



## POLICY ON THE FINANCING OF MILK SA RESEARCH & DEVELOPMENT PROJECTS

See definitions at the back of the document (Paragraph 23)

### 1. AUTHORITY OF MILK SA IN TERMS OF THE STATUTORY MEASURES

- 1.1 Milk SA was appointed as Administrator of the relevant statutory measures (“the Regulations”) by the Minister of Agriculture, Land Reform and Rural Development under the Marketing of Agricultural Products Act No. 47 of 1996 (the “MAP Act”). This means, *inter alia*, that Milk SA owns all the powers and duties under the MAP Act to ensure that the maximum amount of statutory levies is collected and that the levy funds are applied in accordance with a budget, the Regulations and the MAP Act. Levy funds can only be spent on projects as approved from time to time by the Board of Directors of Milk SA (“the Board”) and in line with budgets for the projects approved by the Board.
- 1.2 The Minister of Agriculture, Land Reform and Rural Development has assigned to Milk SA the accountability to implement, administer and enforce the Regulations. Milk SA shall therefore annually report to the Minister on the administration of the Regulations and the achievements in respect of the objectives of the Regulations. Milk SA shall furthermore take all actions necessary to ensure the most effective and efficient delivery in terms of its mandate.<sup>1</sup>

### 2. SCOPE AND LIMITATIONS OF PROJECT PROPOSALS

- 2.1 A project proposal must advance one or more of the objectives of the Regulations, and comply with the requirements of this policy.
- 2.2 The Board shall, on recommendation of its advisory committees and other structures that advise the Board, consider project proposals in respect of the following disciplines:
  - 2.2.1 Research and development in respect of the dairy industry;
  - 2.2.2 Dairy consumer education;
  - 2.2.3 Improvement of the quality and safety of milk and other dairy products;
  - 2.2.4 Enterprise Development in respect of black dairy entrepreneurs;
  - 2.2.5 Skills and Knowledge Development;
  - 2.2.6 Statistical and other information relevant to the dairy industry; and
  - 2.2.7 Customs duties and Market access.

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<sup>1</sup> Milk SA's mandate is formalized through decisions of the Members of Milk SA in General Meetings. The obligations of Milk SA in terms of the statutory regulations by virtue of the MAP Act, are the result of the mandate that was given to Milk SA by its Members in 2006. Currently, Milk SA's Members comprise the Milk Producers' Organisation (MPO) and the South African Milk Processors Organisation (SAMPRO).

### 3. PROJECT PROPOSALS: SCHEDULE, PRINCIPLES AND PROCEDURES

#### 3.1 Schedule for project proposals and processing thereof

Target dates	Activities
Feb, 28	Project Managers submit Annual Reports in respect of the previous year to the CEO of Milk SA.
Apr, 30	Advisory Committees (including the DRDC) review annual project reports of the previous year, and advise the Board accordingly.
May, 15	The Executive Committee considers the Annual Reports, for recommendation to the Board.
Jun, 30	The Board decides whom to invite for project proposals for the following year; and the CEO invites the relevant persons (potential Providers) to submit project planning approaches.
Aug, 31	Advisory Committees, during the scheduled meetings, consider and recommend project planning approaches.
Sep, 5	The Milk SA Office invites project proposers to submit formal (on-line) project applications, which are circulated by the Office for round-robin input by the members of the Advisory Committees (if required).
Sep, 30	The Executive Committee and the Board consider and approve formal project proposals (which must comply with this policy).
Oct, 31	CEO provides feed-back to the project proposers and signs contracts.

In exceptional cases and at the discretion of the Board, the Board will consider project proposals submitted to the office of Milk SA during the course of the year.

#### 3.2 Proposals by invitation

- 3.2.1 The Board shall annually (after June) determine the required services to be rendered in terms of paragraph 2.2. If the Board decides that a project or any part of it should not be executed by any person or institution, project proposals will be requested through the market procedures, namely through invitation to submit quotations or tenders.
- 3.2.2 Project proposals to Milk SA will be on invitation, unless the Board decides to waive this principle for any specific proposal.
- 3.2.3 Milk SA is under no obligation to consider project proposals that are not submitted on invitation.

### 3.3 Administrative procedures for project proposals

A person who was invited to submit a project proposal to Milk SA must:

- 3.3.1 Depending on the business form reveal its directors, trustees, members and shareholders.
- 3.3.2 Declare any conflict of interest between the envisaged project and the project applicant, its directors, trustees, members, shareholders or affiliated organizations.
- 3.3.3 If available, include an official certificate issued to the Provider in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) (the “BBBEE Act”). If not in possession of such a certificate, the Provider must in the proposal declare that it does not have any official BEE status / recognition as required by the afore-mentioned Act.

## 4. GENERAL PRINCIPLES AND FRAMEWORK

- 4.1 Research and Development (“R&D”) should promote the viability of the dairy industry. In particular, R&D should promote the strategic direction of Milk SA, and therefore be functional in terms of the broadening of the market for milk and other dairy products, and / or improvement of international competitiveness of the South African industry, and / or empowerment of previously disadvantaged individuals.
- 4.2 The intended R&D should aim to reveal new knowledge to pursue solutions to a demonstrated problem, need or challenge. The R&D proposal should therefore clearly show the existence of or demonstrated relevance of the problem, need or challenge.
- 4.3 Research would only be justified if there is sufficient proof that no or insufficient knowledge exists on the proposed subject.
- 4.4 The functionality for the industry and impact on the economics of the dairy industry would be important factors in the decision-making process on whether or not to support a proposed R & D project.
- 4.5 An in-depth literature review would be critically considered by the Dairy Research and Development Committee of Milk SA (“DRDC”) to decide whether research is necessary.
- 4.6 Projects with short to medium term objectives will normally receive preference, but there will be exceptions such as where projects will support sustainability which could be longer term. *[Sustainability priorities, especially environmental issues addressing ecology, soil health, water, biodiversity, climate change etc. are mostly medium to long term].*
- 4.7 Proposals must be within the framework of the research fields as indicated below, and must cover subject(s) as indicated for each field:
  - i. Feed Sources & Nutrition
  - ii. Dairy Products and Nutraceuticals
  - iii. Genetics, Physiology & Reproduction
  - iv. The environment
  - v. Markets, Sustainability and Techno-economics

- vi. Animal Health, Bio-security and Welfare
- vii. Food safety and Quality.

## 5. CO-OPERATIVE RESEARCH NETWORKS (CRNs)

Milk SA encourages the use of expertise and capacities through CRNs, where possible.

## 6. FUNDING PRINCIPLES (Assuming approval of project proposal)

- 6.1 As Milk SA's R&D budget is limited, applicants are encouraged to approach or suggest co-funding institutions in their applications.
- 6.2 If the project budget is too huge for Milk SA to absorb, Milk SA will assist in either seeking co-funding institutions for the project or recommend increasing the timeline of the project.
- 6.3 Sources of funding other than Milk SA levy funding, include sources from governmental, tertiary, parastatal, NPO, national and international grants. In general, funding from organizations with own interests and financial gain will not be considered with the exception of a co-funding model where the benefits of the research either become public domain or Intellectual Property (“IP”) rights are negotiated.
- 6.4 Milk SA will pay for all costs necessary to complete the project, but not associated costs such as conference attendance or publication costs. Direct costs may include capital equipment when properly motivated for, which will remain the property of Milk SA unless other arrangements are negotiated. Salary costs will not be funded as these are regarded as the responsibility of the research institution and to avoid double dipping. If, however, the research is conducted by an individual or institution where all income is project based (e.g. consultants), Milk SA will contribute to the project time-related funding to the extent that the budget will allow it, and that other options will be pursued such as sourcing extra funds or extending the timeline of the project. Students associated with the project will be supported if their bursary applications elsewhere are unsuccessful and also to the extent which the project requires to perform the activities. To this effect, Milk SA regards it as its obligation to improve the research and development capacity of South African researchers.

## 7. RESEARCH AND DEVELOPMENT CATEGORIES

- 7.1 **Principle:** All research should promote the strategic direction of Milk SA - as mentioned in paragraph 4.1 - and be **solution focused**. Therefore, irrespective whether a basic or applied or a desktop component is required - the problem must be solved or at least satisfactorily addressed. However, there may be circumstances where the components may be required and therefore the definitions below (paragraphs 7.2, 7.3 and 7.4) are warranted.

- 7.2 **Applied Research:** Applied research deals with solving practical problems and generally employs empirical methodologies for short and medium to longer term application.
- 7.3 **Basic Research:** Basic research is performed to increase the understanding of fundamental principles. It is not intended to yield immediate commercial benefits. It is a preliminary investigation and report into something collating currently available relevant information. However, in the context of the principle of solution focused, Milk SA can only support or commission basic research where the eventual aim is to promote the strategic direction of Milk SA. It should therefore refer to future application as well.
- 7.4 **Desktop studies:** Desktop studies may be literature reviews to understand a particular challenge experienced in the dairy industry, or describe the magnitude thereof. It could also be studies which do not require laboratory or field facilities such as economic analyses or model development.

## 8. COMPULSORY PRINCIPLE CRITERIA IN THE PROJECT PROPOSAL

- 8.1 Must describe the goal, objective(s) and motivation.
- 8.2 Must indicate the way and extent to which it is likely to contribute to:
- i. The competitiveness of the South African dairy industry *versus* substitute products and other products, and/or
  - ii. The broadening of the market for South African dairy products, and/or
  - iii. Transformation objectives.
- 8.3 Additional and if applicable, address the way and extent (not necessarily quantitative) of the impact that it would possibly have on the economic viability, sustainability and image of the South African Dairy Industry.
- 8.4 It must indicate the R&D field where it would find application (refer to paragraph 4.7).

## 9. EVALUATION AND SUBSEQUENT PROCEDURES

- 9.1 Research projects from applicants to be considered will be approved by the DRDC only on account of a well-motivated – literature supported proposal. If requested by the Dairy Research Forum of Milk SA (“DRF”) or from members of the DRDC, it must also be accompanied by a well-motivated – literature supported memorandum.
- 9.2 Research projects/programmes running can be stopped or altered by the DRDC only on account of a well-motivated, literature supported memorandum.
- 9.3 Research project proposals, individually or within programmes, will be considered by members of the DRDC and DRF only if they are structured according to and conform with the criteria of the Milk SA – DRDC – Project Evaluation Form.

- 9.4 The process of consideration, evaluation and approval of all R & D project proposals will be:
- i. Considered and evaluated by the DRF for recommendation to the DRDC *via* the R & D Management Committee (DRF members without knowledge of the specific subject may abstain).
  - ii. Recommendations by the DRF will be considered, evaluated and approved by the DRDC.
  - iii. The agenda of a DRDC meeting where projects will be considered, evaluated and approved will provide for an item where each member will have the opportunity to declare his/her concern about any of the projects not conforming sufficiently with the criteria in the Project Evaluation Form.
- 9.5 Research projects will be IP interpreted, funded and commercialised strictly in conformance with the Policy on Financing of Milk SA R &D Projects. *The Policy on IP declares that all IP belongs to Milk SA, but due to particular circumstances IP may be shared with the service Provider.*
- 9.6 Contracts for all research projects will be concluded between Milk SA and the service Provider where the latter will be the institution employing the research project leader. In rare and particular cases, if circumstances demand, the project leader him/herself may be contracted. If the contracting party is a private company, the contract between Milk SA and the contracting party will contain a clause prohibiting the latter from access to the research data until the final project report has been submitted to and accepted by the DRDC.

## 10. PROJECT BUDGETS

- 10.1 Milk SA will normally fund approved projects per calendar year (January to December) or a shorter period, unless the Board decides for a project to be funded for another period. Therefore, project budgets must also be structured to be executed within such calendar year - which is also the financial year of Milk SA - unless another timeframe is agreed between the parties.
- 10.2 Expenditure on capital assets in a project budget must be thoroughly motivated.
- 10.3 The Provider must ensure that capital items and outsourced services are acquired at the best prices in the market. At least three quotations are required for capital assets and services above R15 000. However, one or two quotations may be acceptable if substantially motivated and approved by the Executive Committee of Milk SA.
- 10.4 The budget amount of each item must as far as practically possible, be informed by a logical calculation of measurable variables, which must be available to Milk SA at any time. The quarterly and annual financial reports must be completed using the template provided in Annexure 1, failing which, Milk SA reserves the right to withhold any payment(s) due in terms of the contract until such time as the financial report(s) has been submitted to Milk SA in the correct format.

- 10.5 Expenses incurred by the project, as indicated in the quarterly and annual financial reports, must be supported by the relevant source documents. In the event that a supplier to a Provider is a registered VAT vendor, the Provider must request a valid tax invoice<sup>2</sup>, which complies with the provisions of the Value-Added Tax Act, 1991 (Act 89 of 1991). The Provider/project manager must claim the relevant VAT from SARS.
- 10.6 The need for foreign and any other extensive travel must be thoroughly motivated.
- 10.7 Budgets and budget lines / items shall not be overspent without prior approval by the Board, based on a written request by the Provider. Unless approved by the Board, excess expenditure in the afore-mentioned regard will be for the Provider's account.

## 11. TREATMENT OF ASSETS

- 11.1 Ownership of an asset that is bought by a Provider with money received from Milk SA shall belong to the Provider and the following conditions shall apply:
- i. The Milk SA funds used for the acquisition of an asset must be recorded as an interest-free loan owing to Milk SA.
  - ii. The asset will serve as security for the loan.
  - iii. The loan will be reduced in line with depreciation recorded over the useful life of the asset.
  - iv. The Provider shall record the asset in its asset register.
  - v. The Provider is responsible for the physical protection of such assets.
  - vi. The Provider is responsible for the insurance of such assets.
  - vii. Depreciation in respect of assets acquired with funds received from Milk SA, must be excluded from project expenditure recovered from project funding.
  - viii. Maintenance of such an asset shall be for the account of the Provider, except if the maintenance cost is incurred in terms of a Milk SA approved project budget.
  - ix. The asset shall be maintained appropriately, as would be expected in terms of the nature of such an asset in order to keep it in a good condition and optimally functional. For example, a food quality analyser machine must be serviced in accordance with industry practice by an accredited person and updated with software as necessary.
  - x. Such an asset shall be returned to Milk SA when the project is terminated, unless alternative use of it is requested by the Provider in writing and written approval is granted by Milk SA.
  - xi. Such an asset shall also return to Milk SA if the relevant statutory regulations - administrated by Milk SA - are withdrawn or discontinued by the Minister.
  - xii. When disposal of such an asset is considered by the Provider, irrespective of the reason for disposal or condition of the asset, the Provider shall seek approval from Milk SA in writing and Milk SA shall respond to the Provider, also in writing. Income from the sale of any such asset, shall accrue to Milk SA.
- 11.2 Regarding a Provider's own asset that is to be used for a Milk SA project, the following conditions shall apply, if any cost recovery from Milk SA is required:

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<sup>2</sup> In terms of the section 20 of the VAT Act, the following information must reflect on a tax invoice for it to be considered valid: 1) Contains the words "Tax Invoice", "VAT Invoice" or "Invoice"; 2) Name, address and VAT registration number of the supplier; 3) Name, address and where the recipient is a vendor, the recipient's VAT registration number; 4) Serial number and date of issue of invoice; 5) Accurate description of goods and /or services (indicating where applicable that the goods are second hand goods); 6) Quantity or volume of goods or services supplied and 7) Value of the supply, the amount of tax charged and the consideration of the supply (value and the tax).

- i. An asset that is intended to be used for a Milk SA project must be mentioned in the project proposal and the Provider must motivate the use of the asset for the Milk SA project.
- ii. Maintenance, depreciation and insurance costs may be budgeted for proportionately, as per paragraph 11.2 iii below.
- iii. If the asset is to be used proportionately between the Provider and/or other persons and Milk SA, the proportionate use must be mentioned and the basis for the proportionate use - and therefore proportionate cost recovery from Milk SA - must be thoroughly motivated and verifiable.
- iv. The Provider must be able to provide proof of the purchase price and purchase date of the asset and provide its depreciation policy for the specific asset to Milk SA, in order for Milk SA to verify depreciation as a cost to the project.

## 12. PROJECT PROPOSAL / BUSINESS PLAN

- 12.1 A concept proposal of maximum three A4 folios should be submitted to Milk SA, which must contain at least the following information:
- i. Name of R&D institution.
  - ii. Name of research leader.
  - iii. Details of Co-operative R&D Network (CRN) - if applicable.
  - iv. Reason why not making use of a CRN.
  - v. Expected lifespan of the project.
  - vi. Project title.
  - vii. Problem statement.
  - viii. Main purpose / objective of the project.
  - ix. If not addressing any one of the subject priorities, the reason why not.
  - x. A list of the most relevant literature sources / references.
  - xi. An overview of similar research done in the previous two decades.
  - xii. Whether funding is required of Milk SA and if so, the amount.
  - xiii. Whether other funding sources had been approached previously or in conjunction with this proposal.
  - xiv. A basic, preliminary budget.
- 12.2 Upon favourable consideration of the concept proposal by the Milk SA's Dairy Research and Development Committee (DRDC), the applicant will be invited by Milk SA to submit a formal proposal *via* the web-based, online system.
- 12.3 Formal project proposals must include business plans in a format as required by Milk SA, which must contain at least the following (as prompted by the online system of Milk SA):
- i. Official title of the project.
  - ii. Objective of the project.
  - iii. Justification and demonstrated need for the project.



- iv. Particulars of the potential Provider:
- a. Details as required under paragraph 3.3 of this policy document.
  - b. Further details of the Provider:
    - Name of applicant.
    - Business form.
    - Business registration number.
    - VAT number.
    - Postal and physical address.
    - Telephone number.
    - E-mail address.
    - Project leader's name, position, qualifications and relevant experience.
  - c. Other key natural persons responsible for the project: name, position, qualifications and relevant experience.
  - d. Whether the applicant has a BEE certificate; and the "contributor level" of the applicant.
  - e. Names of directors, trustees or partners in the business of the applicant.
  - f. Interests of other organizations in the applicant's business: Name of the organization and the relationship of that organization to the applicant.
  - g. Conflict of interest, if any, between the envisaged project and the role of the applicant, its directors, trustees, members, shareholders or affiliated organizations.
  - h. If the project or any part of the project is to be outsourced:
    - Details of the project or part of the project to be outsourced.
    - Name of person to which the project or part of the project is to be outsourced.
    - Relation of sub-Provider to the applicant.
    - Postal and physical address of the sub-Provider.
    - Telephone number of the sub-Provider.
    - E-mail address of the sub-Provider.
    - Whether the sub-Provider has a BEE certificate and the "contributor level" of the sub-Provider.
    - Names of the directors, trustees or partners of the sub-Provider.
- v. Particulars regarding the project manager and other human resources taking responsibility for the project (including qualifications, position and experience).
- vi. Programme of action setting out goals, target dates, procedures and methods.
- viii. Infrastructure and resources.
- ix. Probability of successful completion of the specific planned outputs.
- x. Extent to which the project proposal addresses empowerment of Previously Disadvantaged Individuals.

- xi. Budget as described under paragraph 10 of this policy.
  - xii. A declaration that the applicant is a going concern which is financially sound with sufficient resources to manage the project and to meet the project objectives, for the foreseeable future.
- 12.4 Milk SA may take appropriate steps to verify any of the information submitted in the project proposal.
- 12.5 Any income that the Provider envisages to earn or attract for a Milk SA project in addition to funding by Milk SA, is subject to approval by the Board.
- 12.6 If intellectual property rights are applicable, paragraph 17 of the policy shall apply.

### **13. PROJECT PAYMENTS**

- 13.1 Milk SA will make payments for projects in accordance with the contractual agreements signed between Milk SA and the Provider which will be determined by the specific needs of the project, as agreed by the Milk SA Board.
- 13.2 Milk SA, in terms of decisions of its Executive Committee, may withhold payment to a Provider due to reasons such as non-performance and outstanding reports, and Milk SA will provide reasons to the relevant contractor.

### **14. PROJECT REPORTING**

#### **14.1 Monthly and Quarterly progress reports**

- 14.1.1 A "Project Financial Status Report" must be submitted by the Provider to the Senior Administrative Officer of Milk SA in Excel format within 15 calendar days after each month or quarter (as agreed) in the prescribed format.
- 14.1.2 The Provider must submit online quarterly progress reports to the Office of Milk SA for the attention of its Board and for public notice, by no later than 15 April, 15 July, 15 October and 15 January, or by any other dates as may be arranged with Milk SA in writing: in a format as prescribed by Milk SA.
- 14.1.3 Popular quarterly popular reports must accompany the online quarterly reports which must be a minimum of 300 and a maximum of 1 000 words. As these reports are targeted for the Milk SA Directors, the Milk SA registered role-players and for publication purposes (in amongst others the *Milk Essay*), they must comply with publishable standards.
- 14.1.4 Providers must submit quarterly income and expenditure statements together with the online quarterly progress reports to Milk SA, which must at least display all the items mentioned in the approved project proposal, as also stipulated in paragraphs 10.4 and 10.5 of this policy.

## 14.2 Annual reports

- 14.2.1 An annual report and a statement of income and expenditure as well as a statement of assets and liabilities in respect of the project - whether audited or not - must reach Milk SA by 28 February of the following year. Also see paragraph 14.3.7 of this policy.
- 14.2.2 A statement of income and expenditure must at least report on all the items mentioned in the approved project proposal, as also referred to in paragraphs 10.4 and 10.5 of this policy.
- 14.2.3 Popular annual reports must accompany the annual reports which must be a minimum of 300 and a maximum of 1 000 words. As these reports are targeted for the Milk SA Directors, the Milk SA registered role-players and for publication purposes (in amongst others the *Milk Essay*), they must comply with publishable standards.
- 14.2.4 The following information must be stated in the annual report:
- i. An explanation of the reasons why actual outputs deviate from the goals, if applicable;
  - ii. A description and the extent of fruitless expenditure and/or expenditure in excess of the budget, the reasons therefore, and steps taken to prevent this from reoccurring;
  - iii. A written statement by the Provider, confirming that:
    - a. Levy funds were applied only for the purposes stated in the contract;
    - b. In the reasonable opinion of the Provider, levy funds were applied in an appropriate and accountable manner;
    - c. Sufficient management and internal control systems were in place to adequately control the project and accurately account for the project expenditure.
    - d. The information provided in the annual report is correct.

## 14.3 Administrative matters in respect of project reporting

- 14.3.1 Project funds that were not used within the contract period must be refunded to Milk SA without any delay but within four months after the end of the contract period. If Milk SA is not the only funder of a project, the surplus must be refunded *pro rata* according to Milk SA's share in financing the project.
- 14.3.2 If it becomes clear that the total contractual amount cannot be used or has not been used during the contractual period for the objectives of the project, the Provider may submit to Milk SA, for consideration by the Board, a motivated request in writing to carry forward unutilised funds for this project to another term. However, in terms of the MAP Act, unutilized project funds carried forward to a date after the lapse of the statutory measures, become the property of the Minister of Agriculture, Land Reform and Rural Development.

- 14.3.3 Full reporting in respect of foreign visits and other extensive travel must be submitted to the CEO of Milk SA within 30 days after returning from the destination/s.
- 14.3.4 Milk SA may at any time request information about any aspect of the project and may perform audits in respect of the projects for which contracts were concluded between Milk SA and the Provider, of which the cost will be borne by Milk SA. The independent Internal Auditor of Milk SA shall have access to the records pertaining to the project concerned – irrespective of whether such records are kept by the Provider or its sub-Provider, to enable him/her to follow a proper audit trail, in order to verify actual *versus* planned output and expenditure against budget. The Provider must ensure that such audit trail is available to the Internal Auditor of Milk SA regarding the project concerned. Records and supporting documents must be readily available to Milk SA for at least five years.
- 14.3.5 Each project must have separate financial records. Basic financial records include invoices, cheques, time schedules, documents of prime entry and working papers to explain the methods by which financial statements are compiled. Such records must be made available to Milk SA or its Internal Auditor upon request.
- 14.3.6 Monthly, quarterly and annual income and expenditure reports must where appropriate, be supported by financial records, depreciation schedules, a general ledger, a general journal, an asset register, cash records, bank account statements, bank reconciliations, wages records and minutes of meetings.
- 14.3.7 An annual statement of income and expenditure as well as a statement of assets and liabilities (audited or unaudited) in respect of this project must be provided to Milk SA within two (2) months after termination of the project. If not audited at that stage, an audited statement of income and expenditure and statement of assets and liabilities should be submitted to Milk SA by no later than April of the same year - unless the Board of Milk SA allows an extension of time.
- 14.3.8 The Board may consider a written application by the Provider, for expenditure in excess of the approved project budget amount. Unless a decision was passed by the Board and unless written notification as such by the CEO of Milk SA to the Provider, over-expenditure on the project budget will be for the Provider's account.
- 14.3.9 Interest earned on unutilized project funds must be declared to Milk SA in the annual income and expenditure reports; and such interest may be utilized for the project subject to a decision by the Board Milk SA.

## 15. CONTRACTING

- 15.1 On approval of a project proposal, Milk SA will sign a **contract** with the Provider who submitted the project proposal and the Provider shall not sub-contract the project or any part of it to a third party without the prior written approval of Milk SA, which approval shall not be unreasonably withheld.
- 15.2 A contract shall include the project proposal and budget as approved by the Board of Milk SA.

- 15.3 If Milk SA paid the Provider for the project prior to the signing of a contract, all the provisions of the contract shall apply for the full duration of the written contract period.

## **16. CONFIDENTIALITY**

- 16.1 In consideration of any confidential information received, learned or acquired pursuant to the agreement entered into between Milk SA and the Provider, each receiving party undertakes to treat such confidential information as strictly confidential, not to divulge to any third party or sell, trade, publish, reproduce or reverse engineer any of the confidential information and, not to put in use for any purpose unrelated to the project, in any manner, any confidential information without the disclosing party's prior written consent.
- 16.2 The confidentiality and limited use obligations in terms of this paragraph 16 shall survive the termination of an agreement / contract for a period of three (3) years.

## **17. INTELLECTUAL PROPERTY**

### **17.1 Background Intellectual Property**

- i. All Background Intellectual Property will be deemed to vest in and remain the sole property of the party that contributed same to the Project and/or disclosed same to the other party.
- ii. The parties acknowledge and agree that it is important to identify Background Intellectual Property, insofar as it may relate to the Project, and will accordingly endeavour to specify such Background Intellectual Property in writing to the other party within 1 (one) month of the date of signature of this Agreement.
- iii. Unless expressly authorised in writing by the proprietor of the relevant Background Intellectual Property or elsewhere in this Agreement, a party licensed under the other party's Background Intellectual Property in terms of this Agreement will not, directly or indirectly, distribute, use, rent, lease, share, sell, assign, sub-license or otherwise cede, transfer or make over any rights under the other party's Background Intellectual Property.

### **17.2 Project Intellectual Property - general**

- i. Irrespective of the ownership of, and any rights granted to Milk SA under the Project Intellectual Property, the Copyright in a Copyright Work, which in the ordinary course of business is associated with conventional academic work at the Provider, such as a thesis, dissertation, article, handbook or any other publication and that may arise in connection with the Project will solely vest in and remain the property of the Provider and/or the authors thereof.
- ii. The Provider will promptly, and at least as frequently as indicated in the Project Plan, disclose in writing to Milk SA any material Know-how resulting from Project activities.

Irrespective of whether or not intervals for disclosure of material Know-how are specified in the Project Plan, the Provider will disclose all material Know-how resulting from Project activities to Milk SA in the final deliverable for Completion of the Project. If the Provider applies to register any statutory rights in respect of Know-how so resulting, it will notify Milk SA of such applications.

- iii. The parties acknowledge that in terms of the IPR Act the South African government has certain rights in Project Intellectual Property resulting from the Project activities where Milk SA did not contribute the Full Cost of the Project activities, including the right to use, on a non-transferable, irrevocable, royalty-free world-wide basis, the Project Intellectual Property for South Africa's emergency health, safety and other purposes. Notwithstanding anything to the contrary, the parties will be entitled to grant and will grant such licences under Project Intellectual Property as they may be required to do by the IPR Act.

### **17.3 Intellectual Property warranties**

- i. Each party warrants that:
  - a. It is lawfully entitled to use its Background Intellectual Property, to the extent that such use is reasonably necessary to conduct the Project activities contemplated by the Project Plan;
  - b. To the best of its knowledge and belief, there are no proprietary claims by any third parties or any encumbrance or claim relating to its Background Intellectual Property that would prevent it from granting the rights set out in clause 17.5.i;
  - c. There are no imminent, pending or threatened legal proceedings instituted by a third party, relating to its Background Intellectual Property; and
  - d. It has not entered into any arrangements or agreements with any third party that may prejudice its own or the other party's use, implementation or exploitation of the Project Intellectual Property Portfolio, as that other party may be entitled to do in terms of this Agreement.
- ii. The Provider warrants that, to the best of its knowledge, there is no patent, registered design or any other proprietary right of any third party which would be infringed as a result of the purchase, exercise, use or exploitation by Milk SA of the Project Intellectual Property Portfolio, as it is entitled to do in terms of this Agreement.
- iii. The Provider warrants that the amount indicated in the Project Plan as the Full Cost of the Project has been calculated in accordance with the Provider's Full Cost model, which has been approved by NIPMO and that this amount is, in fact, the Full Cost of conducting the activities in the Project.

### **17.4 Project Intellectual Property<sup>3</sup>**

All Project Intellectual Property will be disclosed to the Institution and will belong to and be, or be transferred, ceded, assigned and made over to and become, the absolute property of the Institution.

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<sup>3</sup> Intellectual Property Model 1 (Project is partly financed and project IP is owned by the Institution: 17.4 to 17.6)

## 17.5 Licences

- i. Each party hereby grants to the other party and its Affiliates, a fully paid-up, non-exclusive and non-transferable license to use its Background Intellectual Property, including the right to sub-license third parties subject to any other relevant provision of this Agreement, to the extent that will strictly be required by the other party to undertake the Project activities.
- ii. If, at any time during the Project or after the Completion of the Project, Milk SA wishes to obtain a licence under the Project Intellectual Property, to use the Project Intellectual Property in any manner whatsoever, including for the purposes of Commercialisation, the parties will negotiate in good faith to the terms of this licence, provided that nothing in this clause 00 shall be interpreted to place an obligation on the Institution to obtain any registered protection for any part of the Project Intellectual Property.

## 17.6 Publication

- i. The Institution will not publish any paper or deliver any public presentation pertaining to the Project or the Project Intellectual Property, which contains the Confidential Information of Milk SA unless the Institution will have:
  - a. given at least 60 (sixty) days written notice, prior to the submission for publication or delivery thereof, to Milk SA, accompanied by a true and complete copy of the entire text or transcript of verbal presentation proposed to be published or delivered; and
  - b. obtained the prior written consent of Milk SA to such publication or presentation.
- ii. Milk SA will respond to the Institution's request for publication within 30 (thirty) days after receiving the request and will only be entitled to refuse to consent to any such publication or disclosure if such publication or disclosure would disclose its Confidential Information. Milk SA's response will be in writing and will detail the grounds for its refusal (if any) and set out the objectionable portions of the proposed publication. If the proposed publication or disclosure would disclose the Confidential Information of Milk SA, Milk SA will provide an acceptable revised version for publication that does not disclose its Confidential Information. Should such a response not be received within the 30 (thirty) day period envisaged above, such consent will be deemed to have been granted.

## 18. PUBLICATION (APPLICABLE TO RESEARCH AND DEVELOPMENT PROJECTS)

- 18.1 No party may use the name of the other party in relation to any publication without having obtained the prior written consent of such other party and the use of such name will be subject to any conditions attaching to such consent.
- 18.2 No party may in relation to any publication, presentation or promotional materials, identify or include photographs or other images of any facility, property or operation of any other party without the prior written consent of such other party.

- 18.3 No party may knowingly make or permit to be made any inaccurate or misleading statement concerning any other party or the project in any publication or discussion relating to the project.
- 18.4 The parties must agree that it is part of their core function to disseminate information. They further must recognize that the publication of certain technical information may destroy its commercial value. Accordingly, publication shall proceed on the following terms:
- 18.4.1 The parties may publish and disseminate the results of their investigative findings hereunder and shall solely determine the authorship and contents (including scientific conclusions and professional judgements) of any such paper.
- 18.4.2 The parties, as the case may be, shall provide each other with a copy of the papers prepared for publication by it at the earliest practicable time, but in any event not less than thirty (30) days prior to their submission to a scientific journal or presentation at scientific meetings and a reasonably detailed summary or abstract of any other oral or written publication not less than fifteen (15) days prior to their submission or presentation.
- 18.4.3 The receiving parties will respond within thirty (30) days of receipt of the proposed publication [fifteen (15) days for abstracts or presentations]. The receiving parties may comment upon, but shall not be entitled to make any editorial changes to the results and conclusions set forth in the proposed publication; however, if identified by the receiving parties, any confidential information of the parties that may be contained therein shall be removed.
- 18.4.4 No party shall be entitled to delay the submission and examination of theses and dissertations or the awarding of degrees, other than for the purpose of obtaining patent protection for patentable subject matter contained in a thesis or dissertation. In any event, such delay may not exceed six (6) weeks.
- 18.5 The provisions of this paragraph 18 shall survive the termination of an agreement.

## **19. COMMUNICATION IN RESPECT OF A PROJECT**

- 19.1 Internal communication in respect of the contract of this project shall be between the CEO: Milk SA and a natural person appointed by the Provider.
- 19.2 External communication in respect of the project or any element of the project, i.e. to communication targeted for any person/s in the public domain, shall always make it clear that the project or part thereof is that of Milk SA.
- 19.3 The Provider shall supply copies of press statements, news releases and any other communication regarding the project to the media, to the CEO of Milk SA and the Chairperson of the Milk SA Board of Directors, at the same time of releasing such communication.
- 19.4 Paragraphs 19.1, 19.2 and 19.3 exclude communication with any person or party in the normal course of the execution of the project.



## 20. FORCE MAJEURE

- 20.1 “*Force majeure*” means any event, failure or circumstance over which Milk SA and / or the Provider cannot reasonably exercise control.
- 20.2 Neither Milk SA nor a Provider will be liable for any delay or unsuccessful performance of its obligations in terms of a contract if caused by *force majeure*.
- 20.3 Milk SA or the Provider that cannot fulfil its responsibilities in terms of a contract or agreement due to force majeure shall immediately inform the other party of the reasons and causes of its inability to perform and shall present to the other party an estimated period of its inability to perform.

## 21. DISPUTES

- 21.1 The parties will agree to negotiate with each other in good faith in an effort to resolve all disputes relating to the meaning or interpretation of any provision of or pursuant to any agreement between the Parties, or as to the carrying into effect of any such provision, or of any party's right and/or obligation arising from such agreement, or the termination or purported termination or expiry of the agreement.
- 21.2 If such negotiations do not commence within 10 (ten) business days after the date on which such negotiations are requested by written notice from a party to the other party or if such a resolution is not reached within 10 (ten) business days after the date on which such negotiations are commenced, the dispute shall automatically be referred for mediation. In this regard, the parties will agree that no dispute as provided for in paragraph 21.1 shall be made the subject of litigation or arbitration until it first has been referred to mediation.
- 21.3 A mediator shall be appointed by the parties within 15 (fifteen) business days after the date on which negotiations are requested as provided for in paragraph 21.2 above or, failing an agreement by them as to a mediator, the latter shall be nominated by the chairperson of the Alternative Dispute Resolution Association of South Africa (“ADRASA”).
- 21.4 The mediation shall terminate, if a final resolution is not reached within 25 (twenty five) business days after the date on which negotiations are requested in writing as provided for in paragraph 21.2 above, or at such earlier date that the mediator informs the parties that in the mediator's opinion, no useful purpose will be achieved in continuing the mediation.
- 21.5 Upon termination of the mediation procedure as provided for in paragraph 21.4 above, any party to the dispute shall be entitled to require, by written notice to the other party, setting out the particulars of the nature of the dispute, that the dispute be submitted to arbitration in terms of paragraph 22 below.
- 21.6 The costs involved in the mediation process shall be shared equally between the parties.

- 21.7 In this regard, the parties will agree that:
- 21.7.1 All communications made by the parties to the mediator or to each other during or in connection with the mediation shall be without prejudice to any rights which they may have and shall be deemed to form part of bona fide settlement negotiations;
  - 21.7.2 The parties shall keep the mediation proceedings and any order made by the mediator confidential, save to the extent otherwise contemplated in the agreement;
  - 21.7.3 The mediator shall not be compelled by any disputant to disclose any fact learnt in the course of the mediation in any subsequent legal proceedings which may take place; and
  - 21.7.4 The parties waive their right to require the mediator to testify regarding what transpired in the mediation.
- 21.8 The mediator shall:
- 21.8.1 Be entitled to communicate and meet with any disputant either in the presence of the other disputant/s or in private;
  - 21.8.2 Not disclose any information furnished in confidence by any one disputant to the mediator, to any other disputant without the prior consent of the disputant who furnished the information;
  - 21.8.3 Act impartially; and
  - 21.8.4 Not make any decision which is binding upon the disputants, the resolution of the dispute will depend entirely upon the disputants achieving agreement in respect thereof.

## **22. ARBITRATION**

- 22.1 Subject to the mediation procedure set out in paragraph 21 of the policy and such mediation being unsuccessful and save as otherwise provided for in an agreement, should any dispute arise between the parties, any party to the dispute shall be entitled to require, by written notice to any other party, in which notice particulars of the nature of the dispute shall be set out, that the dispute be submitted to arbitration in terms of this paragraph 22.
- 22.2 The arbitration will be held under the provisions of the arbitration laws for the time being in force in the Republic of South Africa, as it is constituted from time to time. The arbitrator will be an independent person agreed upon by the parties to the dispute and, failing such agreement within 5 (five) business days after the date on which the arbitration is requested by a party to an agreement, will be appointed by the President and, failing him, the Vice-President for the time being of the Law Society of the Northern Provinces, or their successor in title, who may be requested by either party in writing to make the appointment at any time after the expiry of that 5 (five) business day period.

Immediately after the arbitrator has been agreed upon or appointed, the party who has given the notice shall request the arbitrator to fix a date and place when and where the arbitration proceedings will be held and to settle the procedure and manner in which the arbitration proceedings will be held.

- 22.3 The arbitration will be held in Pretoria in accordance with the formalities and procedure settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence.
- 22.4 In the absence of an agreement between the parties or a ruling by the arbitrator, a party wishing to use any document, photograph, audio or video tape recording, or any other exhibit of a like nature (the "exhibits") must furnish particulars thereof to the arbitrator and the other party to the arbitration not later than 10 (ten) business days prior to the hearing fixed for the arbitration.
- 22.5 The notice giving particulars must include an address at which the exhibits may be inspected and the party giving notice must, if requested to do so by the other party, provide a copy of any of the exhibits. The cost of making such copy will be costs in the arbitration.
- 22.6 The arbitration will be held as quickly as possible after it is requested with a view to it being completed within 30 (thirty) business days after it has been requested, if possible.
- 22.7 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or penalty or otherwise as he/ she in his/her sole discretion may deem fit and appropriate and to deal as he/she deems fit within the question of costs, including, if applicable, costs on the attorney and client scale, or own client scale, and his own fees.
- 22.8 Any award made by the arbitrator will be final and binding on the parties to an agreement and may be made an order of any court to whose jurisdiction the parties are subject.
- 22.9 This paragraph will not preclude either party from obtaining intermediate relief on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator.

## 23. INTERPRETATION AND DEFINITIONS

ADRASA	The Alternative Dispute Resolution Association of South Africa is a wholly owned subsidiary of the Arbitration Foundation of Southern Africa (AFSA), which is a joint venture between organised business, the legal and accounting professions.
Background intellectual property	Any Intellectual Property developed or procured by and/or on behalf of either Party pertaining to the Project, deliverables and/or Foreground Intellectual Property, prior to the project commencement date, wherein either Party has any right, title and/or interest in, regardless of whether any independent third party relative to either Party has any right, title and/or interest therein.
Board	Board of Directors of Milk South Africa NPC.

Confidential information	All tangible and intangible information, in any format or material embodiment and whether proprietary or not which a party ( the “Disclosing Party”) has an interest in keeping confidential and which by its nature is or ought be reasonably identifiable as confidential, and which has or may come to the knowledge of the other Party (the Receiving Party”), whether disclosed by the Disclosing Party in writing or in electronic form or pursuant to discussions between the Parties, or which may be obtained by the Receiving Party through examination , testing, visual inspection or analysis, and which includes, without limitation, scientific, business or financial data, projects reports, project details, the Disclosing Party’s Background Intellectual Property, outcomes or findings of studies and analyses, concepts and compilations.
DRDC	Dairy Research and Development Committee.
DRF	Dairy Research Forum.
Foreground intellectual property	All intellectual property which results from or is attributable to the carrying out of the Project.
Intellectual property	<p>Any creation of the mind that is recognized and/or capable of being protected by law from use by any other person, whether in terms of South African law or foreign intellectual property law, and including, but not limited to:</p> <ol style="list-style-type: none"> <li>i. Any information such as training and educational material, know-how, concepts, specifications, data, diagrams, chemical structures, manufacturing and production techniques and designs, specifications and formulae, products, systems, methods, processes, memoranda, reports, engineering drawings, prototypes and computer modeling;</li> <li>ii. All inventions, designs, trade marks and copyrightable works, whether registered, registrable or the subject matter of an application for registration or not; and</li> <li>iii. All statutory intellectual property, including all Patents, Design and Trade Mark Registrations and Copyrighted Works as well as any improvements thereto,</li> </ol> <p>Excluding, only to the extent to which it relates to such article, thesis or publication as such, any article, thesis or any other publication of an academic nature.</p>
IPR Act	The Intellectual Property Rights from Publicly Financed Research and Development Act No. 51 of 2008 and the regulations thereto, as amended from time to time.
Person	A legal person or entity (such as a company, trust or association) or a natural person.
Provider	The person/institution with whom Milk SA has signed a contract.
Statutory measures	The interventions in terms of the dairy industry of South Africa, as published by the Minister of Agriculture, Land Reform and Rural Development in terms of the Marketing of Agricultural Products Act, 1996 (Act 47 of 1996), for which Milk SA was appointed as Administrator by the Minister.

Sub-Provider	A person or institution appointed by the Provider - with the written consent of Milk SA - with a responsibility to execute the project, while the accountability for all facets of the project rests with the Provider.
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**Annexure 1a****FORMAT AS REQUIRED BY MILK SOUTH AFRICA, FOR QUARTERLY AND ANNUAL FINANCIAL REPORTING**

	<b>A</b>	<b>B</b>	<b>C</b>
	<b>2024 ANNUAL BUDGET</b>	<b>2024 Y-T-D REAL</b>	<b>2024 Y-T-D BALANCE (A MINUS B)</b>
	<b>Rand</b>		
<b>INCOME</b>			
- Milk South Africa			
- Other sources			
- Interest			
<b>EXPENSES*</b>			
- Expense item 1			
- Expense item 2			
- Expense item 3			
- Expense item ...			
<b>BALANCE</b>			

\* The expense items must correspond with the items listed in the project budget. More detailed sub-items may also be added.

The second part of the financial report (Annexure 1b) is the "Summary Report" which provides information on project advances, i.e. funds paid to the project, but not utilized to date. A template in this regard is attached, together with guidance notes.

SUMMARY REPORT

Title or code of project:

Year of reporting:

Q1 1 Jan - 31 Mar R	Q2 1 Apr - 30 Jun R	Q3 1 Jul - 30 Sep R	Q4 1 Oct - 31 Dec R	Total R
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Operating results				
Balance brought forward	-	-	-	-
Funds received from Milk SA				-
Interest earned				-
Funds utilised				-
Balance carried forward	-	-	-	-

Capital expenditure				
Book value brought forward	-	-	-	-
Acquisitions / Sales				-
Depreciation				-
Book value carried forward	-	-	-	-

<b>Total</b>	-	-	-	-
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CORFIN090

This page will be provided to the Project Manager in Excel format as well, to facilitate completion.

**COUNTING TREATMENT OF PROJECT ADVANCES****1. Advances made by Milk SA to project contractors**

The advances made by Milk SA to project contractors, must be recorded in separate control accounts in the accounting records.

**2. Interest earned**

Interest earned on project advances, must be recorded in the accounting records on a quarterly basis.

**3. Project operating expenses**

Project expenses incurred from Milk SA funding, in terms of approved project budgets, must be recorded in the accounting records on a quarterly basis.

**4. Project Capital expenditure**

Assets bought with project funds received from Milk SA shall be the property of Milk SA and the contractor shall keep an asset register of such assets.

These assets must be depreciated over the estimated useful lives of the individual assets, and the depreciation should be reported as part of the operating expenses. The book value of these assets will therefore be reflected as the amount due to Milk SA.

The disposal of the assets that were acquired with funds obtained from Milk SA, are subject to a resolution by Milk SA's Board of Directors and the proceeds from the sale of any such goods will accrue to Milk SA.

Upon termination of the statutory regulations, assets bought with project funds shall be physically transferred to Milk SA and will then be recorded at book value in the accounting records of Milk SA.

**5. Project advances not utilised at the end of each quarter**

At the end of each quarter, the project advances not utilised, should be reconciled to the quarterly financial reports, received from the project contractors in the prescribed format.