



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

# **Request for tender**

## ***Applicability of supply chain integrity devices: incentivising cooperation***

### ***Strictly confidential***

Tenderer: Julie Petty [jpetty@mla.com.au](mailto:jpetty@mla.com.au)

Date completed: 27 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.

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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 **5pm on 20 Dec 2019** (Closing Date).

### 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.

1.5 All questions in Section 2 must be completed.

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 Section 5 contains a declaration to be completed by the tenderer.

1.10 All tenders should be sent to:

Attention: Julie Petty [jpetty@mla.com.au](mailto:jpetty@mla.com.au) Meat & Livestock Australia

and should contain:

- (a) the answers to the questions and information required in **Section 2**;
- (b) any additional information, reports or documents required in relation to the Specification in **Section 3**;
- (c) a statement detailing how the tenderer will meet MLA's requirements in **Section 3**;
- (d) any comments on or proposed amendments to the terms set out in **Section 4**.

- 1.11 MLA will treat all tenders in confidence.

#### **Ownership of tenders**

- 1.12 All material submitted in response to this request for tender will become the property of MLA.
- 1.13 Any intellectual property rights that exist in a tender will remain the property of the tenderer.
- 1.14 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**

- 1.15 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.
- 1.16 Tenderers must identify any information that they consider should be protected as confidential information and provide reasons for this.

#### **Questions**

- 1.17 Any questions must be submitted in writing and marked to the attention of [insert name and contact details]. MLA may provide the answers to such questions to all tenderers.

#### **Extension of Closing Date**

- 1.18 MLA may extend the Closing Date. Tenderers may request an extension by written request marked to the attention of the MLA Contact at least 3 business days prior to the Closing Date and must provide reasons in support of the request.
- 1.19 Any extension of time will be granted to all tenderers, not only the tenderer requesting the extension.

#### **Discussion and public statements**

- 1.20 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.
- 1.21 Tenderers must not make any public statement about this request for tender without the prior written consent of MLA.

#### **Conflict of interest**

- 1.22 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**

1.23 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**

1.24 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**

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

#### **Privacy**

1.26 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**

1.27 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.

1.28 In addition to its rights under paragraph 1.27, 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.

1.29 MLA is not bound to accept the lowest or any tender.

1.30 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.

1.31 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**

1.32 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**

1.33 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**

1.34 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. TENDERER INFORMATION**

**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 and email
- 2.4 Australian Business Number (ABN).

**Pricing**

- 2.5 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**

- 2.6 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**

- 2.7 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				

**References**

2.8 The tenderer must provide details of the last 3 agreements entered into for the provision of goods or services comparable to those set out in this Request for Tender:

- (a) Name:  
Telephone number:  
Contact:  
Goods or services provided:  
Completion date of agreement:
- (b) Name:  
Telephone number:  
Contact:  
Goods or services provided:  
Completion date of agreement:
- (c) Name:  
Telephone number:  
Contact:  
Goods or services provided:  
Completion date of agreement:



## SECTION 3

### 3. SPECIFICATION

#### Background

MLA's [Rural R&D for Profit Insights2Innovation](#) project identified "Food without Fear" as being an important global concern. Consumers in all markets have limited methods to judge the integrity of the products they consume. Adding to confusion, the supply chain is often complicated, and supply chain participants are unclear about how to implement a traceability system, who generates value from this and therefore if it is 'worthwhile'. For a traceability system to work effectively and mitigate the risk of intentional and unintentional traceability compromises, the supply chain partners need to be appropriately incentivised to participate.

Integrity is a term that is used within the industry in multiple ways. Here, we are using the term to mean that the product, wherever it is in the supply chain, is genuine, authentic, and wholesome (not adulterated).

There are strong anti-fraud systems within the Australian meat processing systems. Meat leaving Australia in a carton (majority of product, though some carcasses, and large carcass parts are exported) has a unique GS1-compliant barcode (per carton). Transfers of product destined for export from one registered establishment to another are controlled. Once product leaves Australia, any number of opportunities for fraud present themselves. Some examples of fraud, supported anecdotally, include:

- counterfeit Australian government certificates
- counterfeit cartons of Australian exporters
- counterfeit carton labels
- claiming product as Australian at the retail level that does not have the appearance of Australian product
- claiming product to be of a quality at a restaurant but does not have the expected eating quality

Ultimately, industry needs to have an approach to protecting its reputation and status in market at a profit, which, in part, involves providing the level of assurance that the consumer needs and expects.

#### Project description

Using 3-4 supply chains as case studies, this project will investigate where and with whom consumer trust resides. These case studies need not be red meat specific, though should be comparable to the complexity of Australian red meat export supply chains. This project assumes that a track and trace integrity system will deliver price premiums to supply chain participants and/or other benefits such as social licence from proven provenance and managing downside risk.

The project will document and inform:

- Which actors create value and how it's created
- Which actors actually capture that value and how/why they do
- How and under what circumstances supply chain participants will successfully be incentivised to participate in an integrity program (when is it worthwhile?).

Questions to answer:

- Which supply chain participants are willing to share data?
- Do the supply chain participants have to change what they are doing, are they able to change and will they?
- How can all supply chain participants be/are incentivised to participate accurately in an integrity system – i.e. what problem is the system solving for those entities? Are there learnings in this space from outside the red meat industry which could be applied?

- For each supply chain participant, what value can be created? Financial, social licence, managing downside risk (impact of doing nothing)?
- When is investing in an integrity system 'worthwhile'? For example, when will the brand owner receive the value and which markets and consumer segments are more attractive and worthwhile.
- Possible solutions need to be categorised by ease of implementation, financial or otherwise pay off to the supply chain parties and critical success factors.
- How can retailer's challenges be addressed? For example, how the supply chain overcomes the 'last mile' of the integrity gap (i.e. carton breakdowns to retail cut and application of labels).

'Supply chain participants' includes all parties from producer through to retailer. Product use occasions should be factored into this study and include a mix such as gifting, every day customer, and someone looking for anything that's not local.

Recommendations for future work should be provided that would provide product/brand owners with the ability to tailor the level of product protection and consumer-facing information provided to the ability of the market to provide an appropriate level of reward. Ultimately, the industry needs to have an approach to protecting its reputation and status in market at a profit, which, in part, involves understanding where to focus effort.

### **Budget**

It is anticipated this project will be funded through MLA using producer and processor levies.

### **Timelines**

The project should be completed this financial year.

### **Overall schedule:**

To be supplied and negotiated with the successful applicant.

**SECTION 4**

**4. MLA's STANDARD CONSULTANCY TERMS**

AGREEMENT

BETWEEN

**MEAT & LIVESTOCK AUSTRALIA LIMITED**

ABN 39 081 678 364

AND

**LEGAL ENTITY NAME**

ABN <insert ABN>

*PROJECT NO. X.XXX.XXXX*

*Project Title*

# CONSULTANCY AGREEMENT

## THIS AGREEMENT IS MADE ON

### 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;

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

**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 13.3(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; 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
- (b) 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 3.6.3, 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 3.6.6 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 3.6.6 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 3.6.11 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 developed prior to the date of this agreement, 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 developed prior to the date of this agreement, 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 AND TERM**

### **13.1. Term**

This agreement commences on the Effective Date and continues until the completion date in the schedule, unless terminated earlier in accordance with this clause 13.

### **13.2. Notice for Termination**

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

### **13.3. Termination for 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.

16.5.1. The Consultant agrees that:

- (a) MLA may execute this agreement by applying the signatures of their respective authorised representatives to any counterpart electronically; and
- (b) it will not challenge the validity or enforceability of this agreement on the basis that the signature of MLA's and/or MDC's authorised representatives were applied electronically.

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

## **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.

## **16.8. Counterparts**

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



**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  
(exclusive of GST)**

<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**  
by its authorised representative:

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

Signed for and on behalf of  
the **[insert]**  
by its authorised representative:

.....  
Signature of Authorised Person

.....  
Name of Authorised Person

.....  
Office Held