



MEMORANDUM OF UNDERSTANDING

BETWEEN

Solidaridad Network Foundation Limited

Registration number:131541

32a, Leopards Hill Road, Kabulonga, Cnr Latitude Hotel, Lusaka, Zambia

www.solidaridadnetwork.org/regions/southern-africa

(hereafter referred to as Solidaridad)

Duly represented by **Mandla Nkomo** (Managing Director)

AND

Consumer Unity & Trust Society International

Plot No 406 Kudu Road, Kabulonga, Lusaka

(hereafter referred to as CUTS)

Duly represented by **Chenai Mukumba** (Director)

THIS MoU is made and is effective from 1st of May 2020, notwithstanding the signature date of this agreement.

1. TESTATUM CLAUSE

WHEREAS **SOLIDARIDAD NETWORK SA TRUST** an international civil society organisation Registration No: 4110261015 situated at 25 Sturdee Avenue, Rosebank Terrace North, Rosebank, Johannesburg, 2196 with regional registered offices in Zambia; Solidaridad Network Foundation Limited, Registration number: 131541, situated at 32a, Leopards Hill Road, Kabulonga, Cnr Latitude Hotel, Lusaka, Zambia

AND

WHEREAS **CUTS INTERNATIONAL, LUSAKA** an international organisation Registration No: ORS/102/35/2294 situated at Plot No 406 Kudu Road, Kabulonga, Lusaka of the other part jointly referred to as "**Parties**" and in singular as "**Party**".

CONSIDERING that the aim of SOLIDARIDAD as an international market and solution-oriented civil society organization and front runner in sustainable economic development, is to achieve sustainable growth in agriculture value chains for improved social and economic welfare of the farmers and agribusiness enterprises by adoption of innovative best practices, robust infrastructures and markets.

CONSIDERING that the aim of CUTS is a centre for action (policy) research, advocacy and networking on issues of trade and development, competition policy, investment regulation and consumer protection. Its role is to promote pro-poor policy and practical changes in favour of consumers.

2. BACKGROUND

2.1 Solidaridad is an international civil society organisation with more than 50 years of global experience in facilitating the development of socially responsible, ecologically sound, sustainable, accessible and profitable supply chains.

2.2 CUTS has already been operating since 2000 with the mission to function as a resource, coordination, and networking centre, promoting regional integration through South-South cooperation on trade and development as well as engaging in long-term capacity building of diverse stakeholders to address developmental challenges in Zambia and in the Southern Africa region.

3. PURPOSE AND SCOPE

The purpose is to collaborate and partner in various ways, including but not limited to advisory services, impact programme implementation, TA capital raising, and pipeline sourcing activities, in support of potential and existing agriculture and agribusiness portfolio investments. The scope of this **MoU** is also to establish the working relationship between Solidaridad and CUTS in which both **Parties** become collaborative implementing partners.

4. RESPONSIBILITIES AND OBLIGATIONS

4.1 Area of Cooperation

Cooperation between the **Parties** may relate, but is not restricted to the following areas:

- a) Participate in a multi-stakeholder platform that can collaborate in partnerships to ensure a food safety standard for fruit and vegetable growers and a mechanism for training and assessments are developed
- b) Ensure the interest of consumers are represented in the quality assessment infrastructure including the planned Zambian localgap focussing on safety and phytosanitary regulations
- c) Support research activities to assess the sector's level of compliance or non-compliance with standard food safety requirements as well as supporting research that will address and influence challenges and gaps in the sector's quality frameworks
- d) Assess what is needed to have a vibrant local business environment and local market.
- e) Establish civil society cooperation in the areas of trade, economic policies and the environment in Southern Africa and where necessary, continentally
- f) Facilitate and collaborate in engagements with high level stakeholders such as COMESA, SADC and AU where necessary
- g) Support the formulation of a local standard on Good Agricultural Practices, (GAP), for Zambia and contribute to the localisation of such a standard.
- h) Support the popularisation and familiarization of the local GAP standard and support information dissemination activities.
- i) Facilitate support engagements with NGOs, consumer organisations, the government and regulatory agencies

4.2 Scope of Cooperation

The **Parties** agree to work together to implement the development of a local GAP for Zambia applicable to the vegetable and fruit sector. Currently Solidaridad is working with farmers in Chongwe, Katete and Mazabuka, however we envision this to be a national programme to ensure consumers have access to healthy and safe fresh produce. Hence, the project is targeting a national adoption of mentioned local GAP for the vegetable and fruit sector. Through the scope of corporation, the **Parties** will:

- a) Share staff and resources on project activities through prior negotiations.
- b) Share and produce relevant research findings that will support the development of the Zambian localgap for the vegetable and fruit sector.
- c) Influence national and local policies to ensure an adequate food policy that is transparent, responsible and sustainable.
- d) Leverage consumer and producer voices in food safety standards.
- e) Leverage relevant stakeholders and relationships by making introductions, increasing collaboration, and unlocking new opportunities for an enabling environment for food to be produced safely, and ensure consumer health.
- f) Leverage the inclusion of civil society for project activities.
- g) Collaborate and plan together for implementation.
- h) Assist with the increase of capacity of local producers/farmers to access and supply local and regional markets through necessary training programs.
- i) Support additional fundraising efforts.

5. INTELLECTUAL PROPERTY (IP)

5.1 Each **Party** to this **MoU** will own the intellectual property (IP) conceived or first reduced to practice solely by its employees or agents in furtherance of projects or activities contemplated by this **MoU**.

5.2 IP conceived or first reduced to practice through the jointly funded activities will be jointly owned or governed by the provisions of the definitive agreements to be entered into for the pursuance of specific projects.

5.3 Agreements signed by each **Party** with a third **Party** such as in the within the context of protecting the intellectual property rights and copyrights of these third **Parties** must be adhered to.

5.4 Notwithstanding the items outlined in this **MoU**, the **Parties** may in addition, sign a Non-Disclosure Agreement (NDA) for specific activities.

5. 6. FUNDING AND COSTS

This **MoU** does not include the reimbursement or allocation of funds between the **Parties**. Any reimbursement or allocation of funds shall be set out in a separate Contract. Each **Party** shall continue to pay its own costs and expenses incurred in connection with the conclusion and/or implementation of this **MoU**.

6.

7. 7. COMMUNICATION AND PUBLIC RELATIONS

a. External communication on the partnership shall be subject to prior and mutual written consent, (Email) or similar.

8. 8. ASSESSMENT AND EVALUATION

a. Both **Parties** will inform each other in a timely fashion of all reasonably foreseeable issues and/or delays insofar as related to their respective roles as set out in this **MoU**.

b. Each **Party** will be responsible for conducting its own assessment of the results, or intended results, of the **MoU** on their own views and/or expectations.

c. The **Parties** will assess activities, performance and satisfaction with the arrangement as set out in this **MoU**.

9. 9. CONFIDENTIALITY

a. Each **Party** undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, funders, contributors or suppliers of the other **Party**, except as permitted by **clause 10 below**.

b. 10. DISCLOSURE

c. Each **Party** may disclose the other **Party's** confidential information to:

d. (a) its employees, officers, representatives or advisers ("**Representatives**") who need to know such information for the purposes of carrying out the **party's** obligations under this **MoU**, provided that each **party** ensures that, its Representatives to whom it discloses the other **party's** confidential information comply with this clause; and

e. (b) as may be required by law, court order or any governmental or regulatory authority. Neither **Party** shall use any other **Party's** confidential information for any purpose other than to perform its obligations under this contract.

f. (c) at the request of a **Party** to this **MoU**, the other **Party** shall:

- Destroy or return to the disclosing **Party** all documents and materials (and any copies) containing, reflecting, incorporating, or based on the disclosing **Party's** confidential information, and;

- Erase all the disclosing **Party's** confidential information from its computer systems or which is stored in electronic form (to the extent possible);
- Subject to the provisions of this **MoU**, either **Party** may publicise the existence of this **MoU** and inform interested third **Parties** of its purposes, provided that neither **Party** shall disclose, advertise, or publish the terms and conditions of this **MoU** or any other confidential information as set out in clause 10 of this **MoU**, without the prior written consent of the other **Party**. **Parties** shall give each other a reasonable period of time to review any communication materials containing references to this agreement and the Purpose; and
- The obligations set out in this clause will survive any termination or expiration of this **MoU** and shall remain in effect for a period of 2 years from the termination of this **MoU**.

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11. 11. TERMINATION

a. This **MoU** comes into force as per the Effective Date and shall expire upon the following events, as the case may be:

- Unanimous decision by both **Parties** not to enter into the **MoU**;
- Signature of the **MoU**; or,
- In case it becomes apparent to either **Party** that present knowledge and/or assumptions are incorrect or incomplete or such **Party** is of the opinion that there is no solid economical basis to continue with the envisaged Project.
- In such a case, this **MoU** terminates upon the written notice to that effect sent by one **Party** to the other.

b.

c. This **MoU** forms the complete agreement between the **Parties** until the Contract has been entered into (if any).

d.

12. 12. LEGAL STATUS

a. In any event, in accordance with the legal status of this **MoU**, either **party** reserves the right to withdraw from the negotiations described in this **MoU** or not to pursue further the negotiation or execution of the **MoU**. Should this be the case, the **parties** expressly acknowledge that the other **party** shall not be entitled to any type of compensation or indemnification, expressly waiving any right they may have in that regard.

b. No **party** shall have any liability whatsoever towards the other **party** for any damages suffered by the other **party** in connection with this **MoU**.

c. This **MoU** is not intended, nor shall it create, express or imply, any legal relationship between the **parties** that may be construed as an agency, legal partnership, or otherwise and no **party** shall be authorized to bind the other **party** or to act in its name.

13. 13. DISPUTE RESOLUTION

a. In the event a **party** has a dispute or claim arising out of or relating to this contract ("**Dispute**"), such **party** shall first request a meeting between the **parties** to attempt to resolve the Dispute. If the **parties** are unable to resolve the Dispute within 10 days after the first meeting, then either **party** may request that the Dispute be escalated to senior management within each **party**. If the senior management of the **parties** cannot resolve the Dispute within 10 days after their first meeting, then either **party** may submit the Dispute to mediation as set out in clause 10.

b. For the purposes of resolution of each and any dispute that has arisen or might arise further to the present **MoU**, or any further agreements resulting from the same, the **parties** shall - or the most diligent **party** shall – file a request for mediation.

14. 14. GOVERNING LAW AND JURISDICTION

a. This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of South Africa and Zambia.

b. Notwithstanding the provisions of clause 9; at the sole option of Solidaridad, any dispute or claim arising out of or in connection with this contract or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be finally settled in accordance with the Arbitration Rules of Zambia. The arbitral procedure shall be conducted in the English language.

c.

15. FORCE MAJEURE

Neither of the **Parties** will be liable for the failure to perform any of either **Party's** obligations under this **MoU** insofar as it proves that:

15.1 The failure was due to an impediment beyond its control and which could not reasonably have been foreseen and avoided at the effective date and includes inter alia the following:

- 15.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage, etc;
- 15.1.2 natural disasters, e.g. violent storms, cyclones, earthquakes, tidal waves, floods, lightning;
- 15.1.3 explosions, fires, destruction of machines, factories and any kind of installation;
- 15.1.4 boycotts, strikes and lockouts, go slows, picketing and work stoppages rendering performance impossible;
- 15.1.5 Acts of authority, whether lawful or unlawful, apart from acts from which the **Party** seeking relief has assumed the risk by virtue of any other provision of this **MoU**.

15.2 Any period, within which a **Party**, pursuant to this **MoU** is expected to complete any action or task will be extended for a period equal to the time during which such **Party** was unable to perform such action as a result of force majeure.

- 15.2.1 If force majeure arises, the **Party** affected shall within 2 weeks notify the other **Party** following the occurrence of such event, providing evidence of the nature and cause of such event, and will similarly give written notice of the restoration of normal conditions as soon as possible.
- 15.2.2. For the purposes of this clause, "impediment" does not include lack of authorisation of licenses, permits or approvals necessary and to be issued by the appropriate public authority.

16. BREACH

Either **Party** may cancel this **MoU** by giving three (3) months' notice of its intention, in writing, to the other **Party**.

17. NATURE OF MoU

The **Parties** recognise the non-binding nature of this **MoU**.

18. CONFORMITY

All actions to be jointly conducted will be implemented in accordance with the laws and regulations applicable in the republic of Zambia.

The provisions of this **MoU** will be without prejudice to any other treaties or agreements to which both sides are **parties**.

19. LANGUAGE

All notices, certificates, correspondence or other communications under or in connection with this **MoU** will be in English.

20. NON-WAIVER

A delay or failure by either **Party** to exercise or enforce any right under this **MoU** will not constitute a waiver of that or any other right.

21. SURVIVAL

The termination or expiration of this **MoU** for any reasons will not release either **Party** from any liabilities or obligations set forth in the **MoU** which remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

22. ASSIGNMENT

Neither **Party** will assign the whole or any part of the **MoU** or any benefit or interest in or under the **MoU** unless by express written consent of the **Parties**.

23. SEVERABILITY

If any provision or part of a provision of this **MoU** will be or will become unenforceable, void or invalid (as the case may be) such provision or part thereof shall not affect and will be deemed to be severed from the remainder of this **MoU** to the intent that the remainder of the affected provision and this **MoU** will be or will continue to be fully enforceable and valid.

24. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in the **MoU** will be construed as creating a joint venture, partnership, agency or employment relationship between the **Parties**.

15.

16. 25. MISCELLANEOUS

a. This document contains the entire agreement between the **Parties** with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. Any failure to enforce any provision of this **MoU** shall not constitute a waiver thereof or of any other provision hereof. Additionally, if any provision of this **MoU** shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this **MoU**. This **MoU** may not be amended, nor any obligation waived, except by a written agreement signed by both **Parties** hereto.

This memorandum of understanding has been entered into on the date stated at the beginning of May 2020.

17. DOMICILIUM AND NOTICES

All notices and communications required or permitted hereunder will be in writing and, unless otherwise specified herein, will be personally served, or by means evidenced by a delivery receipt and will be effective upon receipt to the following addresses:

On behalf of **Solidaridad Network Foundation Limited**

Name

Witness:

DocuSigned by:
Mandla Nkomo
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Place and date:

Place and date:

5/14/2020

On behalf of **CUTS International, Lusaka**

Name

Witness:

Chenai Mukumba 

Ishmael Zulu 

Place and date:

Place and date:

Lusaka, Zambia 08/05/2020

Lusaka, Zambia 08/05/2020