

# CoMarketing Program



**Legal terms 2018-19**

## DESCRIPTION OF THE PROGRAM AND THE APPLICATION PROCESS

### A. ABOUT THE PROGRAM

The Collaborative Marketing Program (**Program**) has been developed by **MEAT & LIVESTOCK AUSTRALIA LIMITED** ABN 39 081 678 364 (**MLA**). The Program aims to support Australian companies market Australian beef, veal, lamb and goatmeat Brands to:

- (a) enhance their own internal marketing capabilities to develop superior brand marketing strategies and effective marketing plans; and
- (b) create customer loyalty and sustainable brand growth.

Companies whose participation in the Program is approved by MLA will receive funding from MLA to contribute towards promotion of their brands in various markets on the terms set out below. Participants will organise and pay for their promotional and marketing activities, and MLA will reimburse up to 75% of the Australian participants' cost for each approved activity.

The amount of funding available to participating companies will depend on:

- (a) the number of brands and product categories that will be promoted by the company;
- (b) the volume of product promoted under each brand and/or product category;
- (c) the number of markets and/or accounts in which the brands will be promoted; and
- (d) the range of marketing activities to be undertaken.

MLA will not match funds provided to Participants:

- (a) by third parties (such as importers, wholesalers, end users or others) for the purposes of brand marketing; or
- (b) as part of another corporate or government program, such as the Austrade Export Market Development Grants.

Activities designed to promote participant companies themselves as opposed to specific beef, veal, lamb or goatmeat brands are not eligible for co-funding by MLA.

A guide showing the level of funding available to participating companies is shown at Program Guidelines ("Guidelines"). A non-exhaustive list of the activities MLA will and will not co-fund as part of the Program is shown at List of Eligible Activities ("Eligible Activities").

For the avoidance of doubt, the Guidelines and Eligible Activities form part of these terms. To the extent of any inconsistency between these terms, the Guidelines and the Eligible Activities, these terms shall prevail followed in order by:

- (a) Guidelines
- (b) Eligible Activities.

### B. ELIGIBILITY TO PARTICIPATE IN THE PROGRAM

The Program is only open to participation by Australian beef, veal and/or lamb and/or goat companies who meet the following Eligibility Criteria:

- (a) the company is an Australian company holding an ABN;
- (b) the company is an MLA member, processor or licensed meat exporter and is responsible for the organisation and payment of marketing activities for Australian beef, veal, lamb and goatmeat brands;
- (c) management and/or sales and marketing representatives of the company have completed either the MLA Marketing workshop in 2014-15 or the eLearning program;
- (d) for beef companies who intend to market their brands in Australia, the brands to be promoted relate to meat that is MSA graded and the company holds an MSA Brand licence from MLA in relation to the brands; and
- (e) for beef companies marketing beef with Animal Raising Claims, can substantiate such claims in accordance with applicable legal requirements.

MLA may waive the requirement for a company to comply with paragraph (d) above if the relevant brand relates to products which are classified by MLA as “innovative or value added products”. A company who considers its products may fall into this category must consult with MLA, prior to submitting its application for the Program, to demonstrate that its products create additional value opportunities for beef, veal, lamb and/or goat products.

## **C. APPLYING FOR THE PROGRAM**

### **Submitting your application**

You must submit an application for participation in the Program online via the MLA Collaborative Marketing Program website on or before **8 June 2018**.

As part of your application, you must provide all requested information and complete all templates, including the Annual Marketing Strategy template, for consideration by MLA.

**Before submitting your application, you must accept these terms (as amended from time to time) which govern your participation in the Program. You can do so by clicking the “I agree” button.**

### **Acceptance or rejection of your application by MLA**

MLA will assess your application and may accept or reject your application in its sole discretion.

If your application is:

- (a) accepted, MLA will approve it online; or
- (b) rejected, MLA will reject it online and will inform you of this. MLA may (but is not obliged to) provide guidance as to the adjustments that may be made to your application to increase the likelihood that it will be approved by MLA upon resubmission.

**An agreement on the terms set out below will only be formed when you receive an email confirmation from MLA that your application to participate in the Program has been approved.**

### **Late applications and applications for additional funding**

After 8 June 2018, MLA may accept applications from prospective participants in the Program if MLA’s internal budget for the Program has not been fully allocated. Also, further applications for funding will be considered if funds for the Program have not been fully allocated, after the end of the second quarter in each Financial Year during which the Program is offered. MLA will also notify existing participants in the Program that they may apply for additional funding for the then-current Financial Year.

MLA may conduct a further round of funding allocations at the end of the third quarter in a given Financial Year if funds are available.

## TERMS

### 1. ANNUAL MARKETING STRATEGY

#### Your Annual Marketing Strategy

- 1.1. The Marketing Strategy submitted as part of your application will form your Annual Marketing Strategy for the applicable Financial Year.
- 1.2. During the term, and subject to MLA continuing the Program, you may apply to renew this agreement each Financial Year by submitting a new Annual Marketing Strategy on or before 30 June for the following Financial Year. Each Marketing Strategy submitted by you in accordance with this clause may be accepted or rejected by MLA in its sole discretion.
- 1.3. If any subsequent Marketing Strategy submitted by you is:
  - (a) accepted, MLA will approve it online; or
  - (b) rejected, MLA may:
    - (i) terminate this agreement immediately by notice to you; or
    - (ii) provide guidance as to the adjustments that may be made to the template to increase the likelihood that it will be approved by MLA upon resubmission.

#### Changes to your Annual Marketing Strategy

- 1.4. Subject to clause 1.5 you may make changes to the budget allocation between Objectives and add new objectives throughout the year by adjusting it online in your account.
- 1.5. You acknowledge that any:
  - (a) addition of new Objectives to your approved Annual Marketing Strategy; and/or
  - (b) reallocation of more than 30% of the budget between existing Objectives, geographical regions, or quarters,
 by you will not be effective unless:
  - (c) you submit the revised Annual Marketing Strategy to MLA online with an explanation for the proposed changes; and
  - (d) MLA approves the changes.
- 1.6. You acknowledge that once a quarter is complete, any portion of the Funds allocated to that quarter in the Annual Marketing Strategy which have not been claimed or moved to a subsequent quarter by you will no longer be payable to you by MLA.

#### Reviews

- 1.7. MLA will conduct reviews of budgeted Funds at the end of Q2 and Q3 for your Annual Marketing Strategy and Activities. If requested by MLA, you must revise and submit by each specified deadline, the revised budget allocations relating to your Q3 and Q4 Activity plans (Revised Budget).
- 1.8. The Revised Budget will reflect the amount of total Funds that may be paid by MLA in relation to your participation in the Program.

### 2. ACTIVITIES

#### Activity Proposals

- 2.1. You must undertake the Activities to meet your Objectives.
- 2.2. For each Activity you propose to conduct, you must submit an Activity Proposal online using the template available on the Collaborative Marketing Program website, for approval by MLA. You will not be able to submit an Activity Proposal until all fields in the template have been completed.
- 2.3. MLA will review the Activity Proposal 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 Activity Proposal.
- 2.4. Each Activity Proposal 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

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

#### Specific requirements for Activities

- 2.7. You acknowledge that if you are:
  - (a) required to comply with paragraph (d) of Section B (Eligibility to Participate in the Program) above, where practicable you will prominently refer to the fact that your products are MSA graded, and may use the MSA trade mark in accordance with your MSA licence agreement, when designing and implementing your Activities;

- (b) if you are making an Animal Raising Claim you must be able to substantiate such claims in accordance with applicable legal requirements; and
- (c) marketing your brands outside Australia, where practicable you will prominently incorporate the “TRUE AUSSIE” positioning for beef, veal, lamb and goatmeat in accordance with the *TRUE AUSSIE* licence agreement, when designing and implementing your Activities.

#### Comply with all laws

- 2.8. 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

- 2.9. 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.
- 2.10. You must, on request by MLA, produce evidence of the currency of the insurance policies referred to in clause 2.9.

### 3. FUNDING

#### Payment of Funding

- 3.1. MLA must, subject to this clause 3 and to anything to the contrary in this agreement, pay the Funds to you in respect of each completed Activity in the following manner:
- (a) on or before the day that is eight weeks after the Activity Completion Date, you must submit an Activity Report in accordance with clause 5 which must include:
    - (i) an invoice to MLA in AUD for the approved portion of the Funds allocated to the Activity;
    - (ii) documentary evidence of payments made by Brand Owners, their subsidiary companies or (in the case of US lamb CoMarketing programs) to their designated marketing agents, to third parties (and the relevant amounts) for the provision of goods and services for the purposes of enabling you to complete the Activity;
    - (iii) evidence (images or documents) that the Activity has been completed and a statement about the Activity outcome; and

- (iv) If payments are made in a foreign currency, inclusion of the exchange rate; and

- (b) MLA must pay the approved portion of the Funds in respect of the Activity within one month 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.

- 3.2. For Activities conducted in the second half of May or in June, Activity Reports (including accompanying invoices) must be submitted by 31 July.

#### Suspension of Funding

- 3.3. In addition to its rights under clause 12, MLA may suspend payment of any of the Funds if you:
- (a) do not deliver a report within eight weeks of the Activity completion date, which is required under this agreement; or
  - (b) are in breach of any of your obligations under this agreement,
- until the report has been delivered or the breach is rectified, as the case may be, to the reasonable satisfaction of MLA.

#### GST

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

### 4. ACCOUNTS AND RECORDS

#### 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):
    - (i) setting out details of the Activities carried out under this agreement;
    - (ii) the expenditure of monies in relation to the Activities; and
    - (iii) recording the deposit and expenditure of the Funds; and
  - (b) 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.

### 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 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 reimburse MLA the cost of the audit.

### 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.

## 5. REPORTS

### Activity Report/Invoices

- 5.1. On the Invoice Due Date, you will be prompted to submit an Activity Report (which must include the documentation listed in clause 3.1(a) for the relevant Activity using the template available on the MLA website. You will not be able to submit the Activity Report until all fields in the template have been completed.
- 5.2. If you have not submitted an Activity Report by the invoice due date the Activity will be considered to have expired.
- 5.3. You must submit each Activity Report:
- (a) within six weeks and no later than eight weeks after the Activity Completion Date; or
  - (b) for Activities completed in the second half of May or in June, by 31 July in the same year.

If an Activity Report is not submitted within the required timeframe, MLA may delete the Activity approval from

its system and, if it does so, you will not receive any portion of the Funds in respect of that Activity.

### Annual Reporting

- 5.4. You must submit an Annual Report to MLA online by 31 July each year in relation to the Activities for the relevant year during the term of this agreement using the template provided on the MLA website. You will not be able to submit the Annual Report until all fields in the template have been completed.
- 5.5. If your Annual Report is not submitted by the due date in a given year, or if the Annual Report is inadequate in MLA's opinion, MLA may immediately terminate this agreement by notice to you and your participation in the Program will cease from the date of the notice.

## 6. WARRANTIES

- 6.1. You represent and warrant that:
- (a) you are a Brand Owner and you meet the Eligibility Criteria specified in paragraphs (a), (b) and (c) in Section B (Eligibility to Participate in the Program) above;
  - (b) if paragraph (d) in Section B (Eligibility to Participate in the Program) applies to you:
    - (i) your brands are MSA graded and you hold the requisite MSA Brand licence; or
    - (ii) MLA has approved your products as an "innovative value added product";
  - (c) 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;
  - (d) you will immediately notify MLA if any change in your circumstances means you no longer meet the Eligibility Criteria; and
  - (e) 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 Brand Owners and the amount of funds received by each Brand Owner 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 licence 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 of this agreement; or
- (b) any act or omission of you, your employees, and all agents and contractors in connection with this agreement.

## 12. TERMINATION

### Notice

12.1. MLA may, on 1 months' notice, terminate this agreement.

### Default

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, terminate this agreement.

### Discontinuation of the Program

12.2. MLA may discontinue the Program at any time.

### Consequences of termination

12.3. If MLA terminates this agreement or discontinues the Program, it is not required to pay any outstanding amount of the Funds.

## 13. MISCELLANEOUS

### Notices

- 13.1. A notice under this agreement must be sent through a participants online account or by email to the addressee's email address.
- 13.2. 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.
- 13.3. For the purposes of this agreement:
  - (a) MLA's email address is [comarketing@mla.com.au]; and
  - (b) your email address is the address included in your application.

### Amendment

13.4. From time to time, MLA may vary this agreement by replacing the existing terms with new terms. MLA will make the new terms available on its website and will notify you in accordance with clause 13.1.

### Assignment

13.5. 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

13.6. 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.

### Further assurance

13.7. 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

13.8. 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.

## 14. DEFINITIONS AND INTERPRETATION

### Definitions

14.1. 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 Completion Date** means the date you complete an Activity;

**Activity End Date** means the date nominated by you in the Activity Proposal on which you anticipate the Activity will be completed;

**Activity Proposal** means the proposal submitted online by you to MLA setting out the details of a proposed Activity;

**Activity Report** means the report submitted online by you to MLA following the Activity Completion Date, describing the relevant Activity and the outcome of that Activity, and including the material required under clause 3.1(a) to MLA for the applicable portion of the Funds;

**Activity Start Date** means the date nominated by you in the Activity Proposal for commencement of a proposed Activity;

**Annual Marketing Strategy** means your marketing strategy for each Financial Year as approved by MLA, based on the corresponding Marketing Strategy Template;

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

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

**Funds** means the amount MLA has agreed in writing to contribute to you for a Financial Year for the purposes of the Program;

**E-Learning Program** means the online E-Learning program made available via MLA's website for the purposes of the Program.

**Marketing Strategy Template** means the template completed by you as part of your application to participate in the Program, and thereafter each year during the term of this agreement, setting out your proposed Objectives for the following Financial Year and such other information as required by the template;

**MSA** means Meat Standards Australia, a beef and sheepmeat eating quality program administered by MLA;

**Objectives** mean the marketing objectives described in the approved Annual Marketing Strategy;

**Participant** means Australian beef, veal, lamb and goatmeat brand marketing company who has an approved Collaborative Marketing Program with MLA. and

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

14.2. 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

14.3. 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.