R & D PROJECT FUNDING AGREEMENT

BETWEEN

MLA DONOR COMPANY LIMITED

ABN 49 083 304 867

AND

**MEAT & LIVESTOCK AUSTRALIA LIMITED**

ABN 39 081 678 364

AND

**COMPANY**

ABN xx xxx xxx xxx

*PROJECT NO. P.PSH.xxx*

Project Name

**THIS AGREEMENT IS MADE ON {Dte\_es\_:signer2:date}}**

**PARTIES**

**MLA DONOR COMPANY LIMITED** ABN 49 083 304 867 of Level 1, 40 Mount Street, North Sydney, New South Wales (**Donor Company**)

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

**COMPANY** ABN xx xxx xxx xxx of [insert street address, suburb and state] (**Participant**)

**BACKGROUND**

**A.** The parties have agreed to conduct the Project on the terms set out in this agreement.

**B.** The parties acknowledge that the Project comprises research and development which coincides with the Australian red meat industry’s strategy and that the results of the Project, if successful, will be beneficial to the industry or the broader Australian community.

**AGREEMENTS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Where commencing with a capital letter:

**Assets** means any assets described in the schedule, acquired for the purpose of the Project or developed in the course of the Project (other than Project IP);

**Background IP** means, in respect of a party, the Intellectual Property which is made available by the party for the Project as specified in the schedule;

**Budget** means the budget for the Project set out in the schedule;

**Commercialise**, in relation to Project IP, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service using the Project IP, or to license any person to do any of those things;

**Confidential Information** means 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 each party, includes its Background IP and, in the case of MLA, includes the MLA Material;

**Contribution** means, in respect of:

(a) the Participant, the monetary contribution to the Project set out in the schedule; and

(b) MLA, the Matching Payment;

**Dispose** means, in relation to any property, sell, transfer, assign, create any interest over, part with the benefit of or otherwise dispose of the property;

**Effective Date** means the earlier of the start date in the schedule or the date of this agreement;

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

**Intellectual Property** means all patents, trade marks, designs and plant breeder’s rights (whether registered or not), copyright, know-how, trade secrets and eligible layout rights;

**Interest** means the proportionate interest of each party set out in the schedule;

**Matching Payment** means a payment by the Commonwealth to MLA for the Project under section 66(1)(b) of the *Australian Meat and Live-stock Industry Act 1997* which is equal to the total Contribution of the Participant;

**MLA Material** means all material and information provided by MLA to the Participant in connection with this agreement;

**Project** means the project described in the schedule;

**Project Access Fee** means, subject to clause 2.2.2, the Project Access fee calculated in accordance with the schedule; and

**Project IP** means Intellectual Property which arises out of the Project.

**1.2 Interpretation**

1.2.1 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.

1.2.2 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.

1.2.3 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. CONTRIBUTIONS**

**2.1 Payment**

2.1.1The Participant must pay its Contribution to Donor Company in accordance with the schedule.

2.1.2 Donor Company must pay the Participant’s Contribution to MLA and MLA must allocate it to a project account for the purposes of the Project (**Project Account**).

2.1.3 MLA must allocate its Contribution to the Project Account.

2.1.4 MLA will from the Project Account make the payments specified in the Budget provided that:

(a) the goods and services to which each payment relates are provided to the reasonable satisfaction of MLA; and

(b) MLA receives all payments by third parties specified in the schedule.

**2.2 Project Access Fee**

2.2.1The parties agree that MLA is entitled to be paid the Project Access Fee from the Contributions allocated to the Project Account.

2.2.2 The Project Access Fee increases in proportion to any increase in total Contributions. If the Project completion date referred to in the schedule is extended, the yearly Project Access Fee during the extension (pro rata for part of a year) is the greater of the Project Access Fee for the previous 12 month period and the increased Project Access Fee payable as a result of any increase in total Contributions.

**3 AGENCY**

Donor Company appoints MLA as its agent for the purposes of:

(a) receiving the Participant’s Contribution paid to it under clause 2.1.1;

(b) managing the Contributions and the Project;

(c) entering into agreements with third parties (**Third Party Agreements**); and

(d) exercising its rights and managing its obligations under Third Party Agreements.

**4. BACKGROUND IP**

**4.1 Background IP**

4.1.1 Each party will make available its Background IP for the Project.

4.1.2Subject to this agreement, the parties have a non-exclusive royalty-free right to use each party’s Background IP for the purposes of the Project and Commercialisation or dissemination of the Project IP in accordance with this agreement.

**4.2 Warranty**

Each party warrants that:

(a) to the best of its knowledge and belief:

(i) it is the owner of, or is otherwise entitled to provide, the Background IP under this agreement without the consent of any other person; and

(ii) except to the extent disclosed in the schedule, that Background IP is unencumbered; and

(b) it will not Dispose of or Commercialise that Background IP so as to prejudice in any way the use by the parties of the Background IP for the Project or Commercialisation or dissemination of Project IP in accordance with this agreement.

**5. PROJECT IP**

**5.1 Project IP**

5.1.1 Project IP will be owned by the parties in accordance with their respective Interests.

5.1.2 No party may Dispose of its Interest in the Project IP without the prior written agreement of the other parties.

5.1.3 MLA will have a royalty-free right to use Project IP for its internal purposes and reporting to and complying with its obligations to industry bodies, including Peak Councils, government and government agencies and authorities.

5.1.4 A party may only Commercialise or disseminate the Project IP with the prior written consent of the other parties.

5.1.5 Clauses 5.1.2 and 5.1.4 do not apply to MLA if MLA’s Interest is 100%.

**5.2 Warranty**

The Participant warrants that, if it or any agent or contractor engaged by it provides goods or services under the schedule:

(a) the goods and services will not infringe any other person’s Intellectual Property rights (excluding patent rights);

(b) to the best of its knowledge and belief after due enquiry, the goods and services will not infringe the patent rights of any other person;

(c) the parties will be entitled to use the Project IP without the consent of any other person;

(d) it and its agents and contractors have the necessary experience, skill and ability to properly provide the goods and services on the terms set out in this agreement; and

(e) the goods and services will be provided in a professional manner and conform to a standard of competence equal to that normally employed by consultants of good standing for services of a magnitude and nature similar to the goods and services.

**6. CONFIDENTIALITY**

**6.1 Confidentiality obligations**

6.1.1 Subject to this agreement, each party must during and after this agreement:

(a) keep the Project IP and the Confidential Information of the other parties confidential;

(b) use the Project IP and the Confidential Information of the other parties only as contemplated by this agreement; and

(c) prior to disclosure to any person of any Project IP or Confidential Information of another party, ensure that the person is bound by obligations of confidentiality in substantially the same terms as this clause 6.1.1.

6.1.2Clause 6.1.1 does not apply to MLA in respect of Project IP if MLA’s Interest is 100%.

**6.2 Termination**

On termination of this agreement, each party will, on request from another party, return to that party its Confidential Information.

**6.3 Publications and public announcements**

6.3.1 Neither party will publish, disseminate or otherwise communicate any information relating to a Project or its results without the prior written consent of the other party, such consent not to be unreasonably withheld.

6.3.2 The Participant must ensure that any publications, dissemination or communication permitted under clause 8.4:

6.3.2.1 acknowledges the contribution to and support of the Project by MLA in a manner acceptable to MLA and in compliance with MLA’s Brand and Writing Style Guidelines (available on request); and

6.3.2.2 is carried out in consultation with the MLA/MDC communications team,

and that the Participant has obtained MLA’s prior written approval in relation to all

communications material relating to a Project or its results.

**7. SUBCONTRACTORS**

**7.1 Schedule**

The contractors specified in the schedule, if any, will as specified in the schedule be engaged by MLA or the Participant to work with the Participant in undertaking the Project.

**7.2 Other contractors**

The Participant will not without the prior written consent of MLA engage any other agent or contractor to work with the Participant in undertaking the Project or otherwise assist the Participant in performing its obligations under this agreement.

**7.3 Terms**

If the Participant engages any agent or contractor to work with the Participant in undertaking the Project or otherwise assist the Participant in performing its obligations under this agreement, 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 6;

(b) assign to the Participant all Intellectual Property created under the engagement; and

(c) maintain such insurance in such amounts as MLA may specify.

**8. INSURANCE**

**8.1 Maintenance**

The Participant will:

(a) at all times maintain:

(i) workers’ compensation insurance as required by law for its employees;

(ii) professional indemnity insurance for an amount of at least $2 million; and

(iii) public and product liability insurance for an amount of at least $5 million; and

(b) maintain and protect from loss or damage and, if required by MLA, insure for their replacement value, all Assets.

**8.2 Policies**

The Participant will, on request by MLA, produce evidence of the currency of the insurance policies referred to in clause 8.1.

**9. INDEMNITIES**

 Each party (**Indemnitor**) indemnifies each other party (**Indemnitees**) against all damages, losses, costs and expenses incurred by the Indemnitees arising out of any:

1. breach by the Indemnitor of this agreement; or
2. negligent or unlawful act or omission of the Indemnitor or its employees, agents or contractors in connection with this agreement.

**10. TERM AND TERMINATION**

**10.1 Term**

10.1.1 This agreement commences on the Effective Date and continues until the earlier of:

(a) the completion of the Project;

(b) its termination by written agreement of all parties; and

(c) its termination in accordance with this agreement.

10.1.2 MLA may, by 1 month's notice to the Participant, terminate a Project.

10.1.3 MLA may terminate this agreement with immediate effect by notice to the other parties if:

10.1.3.1 MLA is no longer the declared industry marketing body and/or industry research body for the meat and livestock industry; or

10.1.3.2 its funding agreement with the Commonwealth government is terminated,

in which case, MLA may, by notice to the Participant, direct the Participant to deal with the Assets in a manner determined by MLA.

**10.2 Termination on notice**

10.2.1 MLA may terminate this agreement on notice to the other parties if MLA makes a “No Go” decision referred to in the schedule.

10.2.2 If a “Go/No Go” decision point is referred to in the schedule, the Participant:

(a) must not proceed with the Project after that point until MLA notifies it that MLA has made a “Go” decision to proceed with the Project after that point; and

(b) acknowledges that it is not entitled to payment for any goods or services provided in breach of paragraph (a).

**10.3 Termination for default**

 A party (**Terminating Party**) may by notice to the other parties terminate this agreement if another party:

(a) suffers any form of external administration;

(b) fails, within 7 days after notice from the Terminating Party, to remedy a breach of its obligations under this agreement;

(c) breaches any of its obligations under this agreement which are not capable of remedy; or

(d) persistently breaches its obligations under this agreement.

**10.4 Effect**

If this agreement is terminated:

(a) the Participant will repay to MLA money paid to the Participant for any portion of the Project that will not be undertaken as a result of the termination;

(b) MLA will ensure that the Participant is paid or entitled to retain its proportion of these monies (in excess of that expended on the Project); and

(c) the Participant will:

(i) buy back any Assets depreciated at the rate specified in the schedule, less the Participant’s Contribution to those Assets depreciated at the same rate; or

(ii) with the approval of MLA, sell any Assets to any other person on arm’s length terms, and disburse to the parties all monies received from the sale in proportion to their respective Contributions to the Project.

**10.5 Project completion**

 On completion of the Project, the Participant will:

(a) buy back any Assets at the buy-back price specified in the schedule; or

(b) with the approval of MLA, sell any Assets to any other person on arm’s length terms, and disburse to the parties all monies received from the sale in proportion to their respective Contributions to the Project.

**11. GOODS AND SERVICES TAX (GST)**

**11.1 GST exclusive**

 Unless otherwise indicated, amounts stated in this agreement are exclusive of GST.

**11.2 Tax invoice**

 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.

**11.3 Terms**

 Terms used in this clause 11 which are defined in the GST Act have the same meaning as in the GST Act.

**12. FORCE MAJEURE**

**12.1 Event**

If a party (**Affected Party**) becomes unable, wholly or in part, by any event beyond its reasonable control, including in the case of MLA and Donor Company a cessation or reduction of their funding (including a cessation or reduction in any payments by third parties specified in the schedule) (**Force Majeure**) to carry out an obligation placed on it under this agreement, the Affected Party must give to the other parties prompt written notice of:

(a) reasonable particulars of the Force Majeure; and

(b) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.

**12.2 Effect**

12.2.1 Subject to compliance with clause 12.1, the relevant obligation, so far as it is affected by the Force Majeure, will be suspended during but no longer than the term of the Force Majeure. In the case of a cessation or reduction of their funding, MLA or Donor Company may by notice to the other parties terminate this agreement.

12.2.2 The Affected Party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible, although it is not required to settle any labour or other dispute creating the Force Majeure on terms contrary to its wishes or to contest the validity or enforceability of any law, regulation or decree by way of legal proceedings.

# Miscellaneous

## Notices

13.1 A notice under this agreement must be in writing and may be given to the addressee by:

13.1.1 delivering it to the address of the addressee;

13.1.2 sending it by pre-paid registered post to the address of the addressee;

13.1.3 sending it by fax to the fax number of the addressee; or

13.1.4 sending it by electronic mail to the last notified email address of the addressee,

and the notice will be deemed to have been received by the addressee on receipt.

13.2 A fax is deemed to have been received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the addressee.

13.3 An email is deemed to have been received on the date shown by a printed “read receipt” generated by the sender’s computer.

## Amendment

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

## Assignment

13.5 The Participant may only assign a right under this agreement with the prior written consent of MLA.

## Entire agreement

13.6 This agreement, together with each Project Schedule, embodies the entire understanding and agreement between the parties as to its subject matter.

13.7 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

13.8 Each party must promptly sign 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.

13.9 The Participant agrees that;

13.9.1 MLA may execute this agreement by applying the signatures of their respective authorised representative to any counterpart electronically; and

13.9.2 it will not challenge the validity or enforceability of this agreement on the basis that the signature of MLA's and/or MDC's authorised representatives were applied electronically.

13.10 The Participant acknowledges that MLA may retain only an electronic version of this agreement executed by the parties.

## Governing law and jurisdiction

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

13.10 Each party:

13.10.1 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

13.10.2 waives any right to object to proceedings being brought in those courts for any reason.

## Legal costs

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

## Counterparts

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

|  |
| --- |
| PROJECT SCHEDULE |

**Participant**

|  |  |
| --- | --- |
| **Name:** |  |
| **ABN** |  |
| **Street Address**  |  |
| **Postal Address** |  |
| **Project Leader:**  |  |
| **Name** |  |
| **Phone** |  |
| **E-mail** |  |
| **Administration Contact:**  |  |
| **Name** |  |
| **Phone** |  |
| **E-mail** |  |
| **Authorised Person (Signatory)\*:** |  |
| **Name** |  |
| **Phone** |  |
| **E-mail** |  |
| *\*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*](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).* |

MLA/MLA Donor Company

|  |
| --- |
| **Meat & Livestock Australia Limited** **ABN** 39 081 678 364 **MLA Donor Company Limited ABN** 49 083 304 867 |
|  |
| **Street Address** | Level 1, 40 Mount Street North Sydney NSW 2060  |
| **Postal Address** | PO Box 1961 North Sydney NSW 2059  |
|  |  |
| **Project leader:**  |  |
| **Name** |  |
| **Phone** |  |
| **E-mail** |  |
|  |  |
| **Administration contact:** |  |
| **Name** |  |
| **Phone** |  |
| **E-mail** |  |

|  |
| --- |
| **Project** |

|  |  |
| --- | --- |
| **Project No** | P.PSH. |
| **Project Title** |  |
| **Start date** |  | **Completion date** |  |

**Purpose and description**

|  |
| --- |
|  |

**Objectives**

*The Participant will achieve the following objective(s) to MLA's reasonable satisfaction:*

|  |
| --- |
|  |

**Outcomes**

|  |
| --- |
| Final ReportThe Final report must:* be submitted in accordance with MLA's style guide and report guidelines (available at <http://www.mla.com.au/Research-and-development/Project-reporting-templates>).
* include sections that address all the items in the Objectives.
* be supplied in electronic Microsoft Word format.
* include any associated material such as spreadsheets, decision support tools, multimedia either within the report or as separate electronic files
* duly acknowledge participating producer groups, Research Organisation(s), Consultant(s) and Funding Contributors (including the Commonwealth Government).

MLA is committed to demonstrating transparency and communication of our R&D activities to stakeholders.  Separate confidential and non-confidential versions of the Final report may be provided if a single report cannot be published on MLA’s website.  MLA has a robust process for delivering communications, aligned to a communications strategy that is designed and executed by the MLA/MDC Corporate Communications team each year.In order to ensure maximum value from MLA programs and projects, MLA requires the Participant to comply with the publications and public announcements clause of this agreement and to liaise with the MLA communications team in respect of all communications relating to the Project to ensure the right messages are delivered via the right channel.If you require further information please contact Manager MDC Communications (mdc@mla.com.au) New Technology Commercialisation/Dissemination StrategyOther Comments |

**Additional details**

|  |
| --- |
|  |

**Agents/Contractors**

|  |
| --- |
|  |

**Milestones and payments**

*MLA on behalf of the Donor Company agrees to pay against the milestones as detailed below. Payment is subject to receipt of the Participant’s Contributions, completion of milestone to MLA’s satisfaction and receipt of tax invoices and supporting documents as required by MLA. All amounts are exclusive of GST.*

**Milestones and budgets**

| **Milestones** | **Provider[[1]](#footnote-1)** | **Start Date** | **Completion Date** | **Fees, Salaries & Wages[[2]](#footnote-2)** | **Operating Expenses2**  | **Capital Assets2** | **Total** |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
| **TOTAL** |  |  |  | **0.00** | **0.00** | **0.00** | **0.00** |

|  |
| --- |
| **Payments and Source of Funds** |

**Participant’s Cash Contribution**

*The Participant agrees to pay the Donor Company that part of its Contribution which excludes the Project Access Fee as detailed below.*

|  |  |  |
| --- | --- | --- |
| **Date of Invoice** | **Milestone** | **Contribution\***  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Total** |  | **AUD 0.00** |

\*Exclusive of GST

**Participant’s Project Access Fee Payments**

*The Participant agrees to pay the Donor Company [8%/10%/12%] of its Contribution comprising the Project Access Fee quarterly in advance, as detailed below.*

|  |  |  |
| --- | --- | --- |
| **Date of Invoice** | **Project Access Fee** | **Amount\***  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Total** |  | **AUD 0.00** |

\*Exclusive of GST

**Source of Funds**

|  |  |
| --- | --- |
| Meat and Livestock Australia Limited |  |
|  |  |
| **Total** | **AUD 0.00** |

|  |
| --- |
| **Interest** |

|  |  |  |
| --- | --- | --- |
| **Project IP** | **Company Name** | **Percentage** |
| All milestone report and final report | Meat & Livestock Australia Limited | 100% |
| All remaining project IP | Meat & Livestock Australi | [insert]% |
| Participant \* | [insert]% |

\* MLA consents to the Participant assigning [insert] % of its interest to [insert full name of subcontractor], provided its subcontract with [insert subcontractor] has, at a minimum, obligations that are equivalent to those under clauses 5 (Project IP), 6 (Confidentiality) and 8 (Insurance) of the R & D Project Funding Agreement.

[NOTE to MLA Project Managers: If MLA has agreed for a subcontractor of the Participant to also own part of the Project IP, please ensure you use the above wording to reflect this. If this does not apply this wording should be removed prior to sending the contract to the other party for review.

|  |
| --- |
| **Background IP** |

|  |  |
| --- | --- |
| **Company Name** | **Description** |
|  |  |
|  |  |

|  |
| --- |
| **Assets** |

| **Assets** | **Initial Value\*** | **Depreciation Rate (per annum)** | **Depreciated Value (at end of the Project)\*** | **Buy-back Price\*** |
| --- | --- | --- | --- | --- |
|  | 0.00 | 0.00% | 0.00 | 0.00 |
| **Total** | **AUD 0.00** | **0.00%** | **AUD 0.00** | **AUD 0.00** |

\*Exclusive of GST

**SIGNED AS AN AGREEMENT**

Signed for and on behalf of

**MLA Donor Company Limited**

by its authorised representative:

|  |  |
| --- | --- |
|  | {{Sig\_es\_:signer2:signature}}………………………………………………**Insert Name****General Manager****Insert Department** |

Signed for and on behalf of

**Meat & Livestock Australia Limited**

by its authorised representative:

|  |  |
| --- | --- |
|  | {{Sig\_es\_:signer2:signature}}………………………………………………**Insert Name****General Manager****Insert Department** |

Signed for and on behalf of

the **Participant**

by its authorised representative:

|  |  |
| --- | --- |
|  | {{Sig\_es\_:signer1:signature}}………………………………………………Signature of Authorised Person |
|  | {{N\_es\_:signer1:fullname}}………………………………………………Name of Authorised Person (Print){{Ttl1\_es\_:signer1:title}}………………………………………………Office Held of Authorised Person (Print) |

1. Identify the party contracted to MLA. Include details for any subcontractors to the Providers (include ABN) [↑](#footnote-ref-1)
2. On acceptance and approval of corresponding milestone report, with tax invoice and copy of receipts attached [↑](#footnote-ref-2)