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**EXHIBIT HH 3**

**AFFIDAVIT & ANNEXURES**

**OF**

**MESHACK MPALENI  
NCONGWANE**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR  
INCLUDING ORGANS OF STATE**

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**STATEMENT**

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I, the undersigned

**MESHACK MPALENI NCONGWANE**

state as follows:

- 1 I am an adult male and member of the community that resides at Thembalihle township, Vrede, in the Free State Province. I am one of the persons whose name is on the list of beneficiaries of the Vrede Integrated Dairy Farm project ("the dairy farm project") that the Department of Agriculture and Rural Development ("the Department") initiated.
- 2 In or about 10 June 2019 the investigators of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector ("the Commission") arranged to interview me and some of the other beneficiaries to the dairy farm project. I attended that meeting in conjunction with Mr. Ephraim Makhosi Dlamini ("Mr. Dlamini") and four other beneficiaries.
- 3 Mr. Dlamini and I are members of the Vrede chapter of the African Farmers Association. He is the Chairman of this Association and I am the Deputy Chairman. Both of us are cattle farmers. He owns approximately 60 head of cattle and I own approximately 40 head of cattle. To date we have had

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meeting on this dairy farm matter with the Public Protector in 2017 when Democratic Alliance's Mr. Musi Maimane ("Mr. Maimane") invited us to the Public Protector's Office and again about two months ago, the Hawks in 2018, the DA and the media. It goes without saying that the community of Thembalihle had a number of meetings with officials from the Department, including Mr. Mosebenzi Zwane ("Mr. Zwane").

- 4 In concluding these introductory remarks, I wish to point out that much of what I would like to tell this Commission is already in the public domain. I hope to elaborate on some of those general matters when I give evidence before the Commission. I did not attend all the meetings that were convened by the Department, and rely on Mr. Dlamini to deal with the aspects discussed at any meeting that I may not have attended.
- 5 For current purposes, however, I intend to focus on matters that were not publicised, but that are pertinent to an accurate recordal of what transpired when we as the beneficiaries of the dairy project were promised that this project would bring development and prosperity to the communities of Vrede, Warden and Memel.

### **Background**

- 6 With regard to the dairy farm project, I wish to preface my narration of how I came to be a beneficiary of the dairy farm project by giving this Commission some background to my interest in the establishment of a dairy farm.

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- 7 Prior to the dairy farm project being established in Vrede, I approached the Vrede Town Council with a proposal for land to be made available to myself and ten others who were interested in establishing a dairy farm. Though I raised this matter with the Town Council a number of times, neither the mayor, Mr. John Motaung, or the officials of the Town Council bothered to respond.
- 8 I continued to follow up on my request and was ultimately told that the Councillors could not understand my letter. I raised this matter with one of the Members of Parliament who was known to us, Mr. Bheki Radebe. His view was that there was nothing unclear or vague about our proposal. I also raised this matter with one Ralebenya who was the administration officer at the town hall, He then said that it would appear that I need to have a backer or investor to push the proposal through the Council. In less than a year after those discussions, we heard that a dairy farm was going to be established by the provincial government at Vrede.

### **The First Meeting**

- 9 In or about early 2012 Mr. Zwane came to Vrede and called the community to a meeting at the local hall, Mhlabunzima Hall. In attendance were the Mayor, Mr. John Motaung, Mr. Peter Thabethe, the Head of Department of Agriculture, Mr. Dume Kobeni from the local African National Congress office, the extension officer attached to the agricultural department in Vrede, Mr. Jimmy Mphahlele, and two other agriculture department officials who

are local residents of Vrede, namely Mr. Khuliza Sibeko and Ms. Thuto Kganye. The latter two who were given posts in the department of agriculture by Mr. Zwane, and who also acted as his henchmen, had announced over a loud hailer that farmers were wanted for a project.

- 10 Mr. Zwane addressed the meeting and told us about the establishment of a dairy farm, and that it would bring jobs and prosperity to Vrede. We were told to indicate whether our interest was in dairy, poultry, setting up a piggery or in red meat, meaning cattle farming. I, along with five other community members, joined the dairy farming group. Our names and contact details were taken, and we were told that we would be contacted. At that point in time our identity document numbers were not requested.

### **The Second Meeting**

- 11 A second meeting of interested community members was called a few months later. Mr Sibeko, who had taken down our names and contact details, contacted us. I was not available but got a full report from Mr Dhlamini who told me that Mr. Zwane again attended this meeting, which was also attended by beneficiaries from the Warden and Memel areas.

### **The Third Meeting**

- 12 A third meeting to discuss the dairy farm project was held with us beneficiaries. Ms. Alta Meyer ("Ms. Meyer") asked for our identity documents at this meeting. We had heard that Pretoria wanted to know

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who the beneficiaries were, given that money for the project had been released.

13 We handed in our identity document details and signed certain forms. Ms. Meyer also took us through the rules of the project. We nominated three beneficiaries to represent us at meetings relating to the dairy farm. They were Mr. Jun David Mahlaba, Ms. Zelpha Lindiwe Masiteng and Mr. James Dumalisile Ngqosini ("the Committee"). Though we understood that the Committee did attend meetings, at no stage did they give us any report. When we realised that this Committee was ineffective, we decided to report the matters that concerned us to the media.

14 What was strange was that at no point were any of us beneficiaries invited to go to the dairy farm. We knew that dairy cows had been bought. We knew that some of that milk was being sold in Vrede town and in the township.

#### **The Fourth Meeting**

15 In or about 2013/14 Ms. Meyer returned for a fourth meeting. She said that she had been sent by the Office of Mr. Ace Magashule to tell us that the Free State Development Corporation ("FDC") would take over the project the following week.

16 We were aware that the FDC did not work within the department or the municipality, but that it was a parallel entity. We never got a copy of the

document that recorded that we were beneficiaries, however there is a document entitled "Beneficiary Agreement" in the name of Mr. Jun David Mahlaba, and annex a copy thereof marked "**MMN 1**".

Even after the FDC took over the operations at the farm, no one invited us beneficiaries to visit the farm or discuss our shareholding in the farm. The first time we saw the dairy farm was when the Democratic Alliance ("DA") leader Mr. Mmusi Maimane ("Mr. Maimane") was here. Before that, we knew that the dairy was up and running, but we had never been there. We were told that we had no right to enter the dairy farm premises.

#### **The fifth Meeting**

- 17 The fifth meeting was attended by the Premier, Mr. Ace Magashule. Mr. Zwane and some officials were also in attendance. We had been told that the Premier wanted to meet the beneficiaries. However, all that the visitors did was to inspect the farm. They did not come and address us though we were waiting for them.

#### **Other Subsequent Meetings**

- 18 When we complained through the media, MEC Mamiki Qabathe came to address us. She called us names for having contacted the media.
- 19 We requested a meeting with Mr. Modiba, as we wanted to know the status of the dairy project. Mr. Modiba wanted us to re-register as beneficiaries, but we refused this proposal.

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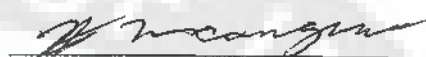
- 20 Sometime in 2013/2014 Dr. TJ Masiteng ("Dr. Masiteng") from the department, accompanied by Mr. Modiba, visited us in Vrede. The issue of our status as beneficiaries was discussed at the meeting. Dr. Masiteng informed us that the dairy farm project had not started making any profit.
- 21 There was one final meeting where the DA visited the farm. The beneficiaries from Warden were there, but not those from Memel. When the DA went to the farm, Mr. Maimane fought for us to enter the farm. That was the first time that we as beneficiaries actually set foot on the farm. I must also record that the Public Protector sent officials from her office in May 2019. The first time we got the opportunity to tell them our side of the story was in May 2019.

### **Conclusion**

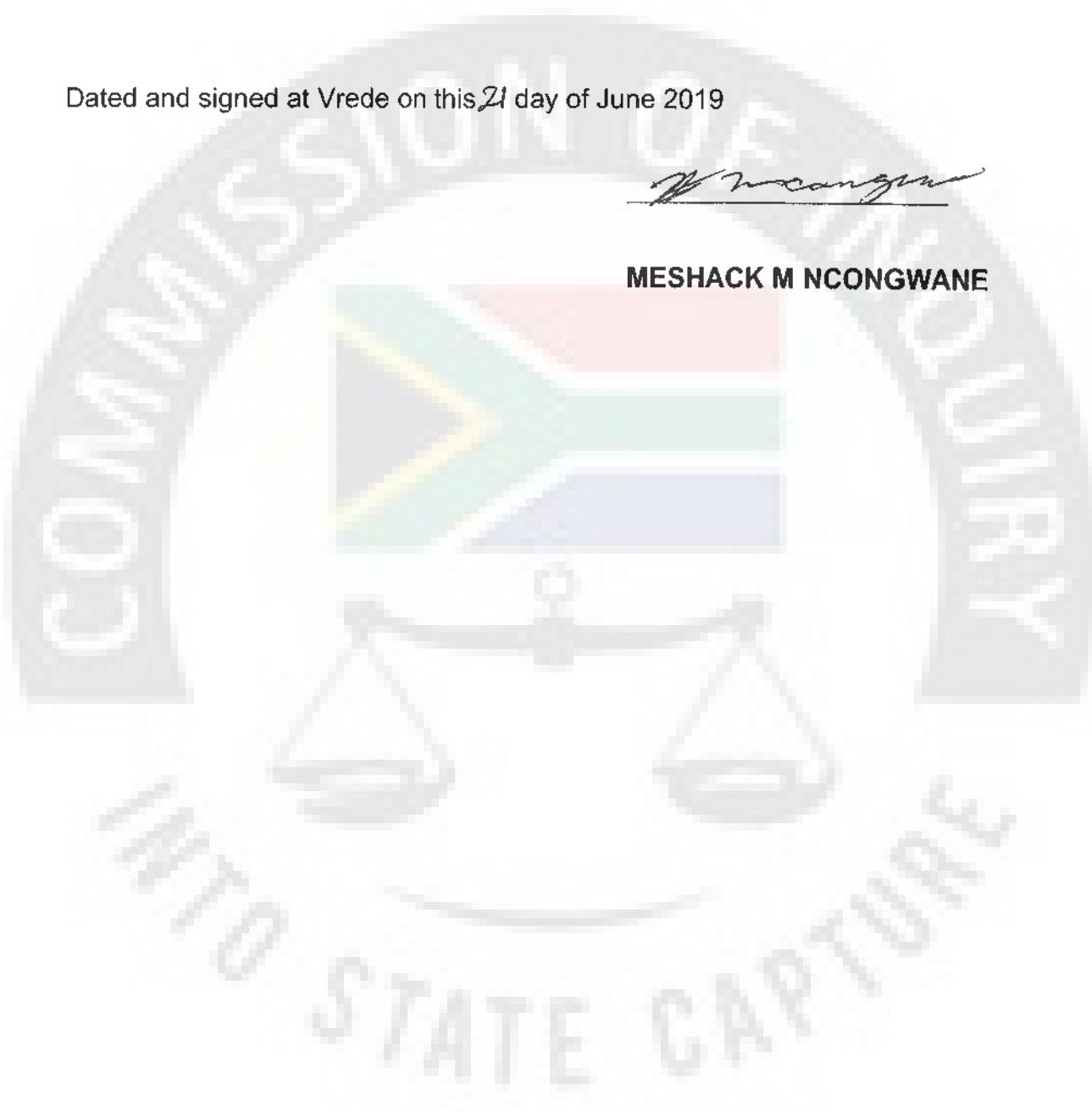
- 22 None of the community members who were registered as beneficiaries have benefited from this project. None of us ever worked at the dairy farm. No one was taken to India for training as promised. Not one received any cattle from government. Instead, we heard that a choir that was supported by Mr. Zwane travelled to India.

23 I have never understood why the municipality failed to respond positively to my request that it give us land so that we could establish our own dairy farm.

Dated and signed at Vrede on this 21 day of June 2019



**MESHACK M NCONGWANE**





# BENEFICIARY AGREEMENT

Entered into and between

**DEPARTMENT OF AGRICULTURE FREE STATE**  
(The Department)

The Department of Agriculture, Private Bag x01, Glen 9360, herein represented by the Chief  
Director: DISTRICT IMPLEMENTATION of the Department duly authorized thereto

AND

**VREDE DAIRY PROJECT 2013/14**

(Hereinafter referred to as "PROJECT BENEFICIARY")

Herein represented by :

Name of Beneficiary: JUN DAVID MAHLABA

Identity no : 7605305426081

Physical address: 179 MAGAGASANE STR

VREDE

AGREEMENT: DARD: VREDE DAIRY PROJECT

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**BENEFICIARY AGREEMENT****PARTIES**

1. The parties to this agreement are cited on the cover page to this agreement.

**RECORDAL**

2. It is recorded that -
  - 2.1. the Comprehensive Agricultural Support Programme ("CASP") and Ilima/ Letsema Programme of the Department, has as its long term goal, the enhancement of the living conditions of low income households in rural and peri-urban communities in the Free State through the use of capital funding from the CASP to establish economically viable and sustainable food and income generating activities, focusing in particular on the agricultural sector;
  - 2.2. the Department will make available Project Funds from the CASP and Ilima/Letsema to the Beneficiary for purposes of funding the Project in accordance with the terms and conditions of this agreement;
  - 2.3. an Mentor may be appointed by the Department for the benefit of the Beneficiary, to assist the Beneficiary in the preparation and implementation of the Project by performing contractually agreed tasks and duties in relation to the Project, which performance shall be monitored by the Department and the Beneficiary;
  - 2.4. this agreement is concluded on the basis that the Beneficiary shall use its best endeavours to ensure the success, sustainability and profitability of the Project through the effective, efficient and accountable use and application of the Project Assets in relation to the Project; and
  - 2.5. the Parties agree as set out hereinafter.

**DEFINITIONS AND INTERPRETATION**

- 3.1 In this agreement, unless inconsistent with or otherwise indicated by the context the following words and expressions shall have the meanings set out opposite them:

**"Aftercare Services" :**

Technical, financial and management assistance and support provided to the Beneficiary by the Department (whether by the Department itself or outsourced by the Department) in its sole discretion (taking into account the availability of funds and capacity to provide such services) after the Project Completion Date;

**"Beneficiary" :** the Party contemplated in clause 1.2;

**"BP" :** the business plan for the Project, or where such business plan does not exist at the date of signature of this agreement any future business

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- "Mentor" Mentor(s) or departmental official(s) or service provider(s) contracted by the Department to assist the Beneficiary in the preparation and implementation of the Project;
- "Members" the individual beneficiaries listed in the Constitution who are to benefit from the Project and form part of the Beneficiary whether as members, partners, shareholders, trust beneficiaries or otherwise, depending on the legal nature of the Beneficiary;
- "Parties" the Department and the Beneficiary, and any reference to "a Party" shall refer to one of the relevant Parties as required by the context;
- "PIP" the Project implementation plan for the Projects, or where such Project implementation plan does not exist at the date of signature of this agreement any future Project Implementation plan drafted for the Project and approved by the Department, and any future updates thereto or amendments thereof, containing details regarding the nature of the Project, the Project Implementation framework and timeframes, production methodology, cost estimates and allocations, asset life and replacement cycles, cash flows and marketing strategy of the proposed business, as well as such other matters which are required by the Department;
- "PMU" the Project Management Unit of the Department responsible for the management and administration of the CASP and all aspects of projects implemented in terms thereof;
- "PPAC" the Provincial Project Appraisal Committee of the Department, being the final decision-making body with authority to grant approval for the implementation of projects in terms of the CASP;
- "Production Commencement Date" the date on which the first draw downs from the Project Funds are made for working capital (as defined and set out in the PIP);
- "Project" the project identified in the BP to be implemented by the Beneficiary in accordance with the PIP with the assistance of the Department and IO and in accordance with the terms and conditions of this agreement;
- "Project Completion" the alienation of the Project Assets to the Beneficiary, entailing the transfer of title and ownership in the Project Assets to the Beneficiary and the alienation of control in the Project to the Beneficiary and, subject to the provisions of clause 10, the termination of this agreement and all responsibilities of the Department in terms of this agreement;
- "Project Completion Date" 12 (TWELVE) months from the Production Commencement Date, or such longer period as extended in terms of clause 11 or unilaterally approved by the Department in its sole discretion;

plan drafted for the Project and approved by the Department, and any future updates thereto or amendments thereof, containing details regarding the nature, description, objectives, cost estimates, cash flows and marketing strategy of the envisaged business;

**"Certificate of Completion":**

the certificate issued by the Department's auditor containing the final asset register compiled during the Completion Audit and the Completion Date, and signed by the Beneficiary and Department signifying that Project Completion has taken place;

**"Completion Audit":**

the audit conducted by the Department's auditor for the purpose of determining the nature, quantity and value of the Project Assets as at the date the audit is conducted in terms of clause 12.1;

**"Completion Date":**

the date certified by the Department's auditor in the Certificate of Completion as the date on which the Project is completed and this agreement, subject to its terms and conditions, is terminated;

**"Constitution":**

the founding document of the Beneficiary, approved by the Department, which may be a founding constitution, trust deed, articles of association, partnership agreement or association agreement, depending on the legal nature of the Beneficiary;

**"CASP":**

the Comprehensive Agricultural Support Programme;

**"Department":**

the Free State Department of Agriculture and Rural development being a provincial department of the Government of South Africa as contemplated in section 7(2) of the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994) read with Schedule 2 thereof (as amended);

**"Department's auditor":**

the person nominated by the Department to conduct an Alienation Audit;

**"Effective Date":**

date of approval of the Project by the PPAC, notwithstanding the date of signature of this agreement by the Parties;

**"Extension Services":**

the ancillary services supplied by the Department (whether by the Department itself or outsourced by the Department) to the Members of the Beneficiary on an ad-hoc basis, for the duration of this agreement, which may include but shall not be limited to technical, financial and management assistance and advice, the provision of technical, financial and management information, training and development and informal transfer of skills to the Members of the Beneficiary;

**"Financial Statements"** at a minimum shall include a Balance Sheet, Income Statement and Cash Flow statement;

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an buildings, plant, fixtures and fittings, and all improvements constructed/and or installed on the Project Site, as well as all equipment, livestock, furniture, tools, spare parts and other assets, all of the aforesaid in relation to the Project and procured by the Department for the Beneficiary with the Project Funds in terms of a competitive procurement process;

"Project Extension 11;" "an extension of the Project in accordance with the provisions of clause

"Project Funds" the total funds as indicated in the PIP and BP to be made available for the Project by the Department in terms of this agreement, as well as any further funds made available for the Project pursuant to a Project Extension, which funds may include amounts for planning and implementation, training, materials and equipment, services, transport, capital expenditure, working capital and sundries;

Project Site" the site, subject to clause 5, on which the Project is to be executed;

"Termination Date" any date of termination of this agreement in accordance with its terms earlier than the Completion Date;

"the/this agreement thereto;" this agreement between the Parties together with the Annexures

"Trial Balance" a summary statement of the debit and credit balances of all Project accounts at a specified point in time and in a format approved by the Department;

- 3.2. In this agreement, unless inconsistent with or otherwise indicated by the context -
- 3.2.1. the headings of clauses, sub-clauses and Annexure have been inserted for convenience only and shall not affect the interpretation of this agreement;
- 3.2.2. any reference to any agreement or annexure, shall be construed as including a reference to any agreement or annexure amending, varying, novating or substituting that agreement or annexure, provided all approvals required to be given pursuant to this agreement for any amendment, variation, novation or substitution of such agreement or annexure has been obtained;
- 3.2.3. any reference to "Parties" shall include the Parties' respective successors-in-title;
- 3.2.4. any reference to one gender shall include the other gender;
- 3.2.5. words in the singular number shall include the plural and *vice versa*;
- 3.2.6. references to a "person" shall include where the context so requires, an individual, firm, company, corporation, juristic person, local authority, and any trust, organisation, association or partnership, whether or not having separate legal personality;
- 3.2.7. words defined in a specific clause have the same meaning in all other clauses of this agreement;

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- 3.2.8. if any definition in this clause 3 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this agreement; and
- 3.2.9. the main body of this agreement (excluding Annexures) and the Annexures thereto should be read and interpreted together to be consistent with the intention of the Parties. In the event of any inconsistency between the main body of the agreement and the Annexures thereto, the provisions of the main body shall prevail.

#### PURPOSES AND OBJECTIVES

4. The purpose and objective of this agreement is to provide for and govern the implementation and disbursement of the Project Funds and to create a framework for the successful and sustainable development, implementation and management of the Project by utilizing the Project Funds, Project Assets and Extension Services and the services of the Mentor.

#### PROJECT CONDITIONS

- 5.1. This agreement is subject to the suspensive condition that the Beneficiary shall, on or before the Effective Date, have valid legal ownership of the Project Site, or have legal access and use thereof in the form of a valid and duly executed lease agreement or other similar legal arrangement approved by the Department, for the purposes of the execution of the Project.
- 5.2. If the condition stipulated in clause 5.1 is not fulfilled, on or before the date of last signature of this agreement, or such later date as the Department may in its sole discretion indicate to the Beneficiary in writing, this agreement shall be automatically cancelled and shall be of no force and effect, with the exclusion of any clauses which need to remain to apply to give effect to the provisions of this clause 5.2.

#### STATUS OF THE PARTIES

6. It is recorded that, notwithstanding any provision to the contrary or any provision which could be construed to the contrary, the status of the Beneficiary shall be that of an independent party, and the Beneficiary shall under no circumstances and for no purposes whatsoever be regarded as a partner or employee, as the case may be, of the Department. The Parties hereby specifically record that they are contracting on an independent basis, and the Beneficiary shall under no circumstances and for no reason whatsoever have the right to in any way bind or represent the Department.

#### THE PROJECT

- 7.1. The Department shall make available for the carrying out of the Project the Project Funds, which Project Funds shall be approved and released in accordance with and for the purposes and requirements of the PIP.

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The Project Assets shall only be utilized in relation to the Project and for no other purpose whatsoever, unless authorized in writing by the Department and in accordance with this agreement.

7.3. The Department, with appropriate assistance by the mentor where necessary, shall utilize the Project Funds to procure the necessary services, supplies and work items required in accordance with the PIP for the Project on behalf of the Beneficiary.

7.4. The Project Funds shall be capped at the amounts contained in the PIP and this agreement for any further amounts or funds from the Department, unless approved by the Department for purposes of a Project Extension.

7.5. The Beneficiary shall have no title or claim against the Department for any portion of the Project Funds not utilized in relation to the Project at the Completion Date or Termination Date.

7.6. The Project Assets shall be procured by the Department utilizing the Project Funds. At Project Completion, all title and ownership of the Project Assets, including all risk, costs and expenses associated therewith, shall pass to the Beneficiary, and the Department shall have no ownership or obligations in respect of such Project Assets.

**RIGHTS AND OBLIGATIONS OF THE BENEFICIARY**

**8.1. General obligations in relation to the Project**

The Beneficiary shall -

8.1.1. use its best endeavours in the execution of the Project and shall at all times act in good faith towards the Department and mentor and act in the best interests of its Members;

8.1.2. ensure that its Members at all times comply with and execute the Project in accordance with the provisions of its Constitution;

8.1.3. at all times ensure that the Project is carried out in compliance with all applicable legislation, law, regulations, ordinances, proclamations, consents, and applicable health, safety and environmental standards;

8.1.4. execute the Project at its own risk and shall be solely responsible to ensure the success and sustainability of the Project; and

8.1.5. be entitled to generate, charge and collect revenue from the Project for its own account, and the Department and mentor shall have no entitlement to any share, distribution or dividend from the revenue generated by the Project.

**8.2. Project Assets**

The Beneficiary shall -

8.2.1. use the Project Assets solely for the execution of the Project and for no other purpose whatsoever, unless the prior written consent of the Department for the

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alternative use of the Project Assets has been obtained;

- 8.2.2. sell, dispense, replace, encumber, cede, assign, transfer, depreciate or alienate the Project Assets deemed to be capital items reasonably in accordance with the asset life and replacement cycle contained in the PIP, provided that where the Beneficiary requires a substantial deviation from the asset life and replacement cycle for the treatment of any capital item, such deviation must be approved by the Department in writing;
- 8.2.3. use, consume, alienate, sell, transfer, dispense, destroy or replace Project Assets deemed to be working capital items in accordance with the PIP, provided that where the Beneficiary requires a substantial deviation from the PIP for any working capital item, such deviation must be approved by the Department in writing.
- 8.2.4. at its own cost and expense be responsible for the maintenance and up-keep of the Project Assets, and shall ensure that such are maintained at a reasonable level and standard;
- 8.2.5. take all reasonable steps against third parties who are in unlawful possession of Project Assets to recover such assets and compensation for damages thereto;
- 8.2.6. ensure that all Project Assets acquired are without undue delay, recorded in an asset register kept on the Project Site, which asset register shall be regularly updated by the Beneficiary and kept current to at any given time reflect the status and condition of all Project Assets;
- 8.2.7. furnish the Department within 14 (FOURTEEN) working days of the receipt of a request from the Department, with full details regarding the use and whereabouts of all Project Assets;
- 8.2.8. allow the Department to recover and remove any remaining Project Assets from the Project Site in the event of any breach of this agreement by the Beneficiary;
- 8.2.9. be liable to reimburse to the Department the monetary value of all Project Funds, or any portion thereof, disbursed in the carrying out of the Project in the event of the Beneficiary failing to substantially comply with the provisions of clause 8.2; and
- 8.2.10. allow the Department where the Department so requires, to register a bond for the benefit of the Department over any of the Project Assets which are capital items, as security for the due fulfilment of the Beneficiary of its obligations in terms of clause 8.2.2. The entitlement of the Department to such bond shall terminate in accordance with clause 10.3.

### 8.3. Access

The Beneficiary shall -

- 8.3.1. for the duration of this agreement at all reasonable times during normal working hours grant unrestricted access to the Project Site to the Department and the mentor in order to enable the Department and the mentor to perform their respective activities and ensure the compliance of the Beneficiary with the terms of this agreement; and

- 8.3.2. for the duration of this agreement at all reasonable times during normal working hours grant unrestricted access to all books, records, documents, notices, invoices, financial statements, and other records or documents required by the Department or mentor which are in the possession or under control of the Beneficiary.

#### 8.4. Finances and management

The Beneficiary shall -

- 8.4.1. implement and maintain a proper accounting or bookkeeping system in respect of the Project which complies with generally accepted accounting practice and which is kept current and managed on a daily basis;
- 8.4.2. supply the Department, for the duration of this agreement, within 14 (FOURTEEN) days after the end of each calendar month with a Trial Balance for that month together with a progress report in a format approved by the Department, briefly detailing the progress of the Project in relation to the PIP. The first Trial Balance shall be submitted in the first calendar month following the month in which the bookkeeping system was implemented;
- 8.4.3. supply the Department, for the duration of this agreement, within 3 (THREE) months after the end of each Financial Year, with the Financial Statements of the Beneficiary for that Financial Year;
- 8.4.4. pay all taxes which apply to the Beneficiary and the Project, and without limiting the generality thereof, pay any VAT (where the Beneficiary is a registered VAT vendor), regional service levies, taxes relating to employees, duties and other taxes which may apply;
- 8.4.5. implement good management practices in relation to the Project in order to ensure the effective management and monitoring of all aspects of the Project; and
- 8.4.6. ensure that the conditions of employment and treatment of employees of the Beneficiary (if any) are in accordance with current labour laws and standards.

#### 8.5. Project specific requirements

The Beneficiary shall ensure compliance in all respects with the specific obligations of the Beneficiary relating to the Project.

### RIGHTS AND OBLIGATIONS OF THE DEPARTMENT

#### 9. The Department shall -

- 9.1. provide, subject to clause 13.2.8, the Project Funds / Assets as required in terms of this agreement and may contract an mentor (if deemed necessary and upon condition of available funds for doing so) to provide the necessary support to the Beneficiary;
- 9.2. for the duration of this agreement provide Extension Services to the Beneficiary; and
- 9.3. after the Completion Date at its discretion and on request of the Beneficiary provide Aftercare Services to the Beneficiary.

**DURATION AND TERMINATION OF AGREEMENT**

- 10.1. This agreement, subject to clause 10.3, shall commence on the Effective Date and shall thereafter endure until the Completion Date or Termination Date, whichever the earlier.
- 10.2. Upon termination of this agreement for whatever reason, the Beneficiary shall furnish the Department within 1 (ONE) month after the termination, such accounting records, asset register as contemplated in clause 8.2.4 and other documentation relating to the Project as requested by the Department.
- 10.3. Clause 8.2 shall survive the termination of this agreement for a further period of 3 (THREE) years.

**PROJECT EXTENSION**

- 11.1. The Beneficiary may at any time during the existence of the agreement apply to the Department for a Project Extension, which application must be in writing and must clearly state whether the Beneficiary is requesting an extension of the Project Completion Date and/or an allocation of further Project Funds to the Project.
- 11.2. The Department after considering the application for Project Extension may –
- 11.2.1. grant an extension of the Project Completion Date; or
- 11.2.2. grant an allocation of further Project Funds to the Project; or
- 11.2.3. grant both 11.2.1 and 11.2.2; or
- 11.2.4. refuse the application for Project Extension, in which event the Department shall provide the Beneficiary with written reasons for such refusal.

**PROJECT COMPLETION**

- 12.1. Project Completion shall only occur in the event of the Project being determined by the Department to be a sustainable Project carried out to the satisfaction of the Department in accordance with this agreement, which determination shall not be unreasonably withheld. Until the Department has made such determination, the Department may extend the Project Completion Date until such time as the Department determines the Project to be sustainable.
- 12.2. Approximately 1 (ONE) month prior to the Project Completion Date approved by the Department, the Department's auditor shall conduct a Completion Audit of the Project and shall reconcile and verify the Project asset register kept by the Beneficiary (or where no such asset register exists, compile an asset register of the Project Assets on the Project Site), with the disbursement of Project Funds and the BP and PIP for the Project.
- 12.3. Discrepancies, differences, shortfalls or any other matter of concern to the Department's auditor arising from the audit contemplated in clause 12.2 must be clarified and substantiated by the Beneficiary. In the event that the Beneficiary fails to provide substantiation to the reasonable satisfaction of the Department's auditor as to the concerns raised, such failure shall be deemed a breach of this agreement.

- 12.4. In the event that the Department's auditor is satisfied with the outcome of the Completion Audit, the Department's auditor shall draft a Certificate of Completion which shall be signed by the Department and the Beneficiary.
- 12.5. A Letter of Donation will be given to the project to indicate the alienation of the procured assets after the successful verification of the procured assets. The Letter of Donation shall state the Completion Date, on which date this agreement, subject to clause 10.3 shall terminate.

### BREACH

- 13.1. Should the Beneficiary commit a breach of any provision of this agreement and fail to remedy or rectify such breach within 14 (FOURTEEN) days after receipt of a written notice from the Department, calling upon the Beneficiary to remedy such breach, the Department shall be entitled, without prejudice to any other of its rights, to forthwith cancel this agreement by written notice to the Beneficiary.
- 13.2. Without limiting the generality of clause 13.1, the Department shall be entitled to cancel this agreement without notice to the Beneficiary on the occurrence of one or more of the following events -
- 13.2.1. the termination of activities, dissolution, deregistration, or winding up of the Beneficiary;
- 13.2.2. any act of insolvency as defined in the Insolvency Act 24 of 1936, by the Beneficiary;
- 13.2.3. any wilful or negligent destruction of a material part of the Project Assets;
- 13.2.4. any failure to comply with the provisions of clause 8.2;
- 13.2.5. any removal from the Project Site of the Project Assets other than in the ordinary course of the execution of the Project, without the approval of the Department;
- 13.2.6. failure or refusal by the Beneficiary for a period of more than 14 (FOURTEEN) days to sign the Certificate of Completion as contemplated in clause 12.4;
- 13.2.7. a continued and prolonged refusal by the majority Members of the Beneficiary to participate in the Project leading to stagnation and failure of the Project; and
- 13.2.8. the unavailability of the Project Funds, for whatever reason, for disbursement by the Department in terms of this agreement.
- 13.3. In the event of cancellation by the Department of this agreement in terms of this clause 13, the Department, notwithstanding any other rights which it may have, shall be entitled to recover any remaining Project Assets from the Beneficiary and/or the monetary value of the Project Funds, or any portion thereof, utilized in relation to the Project together with interest thereon from the Beneficiary.

### INDEMNITY

14. The Beneficiary hereby indemnifies and shall keep the Department indemnified at all times against any claim in respect of the death and/or personal injury of any person,

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including employees of the Department and the public, and/or any claims for loss or damage to the property or assets of any person, including employees of the Department and the public, arising in consequence of any act by any employee, member, agent or invitee of the Beneficiary in the course of carrying out the Project, but excluding any claims for loss or damage arising from the gross negligence of the Department or its employees.

## DISPUTE RESOLUTION

- 15.1. The Dispute Resolution Procedure set out in this clause 15 (the "Dispute Resolution Procedure") shall apply to any dispute, claim or difference arising out of or relating to this agreement.
- 15.2. All disputes shall first be referred to a mediation committee (the "Mediation Committee") consisting of the Head of the PMU and a representative of the Department and the Chairperson of the Beneficiary and a further representative nominated by the Beneficiary, for resolution. An agreement reached by the Mediation Committee shall be reduced to writing and shall be binding on the Parties.
- 15.3. If the Parties have been unable to resolve any dispute within 21 (TWENTY-ONE) working days of referral to the Mediation Committee, either Party may refer the dispute for arbitration.
- 15.4. The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1965 (Act No 42 of 1965, as amended from time to time), provided that –
- 15.4.1. a single arbitrator shall be appointed;
- 15.4.2. the arbitrator shall be a practicing counsel or attorney of not less than 10 (TEN) years standing agreed upon by the Parties within 10 (TEN) days after the date on which the arbitration is called for.
- 15.5. If the Parties fail to reach agreement within 10 (TEN) days after arbitration has been called for on the arbitrator to be appointed, such arbitrator shall be appointed by the President for the time-being of the Law Society of the Free State.
- 15.6. The arbitration proceedings shall take place in Bloemfontein at a venue and time to be determined by the arbitrator.
- 15.7. The arbitration proceedings shall be held informally and in a summary manner, and all procedural requirements and formalities shall be determined by the arbitrator. In determining such formalities and procedure, the arbitrator does not need to observe the normal strict rules of evidence or usual formalities of procedure.
- 15.8. The decision of the arbitrator shall be final and binding.
- 15.9. The cost of the arbitration proceedings shall be borne by the Parties as decided by the arbitrator.
- 15.10. This arbitration clause shall not prevent the Parties from acquiring urgent relief from a court of law by means of motion proceedings.

**INSURANCE**

- 16.1. The Beneficiary must ensure that for the duration of this agreement adequate insurance at the replacement value of the relevant assets is procured and maintained in accordance with the relevant insurance industry standards for Project Assets which are capital items, unless the Department in writing waives the obligation to insure specific assets.
- 16.2. The Beneficiary hereby cedes and undertakes to cede all amounts receivable in terms of the insurance referred to in clause 16.1 as security against the damage or destruction of the Project Assets contemplated in clause 16.1.
- 16.3. The Beneficiary shall do all necessary, and sign all documentation, including to notify the insurers of the insurance contemplated in clause 16.1, of the cession thereof as contemplated in clause 16.2, to give effect thereto.
- 16.4. In the event of the damage or destruction of the Project Assets contemplated in clause 16.1, the Beneficiary shall utilize the proceeds of the insurance to restore, repair or replace such damaged or destroyed Project Assets.
- 16.5. Where the Beneficiary fails to utilize the proceeds of the insurance as contemplated in clause 16.4, the Department shall be entitled to demand immediate payment of all such proceeds and to, at its discretion, utilize the proceeds to either restore, repair or replace the damaged or destroyed Project Assets, or to return such proceeds back to the CASP and to terminate the agreement.

**ENTIRE AGREEMENT**

17. This agreement and the Annexures therewith, contain all the terms and conditions of the agreement between the Parties concerning the subject matter thereof and no terms, conditions, warranties or representations whatever apart from those contained in this agreement have been made or agreed to by the Parties.

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**INDULGENCE**

18. No relaxation or indulgence which any Party ("the first party") may grant to the other Party ("the second party") in regard to any of the second party's obligations in terms hereof shall constitute a waiver of or prejudice any of the first party's rights in terms hereof.

**NOTICES AND DOMICILIUM**

- 19.1. All notices given by either Party to the other in terms of this agreement shall be given in writing by pre-paid registered post or telefax, or delivered by hand to the addresses of the Parties indicated on the coverpage to this agreement or such other address as the one Party may inform the other in writing, which address will not be a *post restante*, and shall be deemed to have taken effect 14 (FOURTEEN) days after posting of the required written notice.
- 19.2. A notice -
- 19.2.1. given by registered post, will be deemed to have been received 5 (FIVE) days after the date of posting thereof;
- 19.2.2. sent by telefax, shall be deemed to have been received on the first working day following the date of transmission of such notice;
- 19.2.3. delivered by hand shall be deemed to have been received on the date of delivery thereof.
- 19.3. Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the Parties from another, including by way of facsimile transmission, shall be adequate written notice or communication to such party.
- 19.4. The Parties choose as their *domicilium citandi et executandi* for all purposes under this agreement at the addresses referred to in clause 19.1.

**NON-VARIATION**

20. No variation or consensual termination of this agreement or any part thereof shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

**COSTS**

21. The Department shall bear all costs relating to the drafting and administration of this agreement.

Z.L.M.

M.T.B.

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SIGNED AT GLEN ON .....

Allye  
WITNESS

AGRICULTURE & Rural Dev  
THE DEPARTMENT

[Signature]  
WITNESS

[Signature]  
Dr. T.J. Masitong

Who by his/her signature warrants that he/she is duly authorized thereto

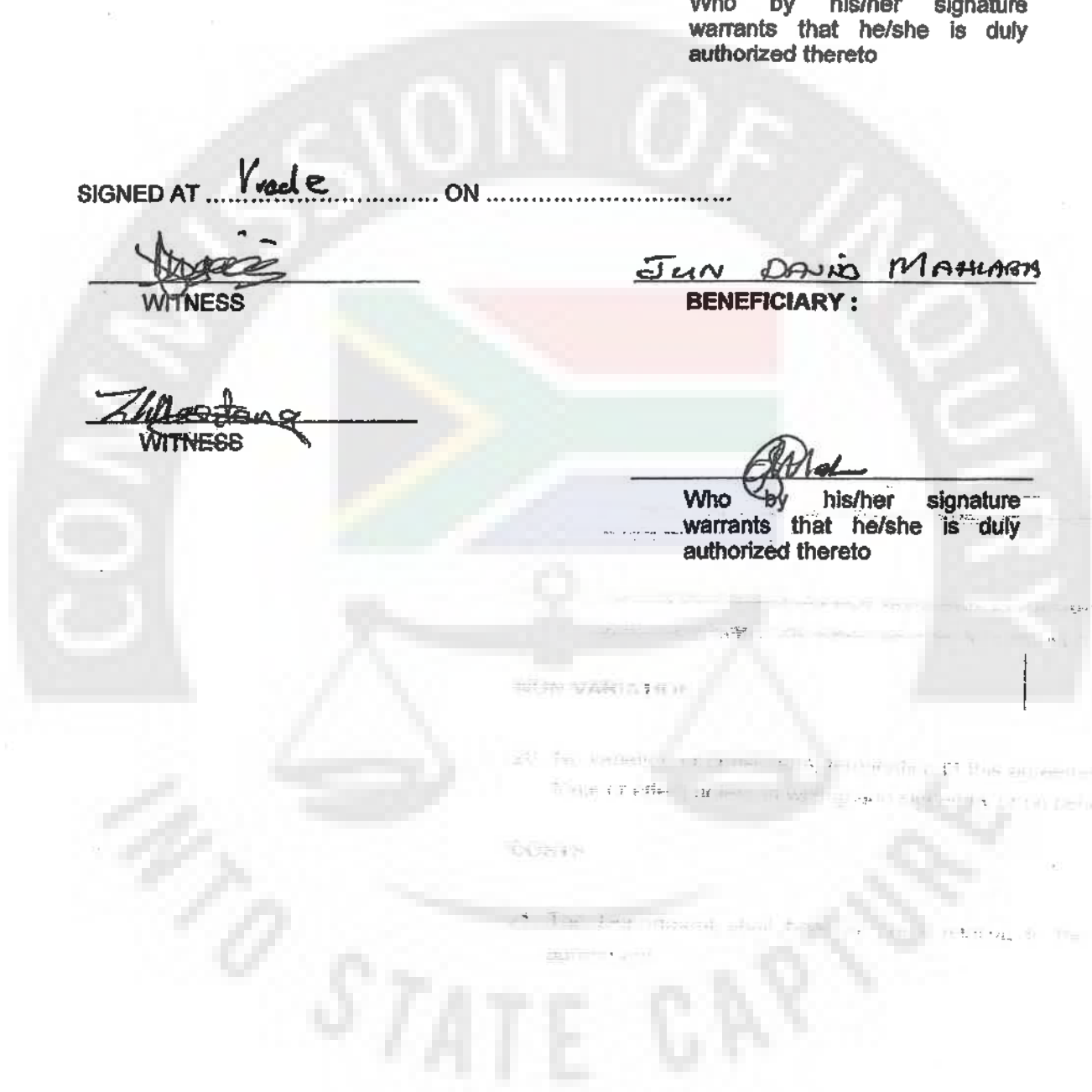
SIGNED AT Vrede ON .....

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WITNESS

JUN DAVID MAHLANGA  
BENEFICIARY:

[Signature]  
WITNESS

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Who by his/her signature warrants that he/she is duly authorized thereto



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