** **

**Productive Alliance Contract (Agreement)**

**Between**

**Producer Organisation**

**And**

**Off-Taker**

**PREAMBLE**

The Competition and Fair Trading Commission (CFTC) will oversee all forms of contract farming in Malawi. The CFTC will regulate the types of conduct that are within its mandate, that is, regulating markets for uncompetitive business practices and unfair trading practices within the contexts of contract farming.

In this regard, CFTC will play an advisory role and mediate between the contracting parties with a view to promote mutual accountability. Therefore the contracts entered between producer organisations and off-takers will be required to be cleared with the CFTC in order to facilitate compilation of fair contracts between Parties.

1. **THE PARTIES**
   1. This Contract (Agreement) is made at [insert place] on [insert date] between [insert name and address of Buyer, organisation or business registration number, if available], the “Buyer,” and [insert name/s and address of Producer or producer organisation, identity or organisation number, if available], the “Producer.”
   2. The Parties affirm their intention to faithfully execute their respective obligations under this Agreement in accordance with the principles of good faith, reasonableness, efficacy, loyalty and fair dealing, and will at all times endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively, and providing necessary information in a timely and transparent manner.
   3. The Off-Taker agrees to buy [insert commodity] produced by the Producer Organisation, and the Producer agrees to produce and sell to the Buyer [insert commodity], “the Goods”, in accordance with the articles set out below.
2. **PRODUCTION PRODUCTION SITE**
   1. *Optional: Parties may specify their production sites. (This Contract (Agreement) relates to Goods produced on [insert size of land area in hectares], located at [nearest town or village/other applicable way to specify],)*
3. **INSPECTION OF PRODUCTION PROCESSES**
   1. *Optional:* Subject to [insert period of time] advanced notice, the Off-Taker, its representative/s [*Optional: or the Independent Entity*] may visit the Production Site/processes for the purpose of providing advice, supervising any production process and/or verifying the Producer’s compliance with the prescribed production methods, provided that the visit shall be carried out during normal business hours and shall not unduly burden or inconvenience the Producer Organisation.
   2. Inspection visits shall be carried out [insert frequency, e.g. weekly, monthly]/[in accordance with the inspection schedule at Annex [X]].
4. **THETHE PRODUCT QUANTITY AND QUALITY**
   1. The Producer Organisation agrees to supply to the Off-Taker [insert unit of measurement, quantities, range, or percentage] of the Goods produced.
   2. The Producer Organisation may sell Goods produced in excess of the amount stipulated in Article 4.1 to a third party.
   3. The Producer Organisation agrees to supply Goods which comply with the [quality standards as defined in Annex [W]]/[insert relevant quality assurance scheme]
5. **INPUTS *(OPTIONAL)***
   1. ***Producer Organisation’s Inputs***
      1. The Producer Organisation shall provide [insert Producer Inputs, including e.g. land, physical facilities, water, energy and labour]
      2. *[Optional:* The Producer Organisation shall purchase the following Inputs, as designated by the Off-Taker from time to time: [insert Inputs to be purchased by the Producer Organisation, including specific brand names and vendors etc.]]
   2. ***Off-Taker’s Inputs***
      1. The Off-Taker shall provide the [insert Off-Taker Inputs, including e.g. seeds, fertilizers, training].
      2. The Off-Taker’s Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws];
      3. The Producer Organisation shall use the Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement.
      4. Upon receipt of the Off-Taker’s Inputs, the Producer Organisation shall verify the Inputs and notify the Off-Taker in writing of any apparent defects.
      5. The Producer Organisation shall be responsible for any loss or damage of the Off-Taker’s Inputs from the time of delivery and acceptance until their inclusion in the production process.
      6. The Off-Taker shall be responsible for any loss or damage to the Goods, the Production Site, the Producer Organisation’s property and/or personnel caused by any Inputs that are not of reasonable quality, fit for their intended purpose, and/or free of defects, including latent defects [and compliant with any specific quality standards set out in Annex [Y] of this Contract (Agreement)]*.*
   3. ***Payment for Inputs***
      1. The Producer Organisation shall pay for the Inputs provided by the Off-Taker according to the Input cost provided for in the pricing scheme in Annex [Y]. The Input cost in Annex [Y] shall be updated [insert a time period]/[upon agreement of the Parties]/[based on prevailing wholesale market price]/[based on past practices between the Parties]/[based on appropriate market prices]. The Off-Taker shall deliver the Inputs at the time and place specified in Annex [Y].
      2. The cost of the inputs shall be deducted from the revenues realized by the Producer Orgamisation.

*[Option1: Shared payment]*

* + 1. *The total cost of all Inputs, including delivery, training, and technical assistance, shall be provided for in Annex [Y]. The Buyer and Producer shall share the cost of the Inputs, as follows: [insert details of share of costs]. The Buyer shall supply the Inputs at the time and place specified in Annex [Y].*

*Option 2*

* + 1. *The Producer Organisation’s share of the costs shall be deducted from the amount payable by the Off-Taker for the Goods supplied.*

1. **SUPPLY AND ACCEPTANCE** 
   1. **Delivery**
      1. Parties agree that supply/delivery transactions may be done on ex-works /Free on Board/Cost-Freight-Insurance basis hence Ex-works/FOB/CIF provisions may apply depending on the nature of the Goods.
      2. *Optional:* [The Producer Organisation may supply the Goods to the delivery point at the Off-Taker’s facility at [insert location of delivery point]]/[The Off-Taker shall collect the Goods from the delivery point at [location of delivery point(s)]], according to the delivery schedule, and in accordance with the technical requirements for delivery, set out in in Annex [Z].
      3. The costs of transportation of the Goods to the delivery point shall be paid by the [Off-Taker]/[Producer Ordanisation]. The Off-Taker shall bear all costs associated with the Goods after delivery to the delivery point.
      4. The [Off-Taker]/[Producer Organisation] shall be responsible for loading the Goods. The [Off-Taker]/[Producer Organisation] shall be responsible for unloading the Goods.
      5. The Goods shall be packaged in [insert commodity-specific packaging requirements] by the Producer Organisation before delivery.
   2. **Inspection of Goods**
      1. The Off-Taker shall weigh, sort, and inspect the Goods at its own cost, no more than [insert number of hours/days] after delivery at the delivery point.
      2. Where the Off-Taker fails to inspect the Goods within [insert number of hours/days] of delivery, all risks and costs of spoilage of the Goods occurring after delivery shall be borne by the Off-Taker.
      3. The Producer Organisation [*optional: or the Independent Entity*] may be present during the inspection of the Goods. The Off-Taker [*optional: or the Independent Entity*] shall issue a written document evidencing the specification of the Goods as inspected. Where the Producer Organisation objects to the specification of the Goods as determined by the Off-Taker, the Parties shall seek a resolution in accordance with Article 11 below (Dispute Resolution).
      4. The costs associated with the inspection shall be covered by the Off-Taker/Producer Organisation.
   3. **Acceptance of Goods after Inspection**
      1. The Parties’ agreement on the quantity and quality of the received Goods constitutes acceptance of the Goods.
      2. The Off-Taker shall provide the Producer Organisation with a written receipt specifying the time, date, quantity and quality of Goods. The written receipt shall be duly signed by the Producer Organisation [*optional: and Off-Taker*].
2. **PRICING MECHANISM**
   1. **Market Pricing**
      1. ***[Option 1a: Fixed price based on reference price]***

The Off-Taker agrees to pay the Producer Organisation [insert Kx/kilo/metre/litre/etc.] of Goods delivered, based on the [insert reference price, for example, Fairtrade Minimum Prices and Premiums/Cost plus formula

* + 1. ***[Option 1b: Fixed price based on grading schedule]***

The Off-Taker agrees to pay the Producer Organisation for Goods delivered according to the following grading schedule:

|  |  |
| --- | --- |
| GRADE | PRICE |
| A | X |
| B | Y |
| C | Z |

* + 1. ***[Option 1 c : Negotiated Price]***

The Off-Taker agrees to pay the Producer Organisation for Goods delivered as long as the Goods meet agreed quality

* 1. **Time and Method of Payment**
     1. The Buyer shall make the payment within [insert period of time] from acceptance of the Goods. Payment shall be made [via bank transfer to the Producer’s nominated account]/[in cash]/[in specify currency]. Upon receipt of the full purchase amount, the Producer shall provide the Buyer with a written receipt of payment(s) made specifying the amount, time and delivery date of accepted Goods.
     2. Parties may agree on various payment methods and timeframes

1. **FORCE MAJURE**
   1. For the purposes of this Agreement, Force Majeure Event means any event that arises after the contract has been signed, is unpredictable, inevitable, beyond the Parties’ reasonable control and that objectively prevents one or both of them from performing their obligations, including, but not limited to, wars, insurrections, civil disturbances, interruption of transportation or communication services, major change to agricultural law or policy in the country of production, blockades, embargoes, strikes and other labour conflicts, riots, natural causes and epidemics, earthquakes, storms, droughts, fires, floods, or other exceptionally adverse weather conditions, explosions, lightning, or acts of terrorism.
   2. As soon as reasonably practicable after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.
   3. The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
   4. Provided it has complied with Articles 8.2 and 8.3 above, if a Party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
   5. Where it is feasible in all the circumstances, those obligations may be suspended by the agreement of the Parties during the continuance of such Force Majeure Event, and no damages or penalties for delay in performance shall be due.
   6. If an obligation is suspended by reason of Force Majeure for more than [insert number of days] from the Affected Party giving notice of the Force Majeure Event, or if suspension is not feasible in all the circumstances, the other Party may terminate the contract and all outstanding payments relating to the Inputs supplied for the production shall [fall due]/[be forgiven], and the Parties shall enter into good faith negotiations to enter into a new Agreement for the supply of the Goods.
2. **REMEDIES**
   1. **Apllication of Remedies**
      1. The Parties shall cooperate in the application of the remedies provided for in this Article, and shall apply those remedies in a manner that is commensurate to the breach in question, with a view to preserving, as much as possible, the Parties’ ongoing relationship and achieving the purpose of this Agreement as outlined in Article 1.3 above.
      2. Unless a Force Majeure Event takes place, a party failing to comply with any obligation in this Agreement (the Breaching Party) is in breach of this Agreement.
   2. **Mitigation and Right to Cure Breach**
      1. Where a party (the Aggrieved Party) becomes aware that the Breaching Party is or will be in breach of its obligations, it shall immediately notify the Breaching Party, and shall take all reasonable measures to minimize and mitigate the effects of the breach whenever possible. Any reasonable expenses or difference in value incurred by the Aggrieved Party should be compensated by the Breaching Party.
      2. Where the Breaching Party has been notified or otherwise becomes aware that it is or will be in breach of its obligations, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach within [insert number of days], including by;
3. replacing any non-conforming Goods with Goods which conform with the requirements of this Agreement;
4. replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;
5. modifying or correcting any non-conforming Production Method or other process required by this Agreement, including in accordance with any specific instructions issued by the Aggrieved Party or any relevant certification body; and/or (include quantity/quality/and any other parameters agreed before)
6. completing any partial delivery, or taking delivery as the case may be, within the time frame agreed between the Parties.
   1. **Right to Take Corrective Action**

Where the Breaching Party does not or cannot cure the breach in accordance with Article 9.2 above, the Aggrieved Party may take corrective action in accordance with the articles below.

* + 1. **Non-conforming Goods or Inputs** 
       1. If the Breaching Party does not or cannot cure the breach, and the breach does not arise from the Aggrieved Party’s failure to comply with its obligations in this Agreement, the Parties may, by agreement, adjust the purchase price to reflect the fair value of the Goods or Inputs supplied.
       2. If the Parties cannot agree on an adjusted price for the non-conforming Goods or Inputs, the Aggrieved Party may reject them and withhold payment.
       3. Where the non-conforming Goods or Inputs are hazardous, dangerous or unsafe, the Aggrieved Party may require the Breaching Party to safely dispose of those Goods or Inputs at the expense of the Breaching Party.
    2. **Failure to Supply Goods or Inputs**

Where the Breaching Party fails to supply the Aggrieved Party with the agreed Goods or Inputs, the Aggrieved Party may obtain replacement Goods or Inputs of a similar description and quality in the cheapest (reasonable) market available, and may claim from the Breaching Party the difference between the price under this Agreement and the price that the Aggrieved Party paid for the replacement Goods or Inputs.

* + 1. **Failure to take Delivery**

Where the Buyer fails to take delivery of conforming Goods within designated period of time from the delivery time in Annex [Z], the Producer may sell the Goods to a third party and may claim from the Buyer the difference between the price under this Agreement and the price that the Producer received for the Goods.

* 1. **Termination upon Failure to Cure or Correct**

Where the Breaching Party has committed a breach of this Agreement that is not a Fundamental Breach, and an attempt to cure by the Breaching Party, or corrective action by the Aggrieved Party, has failed to cure, prevent, or correct the breach, the Aggrieved Party may, with 14 days’ notice in writing to the Breaching Party, terminate this Agreement.

* 1. **Termination upon Fundamental Breach**

Where the Breaching Party commits a Fundamental Breach of this Agreement, the Aggrieved Party may terminate the Agreement with 14 days’ notice in writing to the Breaching Party. The following events are deemed to be a Fundamental Breach:

(i) The Buyer failing to take delivery of conforming Goods, or significantly delaying in taking delivery, on at least [insert number] occasions and by at least [insert period of time] on each occasion;

(ii) The Buyer failing to pay for conforming Goods for more than [insert number of days] past the payment date;

(iii) [Optional – use if there is an exclusive output arrangement: The Producer entering into any marketing arrangement with any other buyer for the Goods produced [on the Production Site] or [using the Buyer’s Inputs]].

(iv) The Producer failing to deliver conforming Goods in accordance with the delivery Schedule in Annex [Z], or significantly delaying in making delivery on at least [insert number] occasions and by at least [insert period of time] on each occasion.

((v) Where the Buyer fails to supply the agreed inputs.,

* 1. **Damages**

Without limiting any other rights or remedies available under this Agreement, the Aggrieved Party may claim damages for any costs, losses or expenses which are attributable to the Breaching Party’s breach of this Agreement in accordance with the applicable laws.

1. **DURATION, RENEWAL, REVIEW AND TERMINATION**
   1. **Duration**

This contract is valid [for a period of [insert number of days/months/years/production seasons]/[from the date of signature to [insert end date].

* 1. **Renewal**

Upon expiration of this Agreement in accordance with Article 10.1, the Parties may agree in writing to its renewal.

* 1. **Periodic Review**

The Parties shall meet on a [insert frequency, depending on the nature of the commodity and length of contract] basis to review the implementation of this Agreement. Where a Party’s ability to fulfil its obligations under this Agreement has fundamentally been altered due to a significant change of circumstances that Party may request a renegotiation of one or more of the terms of this Agreement, and the other Party shall consider that request in good faith.

* 1. **Termination**

This Agreement may be terminated:

(i) following a breach of the Agreement in accordance with Article 9.11 or 9.12;

(ii) by mutual agreement of the Parties;

(iii) by either Party by giving [insert number of months] written notice to the other Party.

1. **DISPUTE RESOLUTION**
   1. The Parties to this Agreement shall provide notice to each other in the event of any disputes arising out of this Agreement and shall seek to amicably resolve within [insert time period], through negotiation and cooperation, any such dispute concerning the application or interpretation of the Agreement.
   2. If the Parties to this Agreement are unable or unwilling to resolve the dispute amicably, the Parties shall seek local and independent mediation of the issues within [insert time period] and under the rules of the [insert mediation institution or association.]
   3. Where the dispute has not been resolved in accordance with the preceding paragraphs, any Party may submit the dispute to the Grievance Redress Mechanism (GRM) or any other local arbitrator or courts in Malawi for resolution. [The rules of the GRM shall determine the manner in which the dispute is resolved].
   4. This Agreement and any dispute arising out of it is governed by the laws of Malawi.
2. **SIGNATURE**

|  |  |  |
| --- | --- | --- |
| Signed …………...[by]/[for and on behalf of]  In Witness of  ………: [insert name] | Signed …………[by]/[for and on behalf of]  the Buyer: [insert name]  In Witness of  ………… [Insert Name] | |
| Signature:  Date: | | Signature:  Date: |
| Done at: ……………….   |  |  | | --- | --- | |  |  | | | Done at ……………………….. |