



**All correspondence to:**

Meat & Livestock Australia Limited

ABN 39 081 678 364

PO Box 1961

North Sydney NSW 2059

# Request for tender

J16384: Technical field officers for shelf life and cold chain management trials

***Strictly confidential***

Tenderer: Long Huynh

Date completed: Nov 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.

**TABLE OF CONTENTS**

<b>1.</b>	<b>INTRODUCTION AND INSTRUCTIONS</b>	<b>3</b>
<b>2.</b>	<b>NEW TENDERER INFORMATION</b>	<b>7</b>
<b>3.</b>	<b>SPECIFICATION</b>	<b>9</b>
<b>4.</b>	<b>MLA'S STANDARD TERMS</b>	<b>1</b>

**CONFIDENTIAL**

## 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 Wednesday 18 December, 2019 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.

**SECTION 2**

**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)
- 2.6 Business structure eg. Sole trader, company, partnership or trust

**Pricing**

- 2.7 Tenderers are to provide quotes for fees per day (where 1 day consist of 8.4 hours). 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**

- 2.8 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**

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

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

CONFIDENTIAL



## SECTION 3

### 3. SPECIFICATION

#### Background

- 3.1 Shelf life of fresh red meat can be affected by several factors, such as plant hygiene, processing protocols, packaging atmosphere and supply chain temperature. Good plant hygiene restricts the initial level of microorganisms and then storing meat at low temperature reduces the rate of growth of these microorganisms thereby extending its shelf life.
- 3.2 Australian vacuum beef and lamb products have excellent shelf lives with beef reaching 160 days, and lamb reaching 90 days if stored at -0.5°C. However, exporters struggle to justify to importing countries and local retailers that TVC results above 1,000,000 cfu/cm<sup>2</sup> are normal in vacuum products, which have abundant shelf life remaining.
- 3.3 The University of Tasmania (UTas), funded by Meat & Livestock Australia (MLA), developed a model to predict the effect of storage temperature on the shelf life of vacuum packed (VP) beef and lamb primals.
- 3.4 The shelf life prediction models is available for meat processors and exporters to use to predict the shelf life of chilled vacuum packed beef and lamb within supply chains.
- 3.5 The model has demonstrated that good cold change management has significant impact on the overall shelf life of product as processors are achieving extremely good hygiene levels. Although some parts of the supply chain may be a challenge to control (such as customers supply chain), being informed and working with customers will provide benefit and ensure the quality of the Australian red meat.
- 3.6 A few processors have accessed and have started to use the model, however to ensure the model is being used correctly, provide feedback on improvements, and tailored to the specific supply chain, technical assistance may be required.
- 3.7 MLA has hosted a sheep meat webinar on the impact of temperate and methods of cold chain analysis using the shelf life predictive model<sup>1</sup>. MLA requires assistance to have the use of the predictive model maximised in as many supply chains as possible.

#### Project description

- 3.8 The Technical Field Officer will assist and participate in the following activities such as:
  - Assist plants to develop a shelf life trial plan (this may require on-site meetings)
  - May require to help conduct sampling, testing and other data gathering activities on the sites of processors, further processors or other members of the supply chain as required and build capability
  - Reporting the Predicted vs observed shelf life for each trial
  - Assist plants in analysing their historical cold chain data or using remote data loggers monitoring and analysis the current cold chain.

---

<sup>1</sup> <https://www.youtube.com/watch?v=UOevnJl-whl&feature=youtu.be>

- Determine methods of analysis and highlight key areas in the cold chain which may commonly experience issues or shelf life may be significantly impacted.
- Report the outcomes and assist parties involved to maximise the benefits from using the model and key learnings.
- Assist in gaining adoption of the model as a common business practice.

3.9 Additional activities may include:

- Providing on the ground support for individual projects within the food safety program as required by MLA from time to time
- Assisting in communication between MLA, processing plants, industry and others, as required;
- Preparing reports or to outline data or other information which need to be brought to MLA's attention;
- Attending meetings, making presentations, presenting and/or running training workshops as required;
- Other activities as determined by MLA from time to time.

### **Requirements for the tender**

3.10 The contractor should include in the proposal details such as:

- Expertise in supply chain, meat processing, meat science, quality assurance, food technology and/or food microbiology
- Knowledge of the Australian meat processing sector and operations
- Connections with the meat processing sector, food safety experts and the meat industry as a whole
- Demonstrated ability to communicate with industry
- Demonstrated ability to communicate effectively and work closely with plant personnel
- Ability to conduct sample collection and experience working with large amounts of data at processing establishments
- Past and current projects with industry

### **Task and methodology**

3.11 MLA is seeking to engage a number of contractors in different parts of Australia to engage with processors and exporters on cold chain management.

3.12 MLA may develop the objectives for some projects, which may be funded through the Plant Initiated Projects (PIP) program, or other funding mechanisms, and then request the involvement of the successful contractor. Alternatively, the successful contractor may be asked to develop a program of

work, which may or may not require PIP funding. There is no objection to successful contractors, with their own resources, developing projects that MLA may choose to support financially.

3.13 In addition to learning how to use the shelf life model, contractors should use the Shelf life trial protocol published in the MLA guides:

- Shelf life of Australian red meat 2nd edition<sup>2</sup>
- Processors guide to improving micro quality and shelf life 3rd edition<sup>3</sup>

#### **Budget**

3.14 As work is yet to be defined, the budget should be quoted as per day rate. We estimated a maximum of 20 days of work per year. When contractors are required to travel, expenses will be covered within the project, the allocated amount will be determined by MLA in line with corporate policies.

#### **Project management**

3.15 Other than providing advice and assisting in the recruitment and contracting of work, MLA does not expect to be involved in performing the work. Training in the use of the shelf life model and in the analytical approaches will be provided to the successful contractors.

3.16 Reports are required for specific projects and unless otherwise agreed will be submitted in standard MLA report format. In addition, a monthly report on activities undertaken for MLA will be required.

#### **Timelines**

3.17 It is expected that the contract will be scheduled for maximum of 24 months.

#### **Overall schedule**

3.18 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 consultancy agreement (section 4 of this document).

---

<sup>2</sup> <https://www.mla.com.au/globalassets/mla-corporate/research-and-development/program-areas/food-safety/pdfs/shelf-life-of-australian-red-meat-2nd-edition.pdf>

<sup>3</sup> <http://publications.mla.com.au/go/E5SKUmsmcisxsZ00>

**4. MLA'S STANDARD TERMS**

AGREEMENT

BETWEEN

**MEAT & LIVESTOCK AUSTRALIA LIMITED**

ABN 39 081 678 364

AND

**LEGAL ENTITY NAME**

ABN <insert ABN>

*PROJECT NO. X.XXX.XXXX*

ProjectTitle

## CONSULTANCY AGREEMENT

THIS AGREEMENT IS MADE ON

2019

### 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> (**Consultant**)

### BACKGROUND

MLA has agreed to engage the Consultant to provide the Services and the Consultant has agreed to accept the engagement on the terms, set out in this agreement.

### AGREEMENTS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

1.1.1. Where commencing with a capital letter:

**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.

**Consultant Background IP** means Intellectual Property owned, licensed or held by the Consultant and made available by the Consultant under this agreement, including but not limited to the Intellectual Property 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;

**MLA Material** means all material and Intellectual Property provided by MLA to the Consultant for the purpose of this agreement;

**Nominated Persons** means the persons named in the schedule and such other persons approved in writing by MLA to perform the work in respect of the Services on behalf of the Consultant;

**Project IP** means all Intellectual Property brought into existence for the purpose of providing the Services;

**Safe Work Method Statement** means a statement about the safety processes and procedures devised by the Consultant with reference to the risk framework detailed in the annexure;

**Services** means the services to be provided by the Consultant under this agreement, including but not limited to the services specified in the schedule; and

**Site** means any sites at which it carries out any part of the Services.

- 1.1.2. Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

## 1.2. Presumptions of interpretation

Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa; and
- (b) a person includes an individual, a body corporate and a government.

## 1.3. Successors and assigns

A person includes the trustee, executor, administrator, successor in title and assign of that person. This clause must not be construed as permitting a party to assign any right under this agreement.

## 2. APPOINTMENT OF THE CONSULTANT

### 2.1. Appointment

MLA appoints the Consultant to provide the Services in accordance with the timetable set out in the schedule on the terms set out in this agreement, and the Consultant accepts the appointment.

### 2.2. Nominated Persons

The Consultant:

- (a) must, subject to the terms of this agreement, cause only the Nominated Persons to perform the work in respect of the Services on behalf of the Consultant;
- (b) undertakes that the Nominated Persons will perform this work to the best of their skill and ability; and
- (c) must provide each Nominated Person with a copy of this agreement and take all reasonable steps to explain it to them.

### **3. OBLIGATIONS OF THE CONSULTANT**

#### **3.1. Liaison**

The Consultant must:

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

for the purpose of enabling MLA to review the performance of the Consultant's obligations under this agreement.

#### **3.2. Directions**

The Consultant must:

- (a) comply with all reasonable and lawful directions of MLA from time to time concerning the Services; and
- (b) at all times, act in the best interests of MLA. If at any time MLA reasonably considers that the Consultant has not acted in the best interest of MLA, MLA may immediately terminate this agreement in accordance with 13.2(c).

#### **3.3. Comply with all laws**

The Consultant must comply with all relevant laws and regulations when performing the Consultant's obligations under this agreement.

#### **3.4. Insurance**

3.4.1. The Consultant must at all times maintain:

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

3.4.2. The Consultant must, on request by MLA, produce evidence of the currency of the insurance policies referred to in clause 3.4.1.

#### **3.5. Privacy**

3.5.1. The Consultant must:

- (a) comply with the Privacy Act 1988, including its Australian Privacy Principles;



- (b) not disclose any personal information under or in connection with this agreement to any entities located outside of Australia without MLA's prior written consent; and
- (c) ensure that all of its subcontractors comply with this clause 3.5.

3.5.2. Without limiting clause 3.5.1:

- (a) in relation to any personal information that the Consultant provides to MLA under this agreement, the Consultant warrants that it has:
  - (i) before providing the personal information to MLA, notified all individuals to whom the personal information relates that it will be disclosing their personal information to MLA for the purposes of this agreement and obtained any required consent to such disclosure; and
  - (ii) provided the individuals with the location of where MLA's privacy policy can be found;
- (b) in relation to any personal information provided to the Consultant by MLA under this agreement, the Consultant must:
  - (i) only store, use, disclose or otherwise handle the information for the specific purposes for which it was provided to the Consultant under this agreement; and
  - (ii) co-operate with any reasonable request or direction of MLA which relates to the protection of the information; and
- (c) the Consultant must promptly notify MLA of any complaint that it receives concerning the personal information under this agreement and comply with any reasonable directions of MLA in relation to such complaint.

### **3.6. Work Health and Safety**

- 3.6.1. The Consultant acknowledges that MLA has engaged the Consultant for its expertise in providing the Services under the agreement.
- 3.6.2. In providing the Services the Consultant must and the Consultant must ensure that the Consultant's directors, officers, employees, agents, subcontractors and consultants exercise all due skill, care and precautions to the standard expected of a suitably qualified, experienced and skilled consultant in providing similar Services which are safe and without risks to persons or property.
- 3.6.3. The Consultant acknowledges that it is solely responsible for all preparation and co-ordination required for the provision of the Services at a Site.
- 3.6.4. Without limiting any other clauses in this agreement, the Consultant must comply with, and ensure that its directors, officers, employees, agents, subcontractors and consultants comply with, all Laws, Codes of Practice and Australian Standards relating to work health and safety and that are applicable to the agreement or the performance of the Services under the agreement.
- 3.6.5. Without limiting clause 3.6.4, the Consultant must:

- (a) implement, maintain and comply with a WHS Management System which must as a minimum requirement demonstrate compliance with all relevant Laws, Codes of Practice and Australian Standards;
  - (b) conduct a risk assessment prior to performing Services under the agreement and, if requested, submit to MLA for its records a Safe Work Method Statement, and at any time thereafter when those risk assessments are no longer valid. The Consultant must comply with the risk assessment in the performance of the Services under the agreement ;
  - (c) ensure that the Consultant, and all persons performing the Services under the control or direction of the Consultant, are inducted, trained, informed and appropriately supervised during the performance of the Services;
  - (d) ensure that the Consultant, and all persons under the control and direction of the Consultant are trained, competent and properly licensed or authorised to operate plant and equipment, and that such plant and equipment is properly maintained and records retained;
  - (e) ensure that the Consultant, and all persons under the control and direction of the Consultant are properly informed, trained and supervised in the use of hazardous substances or dangerous goods;
  - (f) ensure that the Consultant consults with its workers and other relevant persons in relation to work health and safety matters relevant to the Services to be performed under the agreement, including providing appropriate means of communication to discuss health and safety matters;
  - (g) ensure that the Consultant, and all persons under the control and direction of the Consultant, are provided with all necessary personal protective equipment for the Services to be performed safely under the Agreement.
- 3.6.6. The Consultant must provide MLA, at MLA's discretion, with access to and copies of such documents and information as may be necessary to establish the Consultant's compliance with its work health and safety obligations under the agreement.
- 3.6.7. Without limiting the requirements of clause 3.6.5, the Consultant must provide MLA with details of any near misses, incidents, injuries, damage to property and plant and the environment, including the occurrence of any such events to the Consultant or its directors, officers, employees, agents, subcontractors and consultants arising from the Services performed under the agreement.
- 3.6.8. The Consultant must, within 7 days of any event listed in clause 3.6.7 provide a written report to MLA giving complete details of the event, including results of investigations into causes, and any recommendations or strategies for prevention in the future.
- 3.6.9. If the Consultant is required by any laws to give notice of any event specified in clause 3.6.7 to a regulatory authority, the Consultant must at the same time or as soon practicable afterwards provide a copy of that notice to MLA.
- 3.6.10. Failure by the Consultant to comply with any work health and safety provisions of the agreement is a material breach of the agreement.
- 3.6.11. To the extent not prohibited by law, the Consultant will indemnify MLA against any damage, expense, loss or liability suffered or incurred arising out of or in connection with the failure by the Consultant to discharge its work health and safety obligations imposed by law or under the agreement.

- 3.6.12. Where the Consultant is not performing the Services in compliance with the agreement, or is performing the Services in such a way as to endanger the health and safety of any persons, or is likely to cause damage to plant, equipment materials or the environment, the Consultant must immediately stop work and remedy that breach. MLA may suspend the Services until such time as the Consultant satisfies it that the work will be resumed in conformity with applicable work health and safety laws, codes and standards. During any periods of suspension, MLA is not required to make payment whatsoever to the Consultant and the Consultant will not be entitled to any recovery of any moneys arising out of or in connection with any suspension directed by MLA under this clause.
- 3.6.13. If the Consultant fails to rectify any breach identified in clause 3.6.12 for which the performance of the Services have been suspended, or if the Consultant's performance has involved recurring breaches, MLA may at its option terminate the contract immediately, in whole or in part, without further obligation to the Consultant. In the event of this occurrence, MLA's liability will be limited to payment for the Services performed and costs reasonably incurred by the Consultant up to the time of termination or an earlier suspension of Services.

## **4. FEES AND EXPENSES**

### **4.1. Fees**

MLA must pay the Consultant for providing the Services the fee specified in the schedule, provided that Services to which each payment relates are completed to the reasonable satisfaction of MLA.

### **4.2. Expenses**

Unless otherwise specified in the schedule, MLA must reimburse the Consultant for all reasonable travel and telecommunication expenses incurred by the Consultant in providing the Services to the maximum amount if any, specified in the schedule, provided that the Consultant:

- (a) obtains MLA's prior written consent before incurring any travel or accommodation expenses not specified in the schedule; and
- (b) gives MLA:
  - (i) details of the expenses incurred, together with evidence acceptable to MLA on reasonable grounds of the incurring of those expenses, including receipts for expenses over \$20; and
  - (ii) all assistance reasonably required by MLA to verify the expenses incurred.

### **4.3. Payment**

Unless otherwise specified in the schedule, MLA must, subject to this clause 4, pay the fees and expenses referred to in clauses 4.1 and 4.2 in the following manner:

- (a) the Consultant must after the end of each period or milestone specified in the schedule provide to MLA an invoice setting out details of:

(i) the Services provided, time worked and fees payable; and

(ii) expenses incurred,

in that period; and

(b) MLA must pay the invoice within 1 month after receipt of it.

## **5. CONFIDENTIALITY**

### **5.1. Consultant to maintain**

A party must not during or after the term of this agreement:

(a) except in the proper course of performance of this agreement, disclose to any person without the previous consent in writing of the other party:

(i) the terms of this agreement;

(ii) any Confidential Information or

(iii) any other know how or trade secrets arising out of the provision of the Services; or

(b) use or attempt to use any of the items listed in clause 5.1(a) in any manner which may cause injury or loss to the other party or in any manner other than that contemplated by this agreement.

### **5.2. Third party disclosure**

A party must take all such reasonable precautions as are necessary to maintain the confidentiality of the Confidential Information and must:

(a) prevent its disclosure directly or indirectly to any person other than in accordance with this agreement; and

(b) prior to disclosure to any person of any Confidential Information in accordance with this agreement, obtain a written undertaking of confidentiality from that person in the same terms as this clause 5.

## **6. INTELLECTUAL PROPERTY**

### **6.1. Assignment**

6.1.1. The Consultant assigns all Project IP to MLA as and when it is created, whether existing as at the date of this agreement or created afterwards.

- 6.1.2. Where the Consultant engages an agent or contractor to provide any of the Services, the Consultant must ensure that the agent or contractor assigns to MLA all Project IP as and when it is created, whether existing as at the date of this agreement or created afterwards.

## **6.2. Consultant Background IP**

- 6.2.1. During the term of this agreement the Consultant must make available the Consultant Background IP to be provided by it.
- 6.2.2. When the Consultant makes Consultant Background IP available (other than that specified in the schedule) it must give a notice to MLA identifying the Consultant Background IP and the ownership of it, and details of any encumbrances.
- 6.2.3. The Consultant warrants that it is the owner of, or is otherwise entitled to provide, the Consultant Background IP which it makes available under this agreement.
- 6.2.4. The Consultant grants MLA a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence any third party) to use the Consultant Background IP to the extent required to enable MLA to use the Project IP.

## **6.3. Licence to the Consultant**

- 6.3.1. MLA grants the Consultant a non-exclusive, royalty free licence (excluding the right to sub-licence) to use the Project IP and the Intellectual Property rights in the MLA Material solely for the purpose of enabling the Consultant to provide the Services during the term of this agreement.

## **6.4. Restrictions on use of MLA's logo**

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

## **7. WARRANTY**

The Consultant warrants that:

- (a) the provision of the Services will not infringe any other person's Intellectual Property rights and that MLA will be entitled to use the Project IP and the Consultant Background IP without the consent of any other person and without infringing any other person's Intellectual Property rights;
- (b) it, its officers and employees, the Nominated Persons and all agents and contractors have the necessary experience, skill and ability to properly provide the Services on the terms set out in this agreement;
- (c) the Services will be provided in a professional manner and conform to a standard of competence equal to that normally employed by consultants of good standing for services of a magnitude and nature similar to the Services;
- (d) it is compliant with all workers' compensation insurance requirements, superannuation contributions and tax payments for and on behalf of its workers.

## **8. MATERIAL**

### **8.1. MLA Material**

The MLA Material remains the property of MLA and, on termination of this agreement, the Consultant must immediately return the MLA Material and all copies of it to MLA and permanently delete from all computer systems under the control of the Consultant all MLA Material which is in electronic form.

### **8.2. Project IP**

On termination of this agreement, the Consultant must immediately deliver the Project IP and all copies of it to MLA and permanently delete from all computer systems under the control of the Consultant all Project IP, which is in electronic form.

### **8.3. Safekeeping**

The Consultant is responsible for the safekeeping and maintenance of the MLA Material and the Project IP and must ensure that the MLA Material and the Project IP are used, copied, supplied or reproduced only for the purposes of this agreement.

## **9. RELATIONSHIP OF THE PARTIES**

### **9.1. No partnership**

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

### **9.2. No holding out**

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

### **9.3. Exclusion**

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

## **10. SUBCONTRACTORS**

### **10.1. Consent**

The Consultant must not without the prior written consent of MLA engage agents or contractors to assist the Consultant in providing the Services.

## **10.2. Terms**

If the Consultant engages an agent or a contractor to assist the Consultant in providing the Services, the terms of engagement contain terms requiring the agent or contractor to:

- (a) undertake obligations of confidentiality in substantially the same terms as clause 5;
- (b) assign to MLA the Intellectual Property in any materials created under the engagement; and
- (c) maintain such insurance in such amounts as MLA may specify.

## **11. CONFLICT OF INTEREST**

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

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

## **12. INDEMNITY**

The Consultant indemnifies MLA against all damages, losses, costs and expenses incurred by MLA arising out of:

- (a) any breach by the Consultant of this agreement; or
- (b) any negligent or unlawful act or omission of the Consultant, its employees, the Nominated Persons and all agents and contractors in connection with this agreement.

## **13. TERMINATION**

### **13.1. Notice**

MLA may, on 1 months' notice to the Consultant, terminate this agreement.

### **13.2. Default**

If the Consultant:

- (a) goes into liquidation, 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;
- (b) fails, within 7 days after receipt of notice, to remedy any breach of its obligations under this agreement which is capable of remedy;

- (c) breaches any provision of this agreement which is not capable of remedy; or
- (d) persistently breaches its obligations under this agreement,

MLA may, by notice to the Consultant, terminate this agreement and recover from the Consultant all damages, losses, costs and expenses suffered by MLA.

## **14. DISPUTE RESOLUTION**

### **14.1. Dealing with disputes**

- 14.1.1. 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.
- 14.1.2. If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 14 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 14.

### **14.2. Resolution by management**

- 14.2.1. If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party.
- 14.2.2. If the dispute is not resolved within 1 month of submission of the dispute to them, or such other time as they agree, the provisions of clause 14.3 will apply.

### **14.3. Conciliation**

- 14.3.1. Disputes must be submitted to conciliation in accordance with and subject to the Institute of Arbitrators Australia Rules for the Conduct of Commercial Conciliations.
- 14.3.2. 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.

## **15. GST**

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).

## **16. MISCELLANEOUS**

### **16.1. Notices**

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



- (a) delivering it to the address of the addressee;
- (b) sending it by pre-paid registered post to the address of the addressee;
- (c) sending it by facsimile to the facsimile number of the addressee; or
- (d) sending it by electronic mail to the last notified email address of the addressee,

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

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

16.1.3. An email is deemed to have been received on the date shown by a printed "read receipt" generated by the sender's computer.

## **16.2. Amendment**

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

## **16.3. Assignment**

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

16.3.2. For the purposes of clause 16.3.1, the Consultant is deemed to have assigned its rights under this agreement if the management or control of the Consultant is transferred to any person other than those persons who manage or control the Consultant as at the date of this agreement.

## **16.4. Entire agreement**

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

16.4.2. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

## **16.5. Further assurance**

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.

## **16.6. Governing law and jurisdiction**

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

16.6.2. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

## **16.7. Legal costs**

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.

CONFIDENTIAL

---

• **SCHEDULE**

---

**Consultant**

<b>Name</b> <b>ABN</b> <b>Street Address</b> <b>Postal Address</b>  <b>Project Leader:</b> <b>Name</b> <b>Phone</b> <b>E-mail</b>  <b>Administration Contact:</b> <b>Name</b> <b>Phone</b> <b>E-mail</b>
---

**MLA**

<b>Meat &amp; Livestock Australia Limited</b>	<b>ABN</b> 39 081 678 364
<b>Street Address</b>	Level 1, 40 Mount Street North Sydney NSW 2060
<b>Postal Address</b>	PO Box 1961 North Sydney NSW 2059
<b>Technical Details:</b> <b>Name</b> <b>Phone</b> <b>E-mail</b>	
<b>Administration Contact:</b> <b>Name</b> <b>Phone</b> <b>E-mail</b>	

**Services**

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

**Purpose and description**

**Objectives**

*The Consultant 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:*

**Nominated Person(s)**

Contact Name:  
Phone:  
Fax:  
Email:

**Communications**

*Subject to the confidentiality obligations, the Services will be communicated by the Consultant:*

<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>

Activity	Key Message
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>

**Consultant Background IP**

Background IP

**Milestones**

Achievement Criteria	Due Date
1	
2	
3	
4	
5	
6	
7	
8	

*A milestone is not achieved unless it is completed to MLA's reasonable satisfaction*

**Fees and Payment**

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

**Cash flow**

Nominated Person	Daily rate	Max days	Max fees	Max expenses	Total
	\$0.00	0.00	\$0.00	\$0.00	\$0.00

<b>TOTAL</b>	<b>AUD \$0.00</b>				
--------------	-------------------	--	--	--	--

*Each invoice must specify:*

- *MLA's project number on the front page of this agreement;*
- *total number of days worked to which the invoice relates and an analysis of these days with reference to the activities undertaken; and*
- *all expenses incurred during this time (as described below)*

*Fees: The daily rate includes professional services of the Consultant, provision of office facilities, electricity, clerical/secretarial services, indirect costs (overheads), and local phone/fax calls. It does not include STD phone/fax calls, postage and clerical services for large printing jobs that require out-sourcing. These charges are to be invoiced separately, as described below.*

*Expenses: Original suppliers' invoices (or equivalent) will be required to support individual expense items above \$20. MLA approval is required before any commitment to individual items of over \$500. MLA will reimburse airfares for approved travel at a level not exceeding current economy class rates.*

## SIGNED AS AN AGREEMENT

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

.....  
Signature of witness

.....  
**Insert Name**  
**General Manager**  
**Insert Department**

.....  
Name of witness (print)

Signed for and on behalf of  
the [insert]  
in the presence of:

.....  
Signature of witness

.....  
Signature of Authorised Person

.....  
Name of witness (print)

.....  
Name of Authorised Person

.....  
Office Held

## **Annexure – Risk Framework**