have not breached this Agreement, MLA will, pay the Funds to you in respect of each completed Activity on or before the day that is eight weeks after the Activity Finish Date, provided you have submitted an Activity Report (for each Activity) in accordance with clause 5.
- 3.2 For Activities conducted in May or in June, Activity Claims (including accompanying invoices) must be submitted by 31 July. If an Activity Report is not submitted within the required timeframe, MLA will not be able to co-fund the activity.

#### Co-funding

- 3.3 If MLA has agreed (in writing) to fund all or part of the Activity upfront as set out in the Market Development Application, You will be responsible for paying to MLA the total Activity

Amount less the MLA Contribution (the Co-Contribution Amount). MLA will invoice You for the Co-Contribution Amount and You must pay MLA the Co-Contribution Amount within 30 days of the date of invoice.

of MLA, unless the audit reveals any overpayment of more than 2% by MLA or noncompliance by you with the terms of this agreement, in which case you must promptly (being within 30 days) reimburse MLA the cost of the audit.

### Suspension of Funding

- 3.1 In addition to its rights under clause 12, MLA may suspend payment of any of the Funds if you:
- (a) do not deliver an Activity Report within eight weeks of the Activity Finish Date, which is required under this agreement; or
  - (b) are in breach of any of your obligations under this agreement,

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

### GST

- 3.2 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).

### You must allow access

- 4.3 You 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 your 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 your 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.

### Clause survives termination

- 4.4 This clause 4 applies for the term of this agreement and for a period of seven years from the date of expiration or termination.

## 4 ACCOUNTS AND RECORDS

### Record keeping

- 4.1 You must ensure that you:
- (a) keep complete and accurate books and records that are separate from any other books and records of your business (including any particular accounts specified by MLA);
  - (b) setting out details of the Activities carried out under this agreement;
  - (c) the expenditure of monies in relation to the Activities; and
  - (d) recording the deposit and expenditure of the Funds; and
  - (e) 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.

## 5 REPORTS

### Activity Reports/Invoices

- 5.1 You must submit each Activity Report:
- (a) As soon as possible and no later than eight weeks after the activity is completed; and
  - (b) for Activities completed in the second half of May or in June, by 31 July in the same year.
- 5.2 The Activity Report which must include:
- (a) a valid invoice to MLA in AUD for the approved portion of the Funds allocated to the Activity;
  - (b) documentary evidence of payments made by You or your subsidiary companies to their designated marketing agents, to third parties (and the relevant amounts) for the
  - (c) provision of goods and services for the purposes of enabling you to complete the

### MLA may carry out audits

- 4.2 MLA may arrange for the carrying out of an audit of your books and records and the books and records of your agents and contractors at the cost

- Activity;
- (d) evidence (images or documents) that the Activity has been completed and a statement about the Activity outcome; and
  - (e) If payments are made in a foreign currency, inclusion of the exchange rate; and MLA will pay the approved portion of the Funds in respect of the Activity within 30 days after receipt of the Activity Report, provided MLA is satisfied that you have performed the Activity to which the payment relates and there are no further clarifications or additional information required from you.

## 6. WARRANTIES

- 6.1 You represent and warrant that:
- (a) you own or pay for the marketing of the brands set out in your application and you meet the Eligibility Criteria specified in paragraphs (a) and (b); and for companies marketing beef or lamb with Animal Raising Claims, paragraph (c), in Section B (Eligibility to Participate in the Program) above;
  - (b) all information you have provided to us regarding your eligibility to participate in the Program, including as part of the application process, is accurate and complete, and is not misleading in any respect;
  - (c) you will immediately notify MLA if any change in your circumstances means you no longer meet the Eligibility Criteria; and
  - (d) you will at all times design and carry out the Activities in a manner that is intended to benefit the Australian red meat industry.

## 7. CONFIDENTIALITY

- 7.1 MLA will keep confidential and not disclose to any person any information about your specific brand marketing strategies or Activities without obtaining your consent.
- 7.2 You acknowledge that notwithstanding clause 7.1, MLA will report on the Program in its annual report and on its website. MLA's reports *may* include:
- (a) the total of MLA's contributions under the Program by region;
  - (b) a summary of the types of activities supported by MLA; and
  - (c) a list of all Participants and the amount

of funds received by each Participant as part of the Program, for the relevant Financial Year.

## 8. INTELLECTUAL PROPERTY

- 8.1 Each party acknowledges that nothing in this agreement shall affect ownership, including third party ownership, of a party's intellectual property.

## 9. MLA MATERIAL

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

## 10. RELATIONSHIP OF THE PARTIES

### No partnership

- 10.1 Nothing in this agreement creates an agency, partnership, joint venture or employment relationship between MLA and you or any of their respective employees, agents or contractors.

### No holding out

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

### Exclusion

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

## 11. INDEMNITY

- 11.1 You indemnify MLA against all damages, losses, costs and expenses incurred by MLA arising out of:
- (a) any breach by you, your employees, and all agents and contractors of this agreement, including, without limitation,
  - (b) any use of the funds provided by MLA for purposes not approved by MLA;
  - (c) or failure to comply with any reasonable directions by MLA in relation to the use of any funds provided by MLA.

## 12. TERMINATION

### Default

- 12.1 If you:
- (a) go into liquidation, have a receiver or receiver and manager appointed to you or any part of your assets, enter into a scheme of arrangement with creditors or suffer any other form of external administration;
  - (b) fail, within 7 days after receipt of notice, to remedy any breach of your obligations under this agreement which is capable of remedy;
  - (c) breach any provision of this agreement which is not capable of remedy; or
  - (d) persistently breach your obligations under this agreement,

MLA may, by notice to you, immediately terminate this agreement.

### Termination

- 12.2 MLA may terminate this Agreement with immediate effect by written notice to the Participant if:
- (a) MLA is no longer the declared the industry marketing body and/industry research body for the meat and livestock industry; or
  - (b) Its funding agreement with the Commonwealth government is terminated.

### Consequences of termination

- 12.3 If MLA terminates this agreement or discontinues the Program under clause 12.2:
- (a) MLA will reimburse the Participant for expenses with a third party that were included in the approved Market Development Application and incurred in good faith prior to the date of the MLA's termination notice.
  - (b) MLA is not required to pay any **further** amount of the Funds.

## 13. FORCE MAJEURE EVENT

- 13.1 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.

- 13.2 If a Force Majeure Event continues for more than 90 days, the unaffected party may, by written notice to the other party, terminate this agreement with immediate effect.

## 14. MISCELLANEOUS

### Notices

- 14.1 A notice under this agreement must be sent through a Participant's online account or by email to the addressee's email address.
- 14.2 An email is deemed to have been received on sending, unless the sender receives an error message indicating that the email was not delivered to the intended recipient.
- 14.3 For the purposes of this agreement:
- (a) MLA's email address is marketdevelopmentpartnerships@mla.com.au and
  - (b) your email address is the address included in your application and the primary contact for the MDP program.

### Amendment

- 14.4 From time to time, MLA may vary the Guidelines and the Eligible Activities. MLA will make the new Guidelines or Eligible Activities (as applicable) available on its website and if the changes are significant we will notify you in accordance with clause 14.
- 14.5 MLA will honour any Activities approved by MLA in writing prior to the notification of a change to the Guidelines or Eligible Activities.

### Assignment

- 14.6 You may only assign a right under this agreement with the prior written consent of MLA. You are deemed to have assigned your rights under this agreement if management or control of you is transferred to any person other than those persons who manage or control you as at the date of this agreement.

### Entire agreement

- 14.7 This agreement embodies the entire understanding and agreement between the

parties as to its subject matter. 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.

14.8

#### Further assurance

14.9 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.

#### Governing law and jurisdiction

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

## 15. DEFINITIONS AND INTERPRETATION

#### Definitions

- 15.1 In this agreement, unless the context otherwise requires:
- Activity** means each marketing or promotional activity approved by MLA to be conducted by you for the purposes of meeting one or more Objectives;
- Activity Report** means the reimbursement and report submitted online by you to MLA following the completion of the Activity, describing the relevant Activity and the outcome of that Activity, and including the material required under clause 5.2 to MLA;
- Animal Raising Claim** means a claim made in the trade description or export documentation about the animal or supply chain specifically relating to animal husbandry conditions, feeding, handling, drug treatments and/or geographical references. ([Beef animal raising claims](#) and [sheep meat animal raising claims](#))

**Eligible Activities** means the non-exhaustive list

of the activities MLA will and will not co-fund as part of the Program, referred to in Section A above and available on MLA's website;

**Eligibility Criteria** mean the criteria listed in Section B above which an applicant must satisfy in order to be eligible to participate in the Program;

**Financial Year** means the period 1 July to 30 June;

**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.

**Guidelines** means the guide showing the level of funding available to participants in the Program, referred to in Section A above and available on MLA's website;

**Participant** means Australian beef, veal, lamb and goatmeat brand marketing company who has an approved Market Development Partnerships Program with MLA; and

**You** means the company on whose behalf the application to participate in the Program is submitted.

- 15.2 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.

#### Presumptions of interpretation

- 15.3 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.