

AGREEMENT OF LEASE

1. PARTIES

This Agreement of Lease is concluded between:

1.1
(Registration number:)

of

herein represented by

.....

in his capacity as duly authorised thereto

("the Lessor")

AND

1.2
(Registration number:)

of

herein represented by

.....

in his capacity as duly authorised thereto

("the Lessee").

2. **DEFINITIONS AND INTERPRETATION**

2.1 In addition to the words, terms and phrases defined in the other clauses of this Lease, the following words, terms and phrases in this Lease shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:

2.1.1 **"EFFECTIVE DATE"** means, notwithstanding the signature date,;

2.1.2 **"FARM"** means **[Provide details of immovable property where cows are to be kept];**

2.1.3 **"LEASE"** means the Agreement of Lease in this document;

2.1.4 **"MONTH"** means a calendar month, and more specifically:

2.1.4.1 in a reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and

2.1.4.2 in any other context, a month of the calendar,
i.e., one of the twelve months of the calendar

and "**monthly**" has a corresponding meaning;

2.1.5 "**SIGNATURE DATE**" means the date on which this Lease
is signed by the party last in time to sign;

2.1.6 "**VAT**" means Value-added Tax payable in terms of the
VAT Act or any similar or replacement tax;

2.1.7 "**VAT ACT**" means the Value-added Tax Act, No. 89 of
1991 as amended from time to time.

2.2 Unless a contrary intention clearly appears, words signifying:

2.2.1 the singular include the plural;

2.2.2 any one gender include the other genders;

2.2.3 natural persons include created entities (corporate or
unincorporated)

and *vice versa*.

2.3 The clause headings in this Lease have been inserted for convenience only
and shall not be taken into account in its interpretation.

2.4 Where any term is defined within the context of any particular clause in this
Lease, the term so defined, unless it is clear from the clause in question
that the term so defined has limited application to the relevant clause, shall
bear the meaning ascribed to it for all purposes in terms of this Lease,
notwithstanding that the term has not been defined in this interpretation
clause.

- 2.5 If any period is referred to in this Lease by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.
- 2.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of this Lease, notwithstanding that it is only contained in the interpretation clause.
- 2.7 The terms of this Lease having been negotiated, the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the Lease shall not apply.
- 2.8 The termination of this Lease shall not affect those provisions which expressly provide that they will continue after such termination or expiry or those provisions which of necessity must continue to have effect after such termination or expiry, even where those clauses do not expressly provide therefore.

3. **LETTING AND HIRING**

- 3.1 The Lessor hereby lets to the Lessee, who hereby hires from the Lessor, the following **[dairy]** cows:

3.1.1

3.1.2

3.1.3

3.1.4

3.1.5

(hereinafter collectively referred to as "the cows" or "the leased dairy livestock").

3.2 The agreed value of the leased dairy livestock at the effective date is R..... (..... Rand), calculated as the product of cows at an agreed value of R..... per cow.

4. **DURATION**

4.1 This Lease shall come into operation on the effective date and shall endure for a period of **[stipulate period]** to **[stipulate termination date]**. **[Alternative: This Lease shall come into operation on the effective date, and shall thereafter endure indefinitely until terminated by either party by giving the other party not less than months' written notice of termination: Provided that such notice of termination shall not be given before the expiry of a period of months from the effective date].**

4.2 On termination of this Lease the Lessee shall:

4.2.1 Return to the Lessor cows of similar stature, breed, age and stage of lactation as at the effective date; or

4.2.2 In the alternative, and at the written election of the Lessor, pay to the Lessor the replacement value of dairy livestock of similar stature, breed, age and stage of lactation as the cows on the effective date.

The replacement value of the leased dairy livestock shall, in the absence of an agreement between the parties, be determined by **[specify entity]** who shall act as an expert and not as an arbitrator and whose determination shall, in the absence of a manifest error in calculation, be final and binding on the parties.

- 4.3 Any dispute between the parties regarding the stature, breed, age and stage of lactation of the cows (including without limitation a dispute as to whether the Lessee complied with its obligation to deliver cows of similar stature, breed, age and stage of lactation) shall be determined by **[specify entity]** who shall act as an expert and not as an arbitrator and whose determination shall, in the absence of a manifest error in calculation, be final and binding on the parties.

5. **RENT**

- 5.1 The monthly rent payable by the Lessee to the Lessor shall be an amount of R..... per cow per month exclusive of VAT which shall be paid in addition thereto.
- 5.2 The rent shall be payable monthly in advance before the first day of each and every successive calendar month and free of exchange or deductions, retention, remission or set off on any grounds whatsoever into the following account of the Lessor:

Account holder: _____
Bank: _____
Account number: _____
Account clearance number: _____

or such other account as the Lessor may determine in writing from time to time.

6. **OWNERSHIP AND RISK**

- 6.1 The Lessor shall as soon as possible after the effective date deliver the leased dairy livestock to the Lessee by **[provide for manner in which the leased dairy livestock will be delivered, e.g. that the Lessee shall collect same from the Lessor]**.
- 6.2 Notwithstanding any other provisions of this Lease, ownership in the leased dairy livestock shall remain vested in the Lessor and shall not pass to the Lessee.
- 6.3 The Lessee shall become the owner of the progeny of the leased dairy livestock.
- 6.4 The risk in respect of the leased dairy livestock shall pass to the Lessee on the effective date. **[The Lessee shall be obliged, at the cost and expense of the Lessee, to insure the leased dairy livestock for the reasonable replacement value thereof with a reputable insurance company approved by the Lessor and shall on demand deliver proof of the insurance and the payment of the premiums to the Lessor]**

7. **CESSION OF THE LESSEE'S RIGHTS AND SUBLETTING**

The Lessee shall not be entitled, without the prior written consent of the Lessor:

- 7.1 To cede all or any of the rights of the Lessee under this Lease; or
- 7.2 To sublet or give up possession of the leased dairy livestock, in whole or in part, to any third party.

8. **USE OF LEASED DAIRY LIVESTOCK**

The Lessee shall:

8.1 Not remove the leased dairy livestock from the farm without the prior written consent of the Lessee; and

8.2 Only use the leased dairy livestock for purposes of **[stipulate purpose]**.

9. **OBLIGATIONS OF THE LESSEE**

Without detracting from, and in addition to, the other obligations of the Lessee under this Lease the Lessee shall at all times, at the cost and expense of the Lessee:

9.1 Maintain the leased dairy livestock in a healthy and economically sound condition. Without detracting from the generality of this clause the Lessee shall at all times supply suitable nutrition to the leased dairy livestock and provide such veterinary services as may reasonably be required;

9.2 Replace a dead **[or ill]** cow with another cow of similar stature, breed and age and mark the replacement cow accordingly;

9.3 Promptly attend to any illness or other problems which may affect the value and productivity of the leased dairy livestock.

10. **ENTRY AND INSPECTION**

The Lessor or its duly authorised agent shall be entitled at all reasonable times to enter into or upon the Farm for purposes of inspection of the leased dairy livestock.

11. **BREACH**

11.1 The Parties will be entitled to terminate this Lease by written notice to the other party in the event that:

- 11.1.1 the other party commits a breach of the terms and conditions of this Lease, all of which are declared to be material and fails to remedy the breach within 10 days of the receipt of a written notice calling upon the other party to remedy the breach complained of; and/or
- 11.1.2 the other party commits an act of insolvency or is placed under a provisional or final winding-up or judicial management order or if the other party makes an assignment for the benefit of creditors, or fails to satisfy or take steps to have set aside any judgment taken against it within 10 days after such judgment has come to its notice.
- 11.2 The termination of this Lease for whatever reason will not affect the rights of a party which may have accrued as at the date of termination, and will further not affect any rights which specifically or by their nature survive the termination of this Lease. In the event of termination of this Lease the Lessor shall be entitled to immediately, and without detracting from any of its other rights, take possession of the leased dairy livestock.

12. **COSTS**

The legal costs incurred in respect of the negotiation, preparation, finalisation and execution of this Lease including any stamp duty or other expenses shall be born and paid by the Lessee.

13. **DOMICILIA AND NOTICES**

- 13.1 The Parties choose as their *domicilia citandi et executandi* the addresses set out in the preamble to this Lease, provided that such domicilium of either party may be changed by written notice from such party to the other Parties with effect from the date of receipt or deemed receipt by the other parties of such notice.

- 13.2 Any notice, acceptance, demand or other communication properly addressed by either party to the other party at the latter's domicile in terms of this Lease and sent by prepaid registered post shall be deemed to be received by the latter on the 7th business day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods (including telefacsimile) for the transmission or delivery of notices, acceptances, demands and other communications.

14. **GENERAL**

- 14.1 This Lease constitutes the entire Agreement between the Parties, and no representation by either of the Parties or their agents, whether made prior or subsequent to the signing of this Lease, shall be binding on either of the parties unless in writing and signed by both the Parties thereto.
- 14.2 No variation, alteration or consensual cancellation of this Lease or any of the terms thereof, shall be of any force or effect, unless in writing and signed by the Parties hereto.
- 14.3 No waiver or abandonment by either party of any of his rights in terms of this Lease, shall be binding on that party, unless such waiver or abandonment is in writing and signed by the waiving party.
- 14.4 No indulgence, extension of time, relaxation or latitude which any party ("the grantor") may show, grant or allow to another ("the grantee") shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against any grantee which may have arisen in the past or which might arise in the future.
- 14.5 The Parties agree that they will do all things and sign all documents necessary to give effect to the terms of this Lease and to all transactions deriving therefrom.

14.6 The Parties agree to keep the terms of their relationship and the terms and conditions contained in this Lease confidential and not to disclose any such matters to any other person without the prior written consent of the other of them same in the event that any proceedings in relation thereto are instituted by any party against any other, or save where required by the provisions of any law.

14.7 **[This Lease shall constitute a divisible transaction in respect of each separate cow leased]**

15. **COUNTERPARTS**

This Lease shall be capable of execution in counterparts, each of which shall be deemed to be an original, but which together shall constitute one document.

THUS SIGNED AT ON THIS THE DAY OF
..... 2011

AS WITNESSES:

1. _____

2. _____

THUS SIGNED AT ON THIS THE DAY OF
..... 2011

AS WITNESSES:

1. _____
2. _____