



**All correspondence to:**  
Meat & Livestock Australia Limited  
ABN 39 081 678 364  
PO Box 1961  
North Sydney NSW 2059

# Request for tender

Microbiological food safety of effluent from animal industries

***Strictly confidential***

Tenderer: Long Huynh

Date completed: Jan 2019

The contents of this request for tender and all other information and materials provided by or on behalf of Meat & Livestock Australia Limited (**MLA**), are the property of MLA and are confidential to MLA. All materials provided by or on behalf of a tenderer to MLA will become the property of MLA. There is no payment for tender applications.

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## 1. INTRODUCTION AND INSTRUCTIONS

### Meat & Livestock Australia Limited (MLA)

- 1.1 MLA undertakes a range of research and development and marketing programs designed to benefit beef, sheepmeat and goatmeat industry participants, from livestock producers to retail service providers. It also provides a number of research and development and marketing services to related industry sectors including meat processors and live animal exporters.

### Invitation

- 1.2 MLA invites interested parties to submit tenders by **5:00pm on Friday 21st Feb, 2020 AEST** (Late submissions will not be accepted).

### Tenders

- 1.3 Tenders must comply with all requirements specified in this request for tender.
- 1.4 Please submit an electronic/ soft copy of the tender only.
- 1.5 All questions in Section 2 must be completed if you have not previously contracted to MLA.
- 1.6 Section 3 describes MLA's requirements for the project. Each tenderer must provide a statement detailing how it would meet MLA's requirements in Section 3.
- 1.7 Section 4 contains the terms of the agreement which MLA wishes to enter into with the successful tenderer. While the final agreement may also take into account negotiations between MLA and the successful tenderer, MLA has certain minimum legal requirements that must be satisfied before it is prepared to enter into an agreement with a supplier.
- 1.8 Where the successful tenderer has in place a negotiated standard agreement with MLA the terms of that agreement will apply. Where no previously negotiated agreement is in place, unless clearly stated to the contrary in the tender, all terms of the agreement in Section 4 will be deemed to be accepted by the tenderer. If the tenderer is proposing any variations to those terms, the tenderer must identify the precise clause, detail the reasons for non-acceptance and, if appropriate, provide the tenderer's proposed alternative wording to the clause.
- 1.9 All tenders should be sent to:
- Attention: Long Huynh  
Meat & Livestock Australia  
[lhuynh@mla.com.au](mailto:lhuynh@mla.com.au)

### **Ownership of tenders**

- 1.10 All material submitted in response to this request for tender will become the property of MLA.
- 1.11 Any intellectual property rights that exist in a tender will remain the property of the tenderer.
- 1.12 The tenderer licenses MLA, its employees, agents, contractors and advisers to copy, adapt, modify or do anything else to, all material submitted in response to this request for tender, including material in which the tenderer's or any other person's intellectual property rights subsist, for the purposes of evaluating the tender.

### **Disclosure**

- 1.13 In providing a tender the tenderer agrees to the disclosure of information in the tender to MLA's employees, agents, contractors and advisers, for the purposes of this tender process and any legal or MLA policy requirement.
- 1.14 Tenderers must identify any information that they consider should be protected as confidential information and provide reasons for this.

### **Questions**

- 1.15 Any questions must be submitted in writing and marked to the attention of the MLA tender receiver. MLA may provide the answers to such questions to all tenderers.

### **Discussion and public statements**

- 1.16 Unless expressly provided in this request for tender, tenderers and their employees, agents, contractors and advisers must not at any time during the tender process approach or discuss with any MLA employees, agents, contractors or advisers (except the MLA Contact) any matter relating to the request for tender or the tender.
- 1.17 Tenderers must not make any public statement about this request for tender without the prior written consent of MLA.

### **Conflict of interest**

- 1.18 Where tenderers identify that a conflict of interest might arise in the provision of goods or services contemplated by this request for tender, tenderers are to identify that potential conflict of interest in their tender. If an actual or potential conflict of interest arises, the tenderer must immediately notify MLA in writing. If any conflict of interest might arise for a tenderer before entering into an agreement for the provision of goods or services contemplated by this request for tender, MLA may:
  - (a) enter into discussions to seek to resolve such conflict of interest;
  - (b) disregard the tender provided by such a tenderer; or
  - (c) take any other action it considers appropriate.

### **Budget information**

- 1.19 Budget information specified in tenders must:
  - (a) be expressed in Australian dollars;
  - (b) be inclusive of all charges, and expenses;

- (c) identify separately the duties and taxes, including goods and services tax (**GST**) component of the price; and
- (d) apply for the duration of the provision of the goods and services contemplated by this request for tender.

#### **Tender validity period**

- 1.20 Each tender must remain open for acceptance by MLA for a period of at least six months from the Closing Date. The tenderer should specify any longer periods for which the offer remains valid.

#### **Applicable law**

- 1.21 The laws of New South Wales apply to this request for tender.

#### **Privacy**

- 1.22 Tenderers must ensure that it complies with the *Privacy Act 1998* in submitting its tender and, if successful, in entering into an agreement for the provision of goods and services contemplated by this request for tender.

#### **MLA's rights**

- 1.23 MLA reserves the right to:
- (a) reject any tender;
  - (b) close the right to submit tenders at any time before the Closing Date, without giving any reason or communicating such closure to any person;
  - (c) accept late tenders;
  - (d) accept any tenders which do not otherwise comply with the terms of this request for tender;
  - (e) accept part tenders;
  - (f) withdraw this request for tender or issue a new request for tender;
  - (g) vary the terms of this request for tender;
  - (h) negotiate directly with any person before or after the Closing Date;
  - (i) discuss with each tenderer details of its tender; and
  - (j) vary the tender selection process set out in this request for tender.

- 1.24 In addition to its rights under paragraph 1.23, MLA may decline to consider or accept any tender from a tenderer who does not satisfy MLA of the tenderer's ability to complete the tender in accordance with its terms.
- 1.25 MLA is not bound to accept the lowest or any tender.
- 1.26 MLA may waive compliance with any of the terms of this request for tender and consider and accept any tender which does not conform with these terms.
- 1.27 MLA may require a tenderer to provide such further information as MLA requires in order to consider the tenderer's tender and, if so required, the tenderer must promptly provide such information.

**Costs**

- 1.28 MLA will not be responsible for any costs or expenses incurred by the tenderer arising in any way from the preparation of tenders.

**Binding agreement**

- 1.29 A tender will not be deemed to have been accepted, nor any agreement arise between a tenderer and MLA, until the successful tenderer and MLA enter into a formal agreement for the provision of the goods and services contemplated by this request for tender.

**Selection process**

- 1.30 MLA will review each tender and may select a short list of tenderers. Any such short listed tenderers may be required to present to MLA and a successful tenderer may be selected from such a list.

## 2. NEW TENDERER INFORMATION

Please complete this section if you have not worked with MLA previously

### Details of tenderer:

- 2.1 Name and address of the company or individual providing the tender;
- 2.2 Name of the person who may be contacted for further information;
- 2.3 Telephone number;
- 2.4 Facsimile number; and
- 2.5 Australian Business Number (ABN).

### Pricing

- 2.6 Tenderers are to provide quotes for all fees, charges and expenses. Prices are to include all work related to the provision of goods and services contemplated by this request for tender and are to be inclusive of GST and other applicable duties and taxes.

### Proposed subcontractors and suppliers

- 2.7 The tenderer must list all proposed subcontractors and suppliers that the tenderer intends to engage in providing goods or services to MLA:

Description of goods or services	Subcontractor or supplier

### Insurance

- 2.8 The tenderer must provide details of current insurance policies held by it and each proposed subcontractor and supplier:

Insurance type	Policy number	Extent of cover: per incident	Extent of cover: in aggregate	Expiry date
Professional indemnity				
Public liability				
Workers' compensation				

## SECTION 3

### 3. SPECIFICATION

#### Background

- 3.1 Livestock are a known source of pathogens that could unintentionally be directly (waste, manures) or indirectly (air, dust, water runoff, water source, pests and wildlife) transferred to product within the supply chain and present a food safety risk. Environmental, demographic, and climate changes have the potential to increase the risk of hazard transmission between agricultural sectors.
- 3.2 In the event of a foodborne illness outbreak, source attribution studies and epidemiological investigations, which are extending to farm level to identify the primary source of hazards, increase accountability and potential consequences to producers.
- 3.3 Research funded by the fresh produce industry is investigating some risk factors in food safety e.g. adequately composted manure used for growing fresh produce.
- 3.4 The feedlot industry, with MLA, has published guidelines to help manage and utilise waste and effluent appropriately and safely with minimal negative impact on the environment and surrounding sectors.
- 3.5 A small survey of microbiological quality on processed waste and effluent, ranging from farm to processing establishments, will provide clarity and identify potential risks which may not be previously considered.

#### Project description

- 3.6 Investigate practices, protocols (including current testing protocol) and adherence to procedures by animal businesses (farms, feedlots, sale yards, and processing establishments) for waste management and its microbial quality, such as these guidelines:
- MLA National Guidelines for Beef Cattle Feedlots in Australia 3rd Edition 2012 <sup>1</sup>
  - Beef cattle feedlots: waste management and utilisation 2015 <sup>2</sup>
  - Guidelines for Fresh Produce 2019<sup>3</sup> and the recommended scheme Compliant Composting<sup>4</sup>.
- 3.7 A small-scale initial survey of a limited number of animal businesses (farms, feedlots, sale yards, and processing establishments), varying in locations around Australia and size, to define:
- The microbiological quality of liquid and/or solid waste and effluent (laboratory must be NATA accredited) for target microorganisms of interest, specifically, thermotolerant coliforms, *E. coli* (LOD 100 cfu/g or ml), *Salmonella* (in 25g), *Listeria monocytogenes* (LOD 100 cfu/g or ml), *Listeria spp.* (LOD 100 cfu/g or ml), *Campylobacter spp.* (in 25g) and coagulase-positive *Staphylococcus* (LOD 100/g or ml)
  - The correlation of onsite management and procedures to the microbial quality (including contributors to variability such as environmental, seasons, and equipment).

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<sup>1</sup> <https://www.mla.com.au/research-and-development/search-rd-reports/final-report-details/Productivity-On-Farm/National-Guidelines-for-Beef-Cattle-Feedlotsin-Australia-3rd-Edition/956>

<sup>2</sup> <https://www.mla.com.au/research-and-development/feeding-finishing-nutrition/Lotfeeding-intensive-finishing/odour-and-waste-management/manure-handbook/>

<sup>3</sup> <https://fpac-anz.com/food-safety-guidelines-2019/>

<sup>4</sup> <https://www.freshcare.com.au/compliant-compost-webinar/>



- 3.8 Evaluate treatment methods and parameters with compliance to current microbiological guidelines, and propose changes in waste and effluent management on site to improve the microbiological quality, if required. Further investigations may also need to be proposed.

### **Requirements for the tender**

- 3.9 Without limiting the contractor's ability to develop and apply any particular approach or methodology, the proposal should:
- Detail the contractor's approach to the work;
  - Detail a proposed methodology and show how this will address the project issues and aims;
  - Detail the work activities that the contractor proposes to undertake; and,
  - Show how the work program will achieve the objectives of the consultancy.
  - Milestones and achievement criteria should be specified at several points in the work so that consultation can occur between the tenderer and MLA, and any other relevant parties.

### **Task and methodology**

- 3.10 The project will collect data from volunteering enterprises. However MLA does not need access to confidential information.
- 3.11 It is expected that data will be collected from a sufficient number of enterprises to represent the Australian industry.
- 3.12 Reports should be submitted at each milestone and a final report at the end of the project. Recommendations should be made, especially into changes or management options which would impact other agriculture sectors.
- 3.13 Reports are required to be submitted with a minimum of 30 days prior to the due date. This will allow sufficient time for stakeholders to provide comments.

### **Budget**

- 3.14 A cost-effective but realistic budget should be submitted.

### **Project management**

- 3.15 Other than providing advice, MLA does not expect to be involved in performing the work.
- 3.16 A project review group, consisting of relevant MLA managers and Peak Industry Council representatives will review milestone reports and provide comment and advice on the work as required.
- 3.17 Periodic reporting should be provided to MLA, which may be in addition to milestone reports, when several months may elapse between milestones or upon MLA request.

### **Timelines**

- 3.18 It is expected that the project should be completed in 18 months to provide time for assessment of any seasonal variation.

**Overall schedule**

- 3.19 The tender should, in addition to the requirements specified in the Instructions and Tenderer Information, provide information that will facilitate completion of the schedule of the research agreement (section 4 of this document).

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#### **4. MLA'S STANDARD TERMS**

# **RESEARCH AGREEMENT**

BETWEEN

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

AND

**COMPANY**  
ABN xx xxx xxx xxx

***PROJECT NO. x.xxx.xxx***

*Title*

## 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 <insert ABN> of <insert street address, suburb and state> (**Research Organisation**)

## Background

MLA wishes to arrange for the Project to be carried out, and the Research Organisation has agreed to carry out the Project and provide the In-Kind Contributions, on the terms set out in this agreement.

## Agreements

### 1 Definitions and interpretation

#### Definitions

1.1 Where commencing with a capital letter:

**Assets** means any asset described in the schedule, provided by MLA or acquired by the Research Organisation for the purpose of the Project or developed in the course of a Project;

**Background IP** means Intellectual Property owned, licensed or held by a party and made available by the party to the Project, including any Intellectual Property specified as such in the schedule;

**Budget** means the budget specified 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 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 MLA, includes the MLA Material;

**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;

**Funds** means the funds specified in the Budget;

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

**In-Kind Contributions** means the in-kind contributions to be provided by the Research Organisation as specified in the schedule;

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

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

**Milestone** means a milestone specified in the schedule;

**MLA Material** means all material and information provided by MLA to the Research Organisation for the purpose of this agreement;

**Moral Rights** has the same meaning given to it as that term is defined in Part IX of the *Copyright Act 1968 (Cth)*;

**Nominated Persons or Personnel** means the persons named in the schedule and such other persons approved in writing by MLA to work on the Project on behalf of the Research Organisation;

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

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

## **Interpretation**

- 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.
- 1.3 Unless the context otherwise requires a word which denotes:
- 1.3.1 the singular denotes the plural and vice versa;
  - 1.3.2 a person includes an individual, a body corporate and a government; and
  - 1.3.3 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.
- 1.4 A reference to:
- 1.4.1 any legislation includes any regulation or instrument made under it and any amended, re-enacted or replacement legislation;
  - 1.4.2 any agreement or other document includes that agreement or document as amended or replaced;
  - 1.4.3 payments to a party includes payments to another person on the direction of the party;
  - 1.4.4 money is in Australian dollars unless otherwise stated; and
  - 1.4.5 anything (including any amount) is a reference to the whole and each part, and a reference to a group of persons is a reference to all of them collectively, to any 2 or more collectively and to each individually.
- 1.5 In this agreement:
- 1.5.1 clause headings are for convenience only and do not affect interpretation; and
  - 1.5.2 “includes” is not a word of limitation.

## **2 Appointment**

MLA appoints the Research Organisation to carry out the Project in accordance with the Milestones and the Budget on the terms set out in this agreement, and the Research Organisation accepts the appointment.

## **3 Obligations of the Research Organisation**

### **Conduct of the Project**

- 3.1 The Research Organisation must conduct the Project:
- 3.1.1 in accordance with all relevant laws and regulations and any applicable industry standards or guidelines;

- 3.1.2 in accordance with the Milestones and the Budget and otherwise comply with the requirements set out in the Project;
  - 3.1.3 in accordance with all reasonable and lawful directions of MLA from time to time concerning the Project, except to the extent that the direction would prevent the Research Organisation from complying with clause 3.1.6;
  - 3.1.4 to the best of its skill and ability;
  - 3.1.5 using appropriately qualified, competent and skilled personnel necessary for the proper conduct of the Project; and
  - 3.1.6 without limiting clause 3.1.1, in accordance with all applicable occupational health and safety laws and regulations and applicable industry codes of practice and Australian Standards.
- 3.2 Without limiting the Research Organisation's obligations under this clause 3, the Research Organisation must, in conducting the Project:
- 3.2.1 only apply the Funds and the Assets for the purposes of the Project and in accordance with the Budget and the Milestones; and
  - 3.2.2 not vary the Project, the Budget or the Milestones without MLA's prior written consent;
  - 3.2.3 liaise with MLA; and
  - 3.2.4 as requested by MLA, provide reasonable details of the Research Organisation's proposed course of action and strategies, for the purpose of enabling MLA to review the performance of the Research Organisation's obligations under this agreement.

## **Personnel**

- 3.3 The Research Organisation:
- 3.3.1 must, subject to the terms of this agreement, cause the Nominated Persons to work on the Project;
  - 3.3.2 undertakes that the Nominated Persons and all persons who assist in carrying out the Project will during the term of this agreement perform this work to the best of their skill and ability; and
  - 3.3.3 must provide each Nominated Person with a copy of this agreement and take all reasonable steps to explain it to them.
- 3.4 If the Nominated Personnel cease to be available during the term of this agreement, the Research Organisation will notify MLA and may replace such personnel, provided such replacements are acceptable to MLA.

## **Warranty**

- 3.5 The Research Organisation warrants that:
- 3.5.1 its conduct of the Project will not infringe any other person's Intellectual Property rights (excluding patent rights);

- 3.5.2 to the best of its knowledge and belief after due enquiry, its conduct of the Project will not infringe the patent rights of any other person;
- 3.5.3 the parties will be entitled to use the Project IP without the consent of any other person;
- 3.5.4 it, its employees, the Nominated Persons and its agents and contractors have the necessary experience, skill and ability to properly conduct the Project on the terms set out in this agreement; and
- 3.5.5 the Project will be conducted in a professional manner and conform to a standard of competence equal to that normally employed by researchers of good standing for services of a magnitude and nature similar to the Project.

### **Capturing Project IP**

- 3.6 The Research Organisation must provide MLA with all information in its possession regarding Project IP which has been developed or is in the process of being developed.
- 3.7 The Research Organisation must ensure that those of its employees, agents and contractors who participate in the Project:
  - 3.7.1 identify Project IP generated or developed by them;
  - 3.7.2 promptly communicate details of Project IP to MLA;
  - 3.7.3 assign ownership of all Project IP in accordance with the provisions of clause 8; and
  - 3.7.4 give the moral rights consents requested in accordance with the provisions of clause 8.

### **Safety**

- 3.8 The Research Organisation must ensure that:
  - 3.8.1 its activities in carrying out the Project comply; and
  - 3.8.2 any site at which it carries out any part of the Project (Site) complies, with all applicable occupational health and safety laws and regulations and applicable industry codes of practice and Australian Standards.
- 3.9 Without limiting its obligations under this clause 3.9, the Research Organisation must ensure that any person involved in the Project or attending a Site whose health or safety may be affected by the Project is:
  - 3.9.1 properly trained, informed, supervised and instructed in the use of plant and equipment involved in the Project;
  - 3.9.2 provided with all necessary personal protective equipment for work performed in connection with the Project; and
  - 3.9.3 provided with any other training, information, instruction and supervision, including but not limited to induction training, to ensure their health and safety while carrying out the Project or while on the Site.
- 3.10 Research Organisation is solely responsible for all preparation and co-ordination required for carrying out the Project at a Site and, without limiting its obligations under this clause 3.10, the Research Organisation must:



- 3.10.1 at all times exercise all necessary precautions to ensure that the health and safety of any person:
  - (a) involved in the Project; or
  - (b) while on or near a Site,is not compromised by the carrying out of the Project at that Site;
- 3.10.2 stop work on the Project if a safety risk arises and immediately notify MLA; and
- 3.10.3 not resume work until it is satisfied that the safety risk has been eliminated or, if elimination of the risk is not reasonably practicable, controlled.

## **4 Funding and In-Kind Contribution**

### **MLA's obligations**

- 4.1 Subject to clause 4.3, MLA must provide the Funds and the Assets to the Research Organisation in accordance with the Budget for the sole purpose of the Project.

### **In-Kind Contribution**

- 4.2 The Research Organisation must provide the In-Kind Contributions, if any, in accordance with the schedule.

### **Suspension of funding**

- 4.3 In addition to its rights under clause 16, MLA may suspend payment of any of the Funds if the Research Organisation:
  - 4.3.1 does not achieve a Milestone; or
  - 4.3.2 is in breach of any of its obligations under this agreement,until the Milestone is achieved or the breach is rectified, as the case may be, to the reasonable satisfaction of MLA.

### **Assets**

- 4.4 The Research Organisation must, with the Funds, and in accordance with the Budget, purchase the assets specified in the Budget.
- 4.5 The Research Organisation is solely responsible for the safekeeping, maintenance and control of any Assets used for the Project and for all other costs and liabilities associated with the Assets.
- 4.6 The Research Organisation must not encumber or Dispose of any Asset.
- 4.7 On the termination of this agreement, or earlier if requested by MLA, the Research Organisation must on MLA's election either:
  - 4.7.1 return to MLA all Assets provided by MLA and assign to MLA, at no cost to MLA, ownership of all other Assets free from all encumbrances; or
  - 4.7.2 with the approval of MLA, sell any Assets to any other person on arm's length terms, and disburse to MLA all monies received from the sale of the Asset; or
  - 4.7.3 retain possession of the Asset for use in other projects to be conducted with MLA.

- 4.8 MLA may, on reasonable notice, enter premises occupied by or under the control of the Research Organisation to take possession of Assets for the purposes of clauses 4.7.1.

## **5 Accounts and records**

### **Accurate record keeping**

- 5.1 The Research Organisation must ensure that it, and its agents and contractors:
- 5.1.1 keep complete and accurate books and records that are separate from any other books and records of the relevant business (including any particular accounts specified by MLA):
    - (a) setting out details of all work carried out under this agreement;
    - (b) recording the deposit and expenditure of the Funds; and
    - (c) recording the contribution and details of the In-Kind Contributions;
  - 5.1.2 permit MLA, at any time and without prior notice, through its officers, agents or advisers authorised on its behalf, to examine and inspect any material in the possession of the Research Organisation which is relevant to this agreement, including any books and records, and provide all necessary facilities for that purpose;
  - 5.1.3 give full and accurate answers to any questions MLA or any of its representatives may have concerning books or records relating to this agreement and provide all assistance reasonably requested by MLA in respect of any inquiry into or concerning the Project or this agreement; and
  - 5.1.4 retain for a period of seven years after termination or expiration of this agreement all books and records relating to the Funding.

### **MLA may carry out audits**

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

### **Research Organisation to allow access**

- 5.3 The Research Organisation must cooperate with MLA or its representatives, in the conduct of an audit and, for that purpose, must:
- 5.3.1 allow access to the Research Organisation's premises at reasonable times and on reasonable notice;
  - 5.3.2 procure access to the premises of all agents and contractors at reasonable times and on reasonable notice;
  - 5.3.3 require the Research Organisation's employees, agents and contractors to produce books and records related to this agreement and allow any such documentation to be inspected and copied; and

- 5.3.4 provide full and accurate answers to any questions asked in relation to that documentation.

### **Clause survives termination**

- 5.4 This clause 5 applies for the term of this agreement and for a period of seven years from the date of expiration or termination.

## **6 GST**

- 6.1 Unless otherwise indicated, amounts stated in this agreement do not include GST.
- 6.2 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.
- 6.3 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.
- 6.4 Terms used in this clause 6 which are defined in the GST Act have the same meaning as in the GST Act.

## **7 Background Intellectual Property**

### **Provision**

- 7.1 During the term of this agreement each party must make available for the Project the Background IP to be provided by it.
- 7.2 When a party makes Background IP available (other than that specified in the schedule) it must give a notice to the other party identifying the Background IP and the ownership of it, the right of the party to make it available and details of any encumbrances.

### **Warranty**

- 7.3 Each party warrants that:
- 7.3.1 it is the owner of, or is otherwise entitled to provide, the Background IP which it makes available for the Project;
  - 7.3.2 the use of the Background IP in accordance with this agreement will not infringe the Intellectual Property rights of any other person;
  - 7.3.3 except to the extent disclosed to the other party at the time of making it available, the Background IP is unencumbered; and
  - 7.3.4 it will not Dispose of or Commercialise the Background IP so as to prejudice its use in accordance with this agreement.
- 7.4 Where any Background IP is co-owned with the Research Organisation or has been developed by the Research Organisation MLA provides no warranties.

## **Interest**

- 7.5 No party by virtue of this agreement obtains any interest in or right to use another party's Background IP for any other purpose other than in accordance with this agreement.

## **Licence**

- 7.6 Subject to the terms of this agreement:
- 7.6.1 the parties; and
- 7.6.2 subject to clause 13, agents and contractors of the parties,
- have a non-exclusive royalty-free right to use each party's Background IP for the purposes of the Project and Commercialisation of the Project IP.

## **Protection**

- 7.7 Each party must take all reasonable steps to protect the other party's Background IP (but not including applying for, maintaining, prosecuting or enforcing any form of Intellectual Property rights protection) and must give the party which provided the Background IP prompt notice of any infringement or threatened infringement of that Background IP which comes to its attention.

# **8 Project IP**

## **Ownership**

- 8.1 Any Project IP will be owned by the parties in accordance with their respective Interests.
- 8.2 Subject to this agreement, each party has a non-exclusive royalty-free right to use Project IP for the purposes of the Project, other than Commercialisation.
- 8.3 No party may Dispose of its Interest in Project IP without the prior written agreement of the other party.
- 8.4 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.

## **Moral Rights**

- 8.5 The Research Organisation grants or will procure that its employees grant to MLA written, unconditional and irrevocable consents to any act or omission that would otherwise infringe its or its employees' moral rights in any Project IP.

## **Intellectual Property protection**

- 8.6 If MLA considers that a particular development warrants pursuing patent protection, or other form of Intellectual Property protection, the Research Organisation must provide all reasonable assistance to MLA and if requested apply for, maintain and prosecute that Intellectual Property protection in accordance with the party's respective Interests.
- 8.7 Each party must give the other prompt notice of any infringement or threatened infringement of Project IP which comes to its notice and MLA may take such action and incur such costs as may be reasonably required to protect the interests of the parties in that Intellectual Property.

- 8.8 Costs incurred by the parties under clauses 8.6 and 8.7 must be borne by them in proportion to their respective Interests unless agreed otherwise.

## **9 Commercialisation**

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

## **10 Confidentiality**

### **Confidentiality Obligations**

- 10.1 Subject to this agreement, each party must during and after the term of this agreement:
- 10.1.1 keep Project IP and the Confidential Information of the other party confidential;
  - 10.1.2 use Project IP and the Confidential Information of the other party only as contemplated by this agreement; and
  - 10.1.3 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 10.

### **Exclusions**

- 10.2 The obligations on each recipient of Confidential Information under this agreement do not apply to any Confidential Information which:
- 10.2.1 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;
  - 10.2.2 is in the public domain;
  - 10.2.3 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
  - 10.2.4 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.
- 10.3 For the avoidance of doubt, a party's details, the names of researchers working on the Project, the Project title, start and finish dates for the Project and the Funds will not be considered to be Confidential Information and may be disclosed by MLA.

### **Publications and public announcements Clause**

- 10.4 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.
- 10.5 The Research Organisation must ensure that any publication, dissemination or communication permitted under clause 10.4:

- 10.5.1 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
  - 10.5.2 is carried out in consultation with the MLA communications team,
- and that the Research Organisation has obtained MLA's prior written approval in relation to all communications material relating to a Project or its results.

## **Termination**

- 10.6 On termination of this agreement each party must, on request from another party, return all of the other party's Confidential Information.

## **11 MLA**

- 11.1 Clauses 8.3, 9.1 and 10 (in respect of Project IP) do not apply to MLA if MLA's Interest is 100%.

## **12 Material**

### **MLA Material**

- 12.1 The MLA Material remains the property of MLA.
- 12.2 Subject to clause 12.3 on termination of a Project, the Research Organisation must immediately on request from MLA return the MLA Material related to that Project and all copies of it to MLA and permanently delete from all computer systems under the control of the Research Organisation all MLA Material which is in electronic form.

### **Legal Requirement**

- 12.3 The Research Organisation may retain one hard copy of the MLA Material reasonably necessary for the Research Organisation to comply with any statutory obligation to do so.

### **Safekeeping**

- 12.4 The Research Organisation is responsible for the safekeeping and maintenance of the MLA Material and must ensure that the MLA Material are used, copied, supplied or reproduced only for the purposes of this agreement.

## **13 Subcontractors**

### **Other contractors**

- 13.1 The Research Organisation must not without the prior written consent of MLA engage any agent or contractor to work with the Research Organisation in conducting the Project or otherwise assist the Research Organisation in performing its obligations under this agreement.
- 13.2 MLA consents to the Research Organisation engaging the contractors identified in the schedule.

## Terms

- 13.3 If the Research Organisation engages any agent or contractor to work with the Research Organisation in conducting the Project or otherwise assist the Research Organisation in performing its obligations under this agreement, the terms of engagement must contain terms requiring the agent or contractor to:
- 13.3.1 undertake obligations of confidentiality in substantially the same terms as clause 10;
  - 13.3.2 assign to the Research Organisation all Intellectual Property created under the engagement; and
  - 13.3.3 maintain such insurance in such amounts as MLA may specify.
- 13.4 The Research Organisation will remain liable for the acts or omissions of the contractor as if those acts or omissions were those of the Research Organisation.

## 14 Insurance

### Maintenance

- 14.1 The Research Organisation will
- 14.1.1 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;
    - (c) public and product liability insurance for an amount of at least \$10 million;
    - (d) such other insurance cover as MLA may from time to time reasonably require; and
  - 14.1.2 maintain and protect from loss or damage and, if required by MLA, insure for their replacement value, all Assets.

### Policies

- 14.2 The Research Organisation will, on request by MLA, produce evidence of the currency of the insurance policies referred to in clause 14.1.

### Government and Statutory bodies

- 14.3 Clause 14.1.1 does not apply where the Research Organisation is a department or statutory body of the Commonwealth of Australia or an Australian State or Territory and self insures.

## 15 Indemnity

- 15.1 The Research Organisation indemnifies MLA against all damages, losses, costs and expenses incurred by MLA arising out of any:
- 15.1.1 breach by the Research Organisation of this agreement; or

15.1.2 negligent or unlawful act or omission of the Research Organisation, its employees, the Nominated Persons and all agents and contractors in connection with this agreement,

except to the extent that the damages losses, costs or expenses result from the act or omission of MLA.

## 16 Term and termination

### Term

16.1 This agreement commences on the date of this agreement and continues until the earlier of:

16.1.1 Its termination by written agreement of all parties; and

16.1.2 its termination in accordance with this agreement

16.1.3

### Notice

16.2 MLA may, by 1 month's notice to the Research Organisation, terminate this agreement.

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

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

16.3.2 its funding agreement with the Commonwealth government is terminated, in which case, MLA may, by notice to the Research Organisation, direct the Research Organisation to deal with the Assets in a manner determined by MLA.

16.4 If MLA terminates this agreement under clause 16.2, MLA must, subject to clauses 16.9 and 16.10, pay the Research Organisation the costs reasonably incurred or committed by the Research Organisation in accordance with the Budget in the period up to the date of termination.

### Go/No Go decisions

16.5 MLA may terminate a Project by notice to the Research Organisation if MLA makes a "No Go" decision referred to in the Schedule.

16.6 If a "Go/No Go" decision point is referred to in the Schedule, the Research Organisation:

16.6.1 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

16.6.2 acknowledges that it is not entitled to payment for any goods or services provided in breach of clause 16.6.1.

### Termination for default

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

16.7.1 the other party fails, within 7 days after notice from the Terminating Party, to remedy a breach of its obligations under this agreement which is capable of remedy;



16.7.2 the other party breaches any of its obligations under this agreement which are not capable of remedy; or

16.7.3 the other party persistently breaches its obligations under this agreement.

16.8 A party may by notice to the other party, terminate this agreement with immediate effect if the other party has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.

## **Research Organisation's obligations**

16.9 On termination of this agreement, the Research Organisation must immediately discontinue any work on the Project.

16.10 On receipt of notice of termination of this agreement, the Research Organisation must do all things necessary to minimise the incurring of further costs in connection with this agreement.

## **17 Force Majeure**

### **Event**

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

17.1.1 reasonable particulars of the Force Majeure; and

17.1.2 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.

### **Effect**

17.2 Subject to compliance with clause 17.1, 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 its funding, MLA may, by notice to the other party, terminate this agreement.

17.3 The Affected Party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible (except where MLA has its funding ceased or reduced). The Affected Party 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.

## **18 Dispute resolution**

### **Dealing with disputes**

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

18.2 If a party requires resolution of a dispute it must do so in accordance with this clause 18 and the parties acknowledge that compliance with these provisions is a condition precedent to

any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except in the case of applications for urgent interlocutory relief or a breach by the other party of this clause 18.

- 18.3 The existence of a dispute or the commencement of proceedings does not affect the obligations of the parties to continue to perform their obligations under this agreement.

### **Resolution by management**

- 18.4 If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer or authorised delegate of the other party.
- 18.5 If the dispute is not resolved within 1 month of submission of the dispute to them, or such other time as they agree, clause 18.6 will apply.

### **Conciliation**

- 18.6 Disputes must be submitted to conciliation in accordance with and subject to the then current Conciliation Rules adopted by the Resolution Institute.
- 18.7 A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within 1 month of submission to conciliation, or such other time as the parties agree.

### **Urgent Relief**

- 18.8 This clause 18 does not apply if either party commences legal proceedings for urgent interlocutory relief.

## **19 Relationship of the parties**

### **No partnership**

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

### **No holding out**

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

### **Conflict of Interest**

- 19.3 The Research Organisation must not, without the prior written consent of MLA, during the term of this agreement:
- 19.3.1 act as a consultant to any person who carries on or is involved in any capacity in an activity or business; or
  - 19.3.2 carry on or be involved in any capacity in an activity or business,
- which is competitive with or detrimental to the Project.

## 20 Miscellaneous

### Notices

- 20.1 A notice under this agreement must be in writing and may be given to the addressee by:
- 20.1.1 delivering it to the address of the addressee;
  - 20.1.2 sending it by pre-paid registered post to the address of the addressee;
  - 20.1.3 sending it by fax to the fax number of the addressee; or
  - 20.1.4 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.
- 20.2 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.
- 20.3 An email is deemed to have been received on the date shown by a printed “read receipt” generated by the sender’s computer.

### Amendment

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

### Assignment

- 20.5 The Research Organisation may only assign a right under this agreement with the prior written consent of MLA.

### Entire agreement

- 20.6 This agreement, together with each Project Schedule, embodies the entire understanding and agreement between the parties as to its subject matter.
- 20.7 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

- 20.8 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.

### Governing law and jurisdiction

- 20.9 This agreement is governed by and must be construed in accordance with the laws of New South Wales.
- 20.10 Each party:
- 20.10.1 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

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

### **Legal costs**

20.11 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**

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



**Project**

<b>Project No.</b>	
<b>Project Title</b>	
<b>Start date</b>	<b>Completion date</b>

**Purpose and description**

--

**Objectives**

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

--

**Additional details**

--

**Agents or subcontractors**

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

**Interest**

<b>Milestone Number</b>	<b>Company Name</b>	<b>Percentage</b>

**Background IP**

<b>Company Name</b>	<b>Description</b>

**Communications**

*Subject to the confidentiality obligations, the Project will be communicated by the Research Organisation:*

<b>Activity</b>	<b>Key Message</b>
Milestone report	Comprehensive report on achievement of each milestone. Milestone report guidelines are available on the MLA website <a href="http://www.mla.com.au/Research-and-development/Project-reporting-templates">http://www.mla.com.au/Research-and-development/Project-reporting-templates</a>
Final Report	<p>The Final report must:</p> <ul style="list-style-type: none"> <li>• be submitted in accordance with MLA's style guide and report guidelines (available at <a href="http://www.mla.com.au/Research-and-development/Project-reporting-templates">http://www.mla.com.au/Research-and-development/Project-reporting-templates</a>).</li> <li>• include sections that address all the items in the Objectives.</li> <li>• be supplied in electronic Microsoft Word format.</li> <li>• include any associated material such as spreadsheets, decisions support tools, multimedia either within the report or as separate electronic files</li> <li>• duly acknowledge participating producer groups, Consultant(s) and Funding Contributors (including the Commonwealth Government).</li> </ul> <p>MLA is committed to demonstrating transparency and communication of our R&amp;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.</p>

MLA has a robust process for delivering communications, aligned to a communications strategy that is designed and executed by the MLA Corporate Communications team each year.

In order to ensure maximum value from MLA programs and projects, MLA requires the Research Organisation 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 Matthew Peacock ([mpeacock@mla.com.au](mailto:mpeacock@mla.com.au)) or Sharon McGovern ([smcgovern@mla.com.au](mailto:smcgovern@mla.com.au)).

**Milestones**

<b>Achievement Criteria</b>	<b>Due Date</b>

*\*MLA requires a minimum of 30 days to review and consult the reports. A milestone is not achieved unless it is completed and accepted to MLA's reasonable satisfaction.*

**Nominated Person(s)**

Contact Name:

Phone:

Fax:

Email:

**Budget**

<b>Total Budget</b>	Professional fees	0.00
	Operating expenses	0.00
	Capital	0.00

**Total Funds** **AUD \$0.00 (GST exclusive)**

**Cash flow**

Payment Date	Milestone	Fees	Expenses	Capital	Total
	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**

\*or on signing of this agreement

\*\*on acceptance and approval of corresponding milestone report, with tax invoice and copy of receipts attached

\*\*\*on receipt and acceptance of final report by MLA, with tax invoice for payment attached

*NB: any money uncommitted at the end of the Project must be returned to MLA*



## SIGNED AS AN AGREEMENT

Signed for and on behalf of  
**Meat & Livestock Australia Limited**  
in the presence of:

.....  
Signature of Witness

.....  
**Authorised person**  
**General Manager**  
**Business Unit**

.....  
Name of Witness (Print)

Signed for and on behalf of  
**Research Organisation**  
in the presence of:

.....  
Signature of Witness

.....  
Signature of Authorised Person

.....  
Name of Witness (Print)

.....  
Name of Authorised Person (Print)

.....  
Office Held of Authorised Person (Print)