



**Government of Malawi**

# **CONTRACT FARMING STRATEGY**

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## **PREFACE**

Contract farming has the potential to improve the livelihoods of farmers in Malawi through increased access to markets for agricultural commodities, including export markets. At the same time, contract farming offers an opportunity for buyers of agricultural commodities to source high-quality output as and when they need it, thus assuring themselves reliable supply of the agricultural commodities. These advantages, inherent in contract farming, can significantly improve marketing of agricultural commodities, increase production and productivity, and hence contribute to wealth creation and poverty reduction in Malawi.

It is indeed encouraging to note that there are a number of contract farming arrangements in the country, including the Integrated Production System (IPS) in the tobacco subsector, the out-grower schemes in sugarcane, and anchor farming in various crop enterprises. However, the history of contract farming in Malawi shows that farmers have, for a long time, not benefited as much from contract farming. Buyers of agricultural commodities have often taken advantage of the lack of a clear regulatory framework on contract farming in Malawi, and exploited farmers and farm labourers (including women, children and other vulnerable groups), while not taking care of the environment in the process. On the other hand, buyers of agricultural commodities in contract farming arrangements have often provided farmers with farm inputs on credit as well as agricultural extension services, in anticipation of obtaining high quality output only to experience side-selling of the farm output by the farmers.

The Contract Farming Strategy has therefore, been designed to address these multiple challenges with the view of realising the potential benefits associated with a functional contract farming system. The Strategy has been developed in a consultative and evidence-based manner and hence, has incorporated the views of farmers and farmer organisations, the private sector, civil society, academia, development partners and the Government. It is with sincere gratitude that I acknowledge all the stakeholders involved in contract farming in Malawi for their dedicated support and input into the development of this Strategy. It is my hope that there will be continued collaboration amongst all stakeholders as the sector embarks on the implementation of the Strategy.

I therefore appeal to all the stakeholders to work together with Government and contribute to the transformation of contract farming in Malawi, so that it becomes a viable and vibrant system that benefits everyone.



Honourable Dr George T. Chaponda, MP.

**MINISTER OF AGRICULTURE, IRRIGATION AND WATER DEVELOPMENT**

## FOREWORD

The Contract Farming Strategy has been formulated to create an enabling environment for all entities participating in contract farming or supporting its implementation in Malawi, including farmers, buyers of agricultural output, suppliers of farm inputs and third-party entities providing support services to contract farming arrangements. The Strategy aims at facilitating contract farming to take place in Malawi in an efficient, competitive and fair manner. As such, the Strategy provides guidance on the actions of various stakeholders engaged in contract farming arrangements in Malawi and outlines the broad regulatory frameworks necessary to make contract farming work to the benefit of all. The ultimate impact, which this Strategy seeks, is to use contract farming, where appropriate, as a mechanism for creating wealth, reducing poverty and inequality through increased profitable market access for farmers and buyers of agricultural outputs. This Strategy is a single reference document for all stakeholders engaging in or supporting contract farming arrangements in Malawi.

The fundamentals of the Strategy are based on the nation's development aspirations outlined in the Vision 2020 and the Malawi Growth and Development Strategy II (MGDS II), where contract farming is espoused as one of the strategies to ensure sustainable, reliable market access; improved productivity; increased agricultural export and economic growth.

The Strategy is built upon research evidence, lessons learned and challenges experienced in both formal and informal contracts in different agricultural enterprises in Malawi and beyond. Thus, among others it proposes broad principles that have proven to work, which ought to be applied; institutional frameworks surrounding stakeholder obligations; and the necessary regulatory mechanisms for effective governance of contract farming in Malawi. Recommendations on operational arrangements are provided and necessary actions for various stakeholders are described for the promotion, regulation and monitoring of mutually beneficial contract farming.

This Strategy has been thoroughly deliberated, validated and agreed upon by an all-inclusive set of stakeholders, including members of the Commercial Agriculture, Agro-processing and Market Development Technical Working Group, which encompasses state and non-state participants, including farmers and farmer representative bodies; private sector; civil society; academia and the research community; Government and the development partners. I am deeply thankful to all the stakeholders for having provided their input into this Strategy and I am convinced that the same inclusive and resolute commitment that prevailed during the consultations and formulation process of this Strategy will continue during implementation, monitoring and evaluation thereof.

I therefore, implore all stakeholders to join in the coordinated implementation of the Contract Farming Strategy 2016-2020 to ensure development of the agriculture sector to the benefit of all.



Erica Maganga (Mrs.)

**SECRETARY FOR AGRICULTURE, IRRIGATION AND WATER  
DEVELOPMENT**

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Gratitude is accorded to the members of the Commercial Agriculture, Agro-processing and Marketing Development Technical Working Group (CAAMD-TWG) and stakeholders involved with contract farming in Malawi for their comments and suggestions for the finalisation of this document. Special thanks to the ASWAp-Support Project, the Food and Agriculture Organisation of the United Nations (FAO) and the USAID-funded New Alliance Policy Acceleration Support (NAPAS: Malawi) project for providing technical input and financial resources for the development of the document.

The Ministry is also grateful to the contribution made by its members of staff and their commitment to the development of this Strategy. In particular, special recognition is made to the Department of Agricultural Planning Services in the Ministry, for its tireless efforts in the development of the Strategy.

## **ABBREVIATIONS AND ACRONYMS**

ADMARC	Agricultural Development and Marketing Corporation
ARET	Agricultural Research and Extension Trust
ASWAp	Agriculture Sector Wide Approach
CAADP	Comprehensive Africa Agriculture Development Programme
CAAMD	Commercial Agriculture, Agro-processing and Market Development
CFTC	Competition and Fair Trading Commission
DAES	Department of Agricultural Extension Services
DCAFS	Donor Committee on Agriculture and Food Security
LUANAR	Lilongwe University of Agriculture and Natural Resources
FUM	Farmers Union of Malawi
GIZ	Gesellschaft für Internationale Zusammenarbeit
GoM	Government of Malawi
IFPRI	International Food Policy Research Institute
IPS	Integrated Production System
M&E	Monitoring and Evaluation
MBS	Malawi Bureau of Standards
MCCCI	Malawi Confederation of Chambers of Commerce and Industry
MoAIWD	Ministry of Agriculture, Irrigation and Water Development
MoFAIC	Ministry of Foreign Affairs and International Cooperation
MoFEPD	Ministry of Finance, Economic Planning and Development
MoGCDSW	Ministry of Gender, Children, Disabilities and Social Welfare
MoITT	Ministry of Industry, Trade and Tourism
MoJCA	Ministry of Justice and Constitutional Affairs
MoLHUD	Ministry of Lands, Housing and Urban Development
MoLMD	Ministry of Labour and Manpower Development
MoNREM	Ministry of Natural Resources, Energy and Mining
NAP	National Agriculture Policy
NASFAM	National Smallholder Farmers Association of Malawi
NGO	Non-Governmental Organisations
TWG	Technical Working Group
USAID	United States Agency of International Development

## **EXECUTIVE SUMMARY**

The Contract Farming Strategy aims at creating an enabling environment for contract farming activities to take place in Malawi in an efficient, competitive and fair manner. The ultimate impact sought after through this Strategy is to create wealth, and to reduce poverty and inequality by increasing profitable market access for farmers and buyers of agricultural output, through contract farming arrangements where appropriate. It is with clear recognition that contract farming is not appropriate for all agricultural marketing circumstances that the Strategy is developed to promote contract farming in relevant settings in Malawi.

The Malawi Growth and Development Strategy II sets agriculture as one of the Key Priority Areas (KPAs) and contract farming is earmarked as one of several mechanisms that can spur agricultural growth and development by ensuring profitable market access for farmers (particularly smallholders) and buyers of agricultural produce.

At sector level, the Government of Malawi developed the Agriculture Sector Wide Approach (ASWAp) as an investment framework, to prioritise and guide agricultural investments. The ASWAp operationalizes the Comprehensive Africa Agriculture Development Programme (CAADP) in Malawi under the African Union's New Partnership for African Development (NEPAD). One of the ASWAp focus areas is Commercial Agriculture, Agro-processing and Market Development, under which the ASWAp document advocates for the promotion of contract farming and refers to the use of contract farming as a means of increasing market access for growers of tobacco, cotton and horticultural crops.

Government has also developed the National Agriculture Policy (NAP) to provide an overarching policy framework for the sector. In the NAP, contract farming is referenced as a strategy for increasing market participation and commercialization of smallholder agriculture in Malawi.

The CAADP, ASWAp and the NAP all enshrine Commercial Agriculture, Agro-processing and Market Development (CAAMD) as a vehicle to ensuring sustainable market access, economic growth and poverty reduction thereby contributing effectively to the attainment of the Sustainable Development Goals (SDGs). CAAMD highlights contract farming as one of several mechanisms for enhancing agricultural market access for farmers with the ultimate goal of commercialising agriculture in Malawi for export and economic growth.

By definition, contract farming is a production and marketing enterprise performed under a formal agreement between a buyer and a farmer or group of farmers in which the buyer is obliged to purchase specified agricultural product(s) at a predetermined price and quantity, and the farmer or farmer group is obliged to sell the specified agricultural product(s) to the same buyer.

Contract farming in Malawi takes various forms and has evolved from production systems that were instituted by estates and to those that were later adopted by parastatal crop and livestock authorities. Inputs and services were provided to smallholder farmers for the production of crop and livestock commodities, with the estates and national marketing corporation providing markets for the farmers' output. This situation remained in place until liberalisation starting in the 1980s curtailed the activities of the crop and livestock authorities. A weak regulatory framework that provided poor control over credit and production standards led to the collapse

of the crop and livestock authorities by the early 1990s. Since then, private sector contract farming enterprises have expanded to fill the gap and have operated along commercial principles with limited influence from Government.

Currently, there are a number of contract farming arrangements in the agriculture sector including the Integrated Production System (IPS) in the tobacco subsector, the out-grower schemes in sugarcane, and anchor farming in various crop enterprises.

Contract farming arrangements provide opportunities for advancement of agricultural productivity and strengthening of market linkages with rewards of increased farm incomes, export earnings and tax revenue. Such arrangements also provide opportunities for incorporating standards of sustainable agricultural production and resource management into farming systems and instituting safeguards against environmental degradation, farmer exploitation, gender disparities, and child labour in agriculture. However, there are risks in such arrangements in connection with breach of contract and some increased scope for exploitation of participants and the environment. For this Strategy to bear fruit, these risks must be recognised, their potential severity assessed and addressed by Government through appropriate regulatory mechanisms and institutions.

The goal of the Strategy is to create an enabling environment for all entities participating in contract farming or supporting its implementation in Malawi, including farmers, buyers of agricultural output, suppliers of farm inputs and third-party entities. The Strategy will ensure that efficiency, competitiveness and fairness are achieved in contract farming arrangements.

The main objective of the Strategy is to improve market access for producers and buyers of agricultural commodities. This will consequently enhance farmers' productivity and incomes, through provision of yield-enhancing farm inputs and extension. This will be achieved by observing good practices within the context of fairness and transparency, backed by a legal framework that provides opportunities for mediation and redress. In this respect, Government will amend and enact appropriate laws that will govern various contracts pertaining to farming, including the promotion of crops, livestock and fisheries.

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. Institutional structures within CFTC will be established in order to facilitate compilation of fair contracts between buyers and farmers.

To achieve this, rules and regulations will contain clauses on good practices in regard to agricultural production, care of the environment and use of labour, with special attention to non-exploitation of children and to issues of gender and vulnerable groups in agriculture. However, these practices are not within the mandate of CFTC. Therefore, as part of implementation of the Strategy, the CFTC will design and implement a referral system, to ensure that such cases are referred to the relevant authorities.

The contractual agreements between producers and buyers will contain background information and the general terms and obligations of buyers and farmers that are standardised across all participants within a particular subsector/commodity. In addition, the contract agreement

specific to each farmer or farmer group, shall identify the farmer(s), their location, specific obligations to the buyer and the obligations of the buyer to the farmer. The obligations on the part of the farmer(s) may include the production practices and management, quantity and quality of output, as well as commitment to sell to the designated buyer. On the part of the buyer(s), obligations may include the supply of appropriate farm inputs, extension services, and commitment to timely purchase the output from the farmer at the agreed price or price formula.

The clauses in the agreement will be unambiguous to the maximum extent possible, and will be made clear to all parties in a language that is familiar and comprehensible to all parties. The agreement shall have signatures or personal marks of all parties applied to it, and shall be witnessed, where possible, by an identified and reliable adult or legal entity.

Although regulations relating to contract farming will be common to all commodities, incorporation of such regulations to each of the commodities requires recognition of the risks inherent in each of them and the opportunities for addressing them. The regulations are to be generated by discussions between the concerned Government ministries, the private sector, civil society organisations, and other stakeholders including both buyers and farmer representatives.

Until regulations relating to contract farming are brought into law through Parliament they will not be enforceable. Similarly, sanction against non-compliance with the conditions of contracts between buyers and farmers is limited by the lack of legal provision. The practicalities of identifying and tracing non-compliant farmers will remain challenging, but, nonetheless, opportunities and benefits to be gained from contract farming are numerous. In the interim, the role of the CFTC will be to encourage and compel participants to be accountable to the conditions of their contracts and to take such measures as are available to the CFTC under the existing laws in the absence of an amended and improved legal backing to minimise incidences of departure from agreed terms under contract farming.

Contractors engaging in contract farming will have the option of voluntarily submitting their farming contracts to the CFTC for pre-approval and registration prior to entry into a legally binding contractual arrangement. In such cases of CFTC registered contracts, the general form and rules and regulations of the farming contracts shall bear the approval seal of the CFTC, which will have government representation. However, CFTC reserves the right to inspect all contractual agreements.

To sustain the operations relating to contract farming, the CFTC may impose relevant nominal levies as per the Act and regulations. It is envisioned that all CFTC pre-approved farming contracts bearing the seal of the CFTC shall be viewed in higher esteem by all parties engaging in contract farming in Malawi, compared to non-approved contracts. All such contracts pre-approved by the CFTC shall be a basis for effective regulation, mediation and dispute resolution in the event that a dispute or allegation of breach of contract arises.

The buyer that has entered into a contract farming arrangement that is pre-approved and registered by the CFTC will maintain a record of all contracts signed, but this register of contracted farmers will remain confidential to the parties signatory to the contracts. Notwithstanding, the CFTC will retain the right to demand inspection of the registry of CFTC all contracts that have been executed.

In order that the contract farming strategy can become effectively implemented a series of actions must be undertaken by designated institutions and individuals. The sequence of these actions and the parties that must undertake them are elaborated in Table 2 of the text. The responsibilities of stakeholders are detailed in Table 3 while roles and expected outcome of strategic actions of all stakeholders are summarised in Tables 4 to 8.

Monitoring and evaluation of contract farming arrangements will be undertaken by the MoAIWD, in collaboration with CFTC. Civil society organisations will provide oversight functions with respect to the implementation of the Strategy. The outcome of the monitoring and evaluation exercise will inform refinements of rules and regulations governing contract farming. Clear indicators for the relevant processes and outcomes on contract farming have been developed and are contained in Chapter 5 of this document.

# 1. INTRODUCTION

## 1.1 Technical Aspects of Contract Farming

Contract farming is a type of agricultural marketing system that falls between the spot marketing and vertical integration types of marketing systems.<sup>1</sup> It is appropriate when the benefits of vertical coordination that contract farming provides exceed the costs of establishing the contract scheme and overall, the arrangement proves to be more profitable to the contracting participants than reliance on other agricultural production and marketing systems such as spot markets or vertical integration.

### *Contract Farming Defined*

*Contract farming* is an agricultural production and marketing enterprise performed under a formal agreement between a buyer and a farmer or group of farmers in which the buyer is obliged to purchase specified agricultural product(s) at a predetermined price or price formula, quantity and quality, and the producer(s) is obliged to sell the specified agricultural product(s) to the contract buyer.

Contract farming can enable farmers to guarantee market access for their output at profitable prices, thereby benefiting from reduced market risk and uncertainty. Moreover, contract farming can benefit farmers through the provision of quality inputs and services that facilitate efficient production (productivity) under a formalised management structure.

Contract farming also creates opportunities for agricultural processors and traders to guarantee adequate supply of agricultural output of high quality at an agreed price or price formula and at the desired time periods. It also enables the agricultural processors and traders to exercise control over production practices and set standards desired by the market, such as Good Agricultural Practices (GAP) and traceability, without investing themselves substantially in the production process.

The components of a contract farming agreement that are often expected by contracted farmers are guaranteed access to markets (including value added and export markets) at predetermined profitable prices, and provision of production inputs and services, which may include agricultural extension, credit and insurance. On the other hand, buyers under contract farming often expect the contracted farmers to ensure consistent supply of specified quantities of agricultural output at specified quality, time points and location of delivery. Agricultural processors and traders also expect some degree of control over the production processes such as ensuring that the farmers comply with specified standards on how the farm output is produced and handled, as desired by downstream markets. Thus, contract farming can be a vital tool for vertically coordinating agricultural production and marketing in various value chains, especially those that are highly specialized and lucrative. This implies that contract farming can address multiple challenges of market access for both farmers and buyers of agricultural

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<sup>1</sup> Spot marketing is where produce is sold and bought without pre-arrangement between multiple buyers and multiple sellers, while vertical integration is an arrangement in which all of the activities conducted along the entire value chain – from production to processing to marketing – is conducted within a single firm.

commodities but it is not an agricultural marketing panacea and often comes with higher costs of production and marketing.

## **1.2 Evolution of Contract Farming in Malawi**

Since independence in 1964 until the mid-1980s, elements of contract farming involving smallholder farmers in Malawi have followed the pattern established by estates and later taken up by parastatal crop and livestock authorities. Under these arrangements, sole-buyer markets were provided to smallholder farmers, with extension services, training, inputs, and marketing services supplied on credit. Farmers, in return, provided land and labour services for growing crops or raising animals that the estates or crop and livestock authorities sought to purchase. The contracted farmers' produce was purchased by the buyers at prices that were set by the buyer, in effect making the smallholder farmer a price taker. For most commodities produced by smallholders, the Farmers Marketing Board, which later became the Agriculture Development Marketing Corporation (ADMARC), was the sole buyer. However, the tenancy type of contract farming, predominantly used for tobacco production, was commonly practiced on private estates and not by crop and livestock authorities.

With trade liberalisation and economic structural adjustment reforms starting in the mid-1980s, contract farming was introduced in the private sector through cash crops such as burley tobacco, cotton, tea, coffee, and sugar cane. At the time, the contracts specified production quotas without necessarily specifying prices. Formal and informal contract farming began to spread in the 1990s. However, without a clear contract farming policy framework and legislation, farmers were soon exposed to considerable risk due to dubious contractors and, in some cases, incompatibility of contract farming arrangements with the respective crops or livestock.

Several problems, such as reduction in funding for the crop and livestock authorities, and weak management and oversight of contract farming arrangements, resulted in diversion of farm inputs away from contract crops and sometimes diversion of produce to other spot-market buyers (side-selling). This resulted in the collapse of the crop and livestock authorities system in the late 1980s and early 1990s. Although in the post-market liberalization era, formal contract farming arrangements strengthened, somewhat, informal contract farming practices continued to prevail in Malawi with all of their attendant risks for both producers and buyers.

Currently, there are several models of contract farming in operation in Malawi and these vary depending on the nature of the commodity being produced. Five major categories of contractual arrangements that exist are:

- a) The *centralised model*, which is vertically coordinated for tight quality control and focused on a centralised processor that buys specified product from many different farmers. This model is applicable to tobacco, cotton, bananas, coffee, and other crops in which a degree of centralised processing or marketing is a pivotal requirement, while control over production may differ.
- b) The *nucleus estate (anchor farm) model* involved the buyer managing a central estate, while contracted farmers in the vicinity are provided with inputs on credit and management services. Tea and sugarcane are suited to this model primarily because the harvest of these crops must be coordinated to feed steadily into the processing factories with minimal delay.

- c) The *multipartite model* involves additional organisations and statutory bodies in the contractual arrangement in addition to the producers and buyers. Such a model may evolve from the nucleus estate model as farmer cooperatives become established to coordinate farmers and to facilitate credit provision. The model has been adopted in some tea growing areas.
- d) The *informal model* often is created by individual entrepreneurs who engage farmers seasonally under informal contracts, while usually relying on government support services, such as extension and research. In Malawi, this model has been applied to paprika and soya and by some private tobacco estates.
- e) The *intermediary model* involves market intermediaries who, on behalf of a contract buyer, collect produce from farmers who have been sub-contracted. The collectors are responsible for organising the field operations through farmer clubs and are paid by the buyer on a commission basis. This model is commonly used in Malawi for the production of improved seed.

There are a number of contract farming arrangements prevailing in the major cash crop value chains including tobacco, sugar, tea, cotton and coffee subsectors, among others. For example, the Integrated Production System (IPS) practiced in the tobacco subsector promotes good agriculture practices through the provision of extension services and inputs on loan in order to increase crop productivity while encouraging traceability of the tobacco output, which is being demanded by international markets as well as discouraging the use of child labour in the farm production processes. Subsequently, these elements of the IPS often offer a price premium and in turn increased farm incomes. Nevertheless, the system has in recent periods been plagued by claims of unfair market practices including high rejection rates of tobacco leaf, collusion among the buyers and low prices that are unprofitable to the farmers. Table 1 below shows the prices of tobacco offered to farmers in Malawi under the IPS in comparison to the auction floor spot market as well as the export price as reported by the Tobacco Control Commission (TCC).

**Table 1: Comparison of prices of tobacco sold through IPS and auction floors**

Year	Burley Contract Price (US\$/kg)	Burley Auction Price (US\$/kg)	Contract-Auction Price Difference (US\$/kg)	Average World Price (US\$/kg)
2006	0.94	0.90	0.04	2.97
2007	1.66	1.74	-0.08	3.32
2008	2.32	2.39	-0.06	3.59
2009	1.79	1.75	0.04	4.24
2010	1.94	1.73	0.21	4.33
2011	1.15	1.12	0.02	4.49
2012	2.05	2.04	0.01	4.30
2013	2.05	1.95	0.09	4.59
2014	1.79	1.72	0.07	4.99
2015	1.71	1.45	0.26	4.91
Historical Average	1.74	1.68	0.06	4.17

Source: Tobacco Control Commission (2016) and World Bank Commodity Markets Data (2016) for world prices

Note: Price differences may be due to differences in quality of the tobacco supplied through each market and are not necessarily a reflection of each market's level of fair pricing or market power.

In addition to farmers and buyers, third parties play an important role in contract farming arrangements in Malawi and have continued to do so despite a lack of clear guidelines and regulations on their operations. Some of the third parties involved in contract farming arrangements in Malawi include:

- a) Financial institutions that enter into a Memorandum of Understanding (MoU) with a contractor-buyer to provide financing for farm inputs that are supplied to the farmers. The cost of the inputs and the credit used to obtain the inputs usually is recovered through stop orders applied to the sales of the produce of contracted farmers.
- b) Input suppliers, who are a vital component of contract farming through the supply of seed, fertilizer, chemicals and other inputs and machinery that can affect productivity of the farmers. Agro-input dealers that act as third party players in contract farming are also an important source of agricultural extension messages for farmers on best-practice use of farm inputs.

### **1.3 Agriculture Policy Framework**

The overall agricultural policy framework governing economic activities of agriculture in Malawi has bearing on the nature of contract farming arrangements and the outcomes thereof. As such, the overall agricultural policy framework was considered in developing this strategy to diagnose any policy related issues that might affect contract farming, be it in terms of promoting or hindering effective implementation of the Strategy. Overall, the policy environment is seen as advocating for the promotion of contract farming as a means of increasing farmers' access to profitable agricultural markets. However, gaps in the policy framework were identified which the Strategy endeavours to address.

#### **1.3.1 Comprehensive Africa Agriculture Development Programme (CAADP)**

In recognition of poor performance of agriculture in Africa, the New Partnership for African Development (NEPAD) embarked on the Comprehensive Africa Agriculture Development Programme (CAADP) with a vision of promoting agricultural growth in the many agriculture-based economies across Africa. This initiative was linked to the first Millennium Development Goal (MDG) of halving poverty and hunger by 2015. Under CAADP, contract farming is one of the mechanisms that can contribute to improved productivity, market access and agricultural sector growth for African economies.

#### **1.3.2 Southern African Development Community Agriculture Policy**

The Southern African Development Community (SADC) has developed a regional agriculture policy that promotes regional agricultural trade, much of which is facilitated through contract farming. As a signatory to SADC, Malawi supports the promotion of contract farming within the regulated framework as detailed in this document.

#### **1.3.3 Malawi Growth and Development Strategy II**

The Malawi Growth and Development Strategy II (MGDS II) is the overarching medium-term development framework for the country to 2016. Agriculture was highlighted as one of the Key Priority Areas (KPAs) in the MGDS II, and contract farming was promoted as one of the strategies to ensuring sustainable market access, promoting exports and economic growth.

### **1.3.4 National Agriculture Policy**

The Policy has many components that point to support of Contract Farming. The Goal is to achieve agricultural transformation through increased commercialisation of farming, value addition and exports in order to enhance farm incomes. As such contract farming offers opportunities to operationalize the NAP and to contribute towards the overarching midterm national strategy for economic development.

### **1.3.5 The Agriculture Sector Wide Approach**

At sector level, the Ministry of Agriculture, Irrigation and Water Development (MoAIWD) developed the Agriculture Sector Wide Approach (ASWAp) as an agricultural sector investment plan. It focuses, among other things, on Commercial Agriculture, Agro-processing and Market Development under which the contract farming strategy falls.

### **1.3.6 National Export Strategy**

The National Export Strategy has isolated key agricultural commodities that have potential for exports, including groundnut, sunflower, soya beans, cotton, and sugarcane. This calls for increased production and access to markets for these selected crops and contract farming can play a significant role in this respect.

### **1.3.7 Other Policies and Initiatives**

There are other policies and initiatives that are in place that have bearing on contract farming and these include:

- a) In 2011, the upscaling of cotton production and marketing programme in Malawi integrated contract farming in the cotton subsector;
- b) The Food Security Policy of August 2006 called for the promotion of contract farming;
- c) The Fertilizer Strategy of September 2007 also promoted contract farming and out-grower schemes. Contract farming was seen in the strategy to provide an exit strategy from the subsidising of fertilizer for small scale farmers;
- d) The National Irrigation Policy of June 2000 perceives contract farming as a means of absorbing labour, particularly when it is incorporated into the operations of commercial estates; and
- e) The Pesticides Act (no.12 of 2000) regulates the manufacture, sale, storage and application of pesticides in such a way as to affect its use in contract farming, although there is no specific mention of contract farming in the Act.

All these different policies, strategies and Acts shape the policy framework within which the Strategy shall be implemented. Indeed, most of the policy framework is in support of promotion of contract farming and as such, is relatively conducive to the effective implementation of the Strategy.

This document prescribes the means of development and implementation of a Strategy for contract farming in Malawi.<sup>2</sup> The strategy outlines the actions of various stakeholders to create

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<sup>2</sup> A background paper was written to accompany this strategy. It considers the evolution of contract farming mechanisms in Malawi in greater detail and contains further analyses of the rationale for this strategy.

an enabling environment for contract farming activities to take place in Malawi in an efficient, competitive and fair manner. The desired impact is to create wealth, and to reduce poverty and inequality by increasing profitable market access for all participants in contract farming, particularly farmers and buyers of agricultural output. The Strategy proposes an institutional framework and stipulates the necessary regulatory mechanisms for effectively governing contract farming in Malawi. Justification for the recommended operational arrangements is provided and requisite actions are described for the promotion, regulation, and monitoring and evaluation of contract farming.

## **2. RATIONALE FOR THE CONTRACT FARMING STRATEGY**

### **2.1 Benefits and Opportunities to be gained from Contract Farming**

Although contract farming carries its own risks, it provides opportunities for addressing many of the constraints to small-scale agricultural development in Malawi.

- a) Contract farming offers significant economic opportunities for farmers and processors to strengthen access to export markets with economies of scale in processing and marketing that improve international competitiveness;
- b) Provides predictable output prices for farmers and reduces the uncertainty of spot market producer pricing traditionally faced by farmers;
- c) It provides means of enterprise diversification, including livestock and fisheries, which reduces the risks for farmers relying on a single commodity;
- d) Quality control over produce is facilitated by contractual specifications in production supported by extension service;
- e) Bulk buying and distribution of inputs by contracting enterprises can reduce the cost of inputs to the farmer;
- f) It provides means for private sector enterprise to assist small-scale farmers to improve productivity and thereby, contribute to poverty alleviation, through the provision of inputs, extension services and improved market access;
- g) It provides access to credit to the farmer, since the cost of inputs is paid by the farmer only when the produce is sold;
- h) Provides opportunities for negotiation of input and output prices by producers and buyers;
- i) Enhanced commercial involvement in agriculture generates multiplier effects across the rural economy for both farm and non-farm economic enterprises; and
- j) It increases tax revenues, and enhances the export potential and access to raw material for food and other agro-based industries.

### **2.2 Challenges**

Among the problems facing agriculture in Malawi, as identified in the ASWAp, are low productivity and stagnant yields, low uptake of improved farm inputs, low profitability of smallholder agriculture, weak links to markets, high transport costs, limited and weak farmer organisations, poor quality control, and inadequate access to market information.<sup>3</sup> Some, if not all of these challenges, can be addressed through contract farming that operates in an efficient, competitive and fair manner.

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<sup>3</sup> GOM, 2006. For further detail refer to ASWAp document (2010).

### 2.3 Risks Associated with Contract Farming

In addressing these general challenges to agricultural production in Malawi through contract farming arrangements, further challenges arise. These new challenges include the risk of non-compliance with contracts by either party and lack of means to address such non-compliance in the absence of a comprehensive legal framework within which contract farming activities take place.

Risks of non-compliance with contracts *by farmers* include:

- a) Side-selling, that is, where the grower, having accepted the buyer's investment in inputs and extension, sells the produce generated by these inputs to a buyer other than the investor, thereby diverting the contract buyer's investment and failing to repay the input loan;
- b) Diversion of inputs by the farmer to another enterprise or selling those inputs to another farmer with the result that the product is either not produced or is not produced to acceptable standards due to inadequate application of inputs; and
- c) Disregard for recommended practices or standards in the use of inputs or other means of agricultural production, including gender disparities, use of child labour, or employing production practices that are harmful to the environment.

Risks of non-compliance with contracts *by buyers* or their agents include:

- a) Defaulting on price agreements due to fluctuations in world market prices that make the earlier contracted price no longer profitable;
- b) Failure to purchase the contracted commodities from farmers;
- c) Alteration of the quality standards applied to the contracted farmer's products when the agreed price is no longer tenable or the quantities produced exceed market demand; and
- d) Reduced provision of inputs and or services relative to the amounts agreed in the contract.

Further risks arise from the contracts themselves as they can be confusing, poorly translated, or not adequately explained to the farmers. The contracts may not include sufficient obligations on the part of the farmer to result in compliance with good agricultural practice or social or environmental standards. The contracts may also be poorly constructed to the extent that they carry no legal integrity. Lack of biometric identity cards and registered land title also undermines traceability of defaulting farmers. The Contract Farming Strategy will endeavour to mitigate these risks by providing the necessary remedies, while facilitating the benefits of contract farming to both producers and buyers.

Broader, more systemic risks associated with contract farming may include that the incentives to produce a cash crop under contract farming arrangements may reduce the land allocated to food crops, putting at risk the food security of their households.

In addition to the above risks, contract farming, being private sector driven with profit motive, gives scope for exploitation of farmers. The profit motive could also divert contract farming enterprises away from promotion of good practices, if such practices impose costs to either the buyer or the farmer. Government regulation of contract farming provides means of ensuring that obligations of participants are met to safeguard against exploitation and operational

standards to acceptable levels. Important areas of concern are sustainable land use through good agricultural practices, care of the environment and non-exploitative employment principles, especially in respect of women and children. Government regulation can also be applied to ensure that stakeholders in contract farming have uninhibited access to unbiased mediation and arbitration if the need arises.

### **3. BROAD STRATEGY DIRECTION**

#### **3.1 Goal**

To create an enabling environment for all entities participating in contract farming or supporting its implementation in Malawi, including farmers, buyers of agricultural output, suppliers of farm inputs and third-party entities. This will create mutual benefits for all stakeholders engaging in contract farming in Malawi, particularly farmers and buyers, by enhancing their market access in a profitable, competitive and fair manner.

#### **3.2 Objectives**

The objectives of the Contract Farming Strategy are to:

- a) Increase the number of farmers, particularly smallholder farmers, accessing profitable farm output markets;
- b) Increase the share of profits accruing to farmers from value added and export markets;
- c) Increase access to agricultural extension services on good agricultural practices;
- d) Increase the volume of agricultural inputs accessed by farmers;
- e) Reduce the volumes of output diverted to side-selling in spot markets;
- f) Improve the quality of output purchased by buyers;
- g) Minimise the number of disputes arising in contract farming arrangements;
- h) Amicably mediate and resolve contract farming disputes;
- i) Establish a Government pre-approval and registration system for farming contracts; and
- j) Establish a regulatory framework for contract farming arrangements.

#### **3.3 Broad Principles to be applied in Strategy Implementation**

In implementing this Strategy for the support and control of contract farming arrangements in Malawi, the following general principles shall be applied:

- a) Overall, the Strategy must contribute towards equitable growth of the national and agricultural economy in a sustainable manner;
- b) It is to be acknowledged that contract farming arrangements are essentially a partnership between private buying companies and private farmers. The role of Government is therefore limited to facilitating and regulating contract farming arrangements;
- c) The costs of compliance with the regulatory framework must be minimised;
- d) There must be absolute transparency in contract compilation, implementation and enforcement of all regulations on contract farming arrangements, in order to secure compliance, and to monitor performance;
- e) Regulations and sanctions applied to contract farming must be based on the law.

## **4. IMPLEMENTATION PLAN AND INSTITUTIONAL ARRANGEMENTS**

### **4.1 Stakeholder Participation in Implementation**

In implementing the Strategy, various stakeholders are necessary for enabling and regulating contract farming in Malawi. These include the public sector, contract buyers, farmers, the financial sector, and civil society. Their roles in the implementation of the strategy and the institutional context for each of the major actors are described below:

#### **4.1.1 Public Sector**

The Ministry responsible for agriculture will be the lead institution in the implementation of the contract farming strategy. It will facilitate the development of regulations of contract farming in collaboration with relevant line ministries, departments and agencies, and other stakeholders, including civil society organizations. Specifically the main actions of the public sector will be to:

- a) Provide administrative facilities and the necessary regulatory environment to support all parties in contract farming arrangements;
- b) Oversee the formalisation of transfer of functions on contract farming to the CFTC;
- c) Indicate the sources of mediation and arbitration to be used in the event of conflicts between contracting parties;
- d) Provide policy direction on the implementation of the Strategy;
- e) Provide human and financial resources for the implementation of the Strategy;
- f) Take appropriate action in response to the content of monitoring and evaluation reports on contract farming activities;
- g) Sensitise farmers, buyers and other stakeholders on contract farming arrangements and related legislation; and
- h) Facilitate linkages between producers and buyers.

Dispute resolution in contract farming will be handled jointly by the CFTC and the Ministry responsible for agriculture. Issues that are not under the mandate of the CFTC will be referred to the relevant authorities, using existing district or national Government institutions, including District Labour Offices, District Environmental Offices, the Ministry of Labour and Manpower Development, and the Ministry of Industry Trade and Tourism.

#### **4.1.2 Contracting Buyers**

Contracting buyers will liaise and negotiate with contracted farmers and their representative organisations on the provision of contracted supportive services, equipment, and inputs as appropriate to their enterprises and in compliance with guidelines provided by regulatory authorities through the Competition and Fair Trading Commission (CFTC) described below.

### **4.1.3 Contracted Farmers**

Farmers entering into contract farming will have the right to negotiate and bargain on the terms of the contract, such as the price of inputs and outputs, cost and terms of credit, specific clauses in the contract in case of eventualities and remedies in the event of contract breach. Contracted farmers will ensure that the contract has undergone scrutiny by the CFTC.

Overall, contracted farmers will adhere to the agreed provisions in the contracts with contract buyers, and in compliance with laws and guidelines applicable to contract farming in Malawi as advised through the CFTC. The farmers may act within the contract farming system either as individuals or in cooperation with other farmers through farmers' groups or cooperatives.

### **4.1.4 Farmer Organisations**

Farmer organisations will further the interests of the individual farmers within the context of contract farming, lobby on their behalf and keep their members informed of matters of interest and importance to their viability and development. The role of the Farmers Union of Malawi (FUM), the National Smallholder Farmer Association of Malawi (NASFAM) and any other farmer organisation is one of mediator, protector, and promoter of individual and sector interests. This places them in a position of responsibility as advocacy and policy engagement organisations negotiating with government and contract buyers. The farmer organisations will also provide capacity building for farmers on contract farming arrangements.

### **4.1.5 Civil Society Organisations (CSOs)**

Civil society organisations will provide independent supportive mediation services for partners in contract farming arrangements who are in conflict. CSOs, including the Civil Society Agriculture Network (CISANET), are also expected to provide advice on legal, regulatory, social and cultural issues pertaining to contract farming. They will also build capacities of farmers to engage in contract farming. In addition, the CSOs will undertake advocacy activities pertaining to contract farming.

### **4.1.6 Financial Institutions**

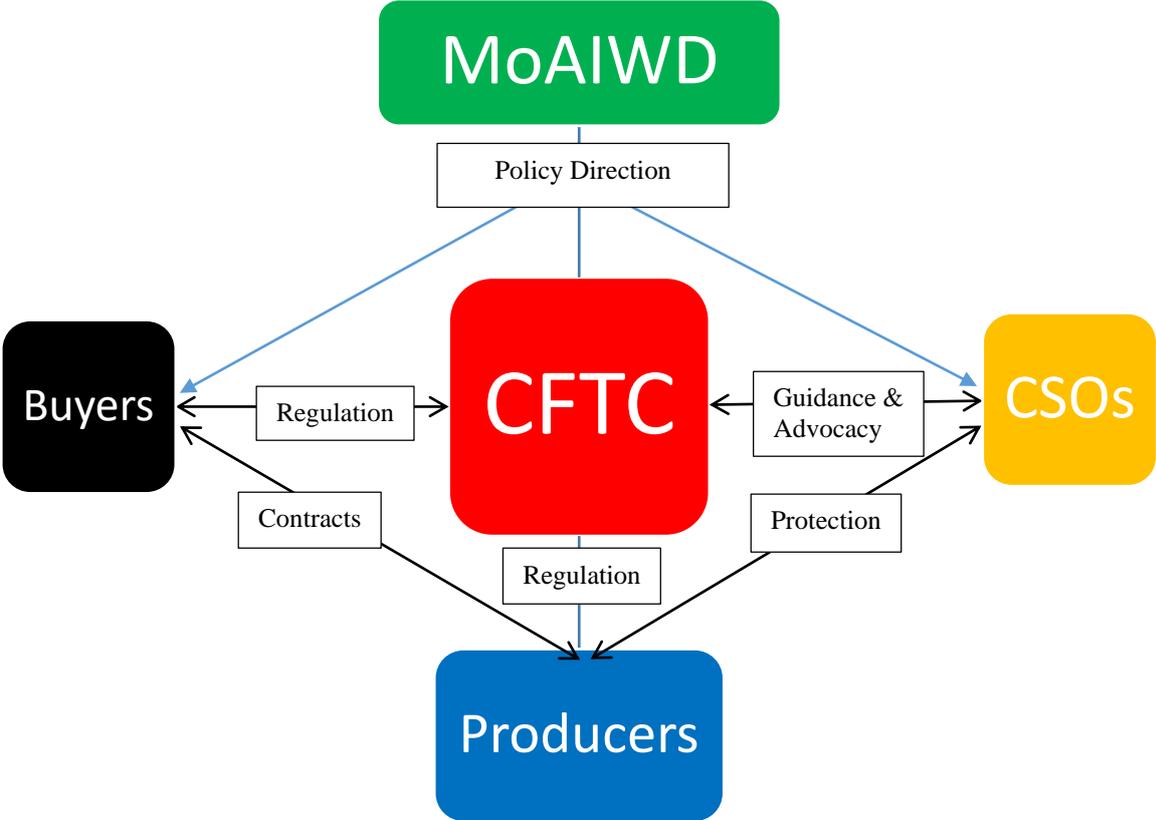
These institutions operate within the existing legal frameworks of the financial sector and play a role in facilitating contract farming arrangements through the provision of loans and support financial services to both producers and buyers.

## **4.2 Institutional Arrangement**

In order for Government to effectively regulate contract farming, the Ministry responsible for agriculture will be a leading institution in the implementation. Institutional links will be established between Government and other stakeholders. These links will be multiple in nature and will include the relationship between the MoAIWD and the Competition and Fair Trading Commission, which will be the focal institutions for regulation. The CFTC will form the umbrella organisation that will oversee and regulate all contract farming enterprises.

Figure 1 provides a schematic diagram of the regulatory pathway for the operation of contract farming sub-sector that involves the Competition and Fair Trading Commission (CFTC).

**Figure 1: Linkages amongst Institutions in the Contract Farming Arrangements**



**4.2.1 Functions of the CFTC**

The CFTC will operate as a market regulator on competition and consumer protection, with additional mandate to oversee contract farming. However, for CFTC to regulate contract farming, there will be a need to amend the Competition and Fair Trading Act. CFTC will also require some capacity building in terms of human and financial resources.

In collaboration with MoAIWD, the CFTC will disseminate contract farming arrangements and regulations pertaining to its implementation. The two institutions will provide advice to farmers and contract buyers on the formulation of contracts in compliance with Government guidelines.

All contracts will be scrutinised by the CFTC with regards to general structure and content and subsequently approved if they meet a minimum set of standards. The CFTC will also provide support for dispute resolution over contractual issues for all parties.

The Commission will ensure that all contracted parties involved are treated fairly. Individual farmers may have neither the skills nor organisational muscle to seek redress against unfair treatment. Therefore, farmers will be accorded access to support mechanisms by the CFTC.

As part of implementation of the Strategy, the CFTC will design and implement a referral system for those matters outside its mandate, including child labour, gender disparities and environmental issues. The CFTC will also work with existing institutions, which are regulating

sub-sector contract farming arrangements, such as the Tobacco Control Commission and the Cotton Council.

For CFTC to sustain its operations, Government will initially provide finances to the Commission. However, a self-sustaining financing mechanism will be explored and put in place in the long run.

The functions and capabilities of the CFTC will evolve in line with the growth of contract farming and will be informed by the outcome of continual monitoring and evaluation processes.

**4.2.1.1 Summary of Stakeholder Responsibilities**

The roles and responsibilities of stakeholders involved in contract farming arrangements are summarised in Table 2.

**Table 2: Matrix of responsibilities within contract farming systems**

Sector	Lead Institution	Roles and Responsibilities	Additional contributors
Government	MoAIWD	Compiling of guiding principles and regulations Capacity building	CFTC, MoITT, MoJCA, MoFEPD, MBS, MoLHUD, MoLMD NGOs, Contract buyers, Academia, CFTC, CSOs
		Research and dissemination	International agricultural research centres, Contract buyers, Academia, CFTC
		Land resource management	NGOs, Contract buyers, MoNREM, CFTC, Farmer organisations, MoLHUD
		Sanitary and phytosanitary regulation and control	MBS, Occupational safety and health agencies, Research institutions
		Dispute management, mediation and arbitration	CFTC, MoJCA, MoLHUD, MoLMD
		Advocacy and Sensitisation	NGOs, Contract buyers, Academia, CFTC, CSOs
		Monitoring and Evaluation	CFTC, CSOs, Academia, Development Partners
Quasi-government	CFTC	Development of contract farming regulations	MoAIWD, MoITT, MoJCA, CSOs, Agro-processors, Contract buyers, Farmer organisations
		Registration and approval of contracts pertaining to contract farming arrangements.	Contract buyers, farmers, farmer organisations, MoAIWD, Financial Institutions
		Registration of buyers, processors and farmers involved in contract farming arrangements.	MoAIWD, MoITT, CSOs, Contract buyers,
		Dissemination of regulations.	MoAIWD, CSOs, media houses
		Communication of government policy guidelines on contract farming to private sector and of	MoAIWD, CSOs, media houses, Development Partners

Sector	Lead Institution	Roles and Responsibilities	Additional contributors
		<p>private sector concerns to appropriate government departments.</p> <p>Quality control on contractual arrangements in compliance with guidelines and regulations.</p> <p>Mediation and arbitration</p> <p>Collection of data on contract farming performance.</p>	<p>MoAIWD, MBS, Consumer Association of Malawi</p> <p>MoAIWD, MoLMD, MoJCA, MoGCDSW, CSOs</p> <p>MoAIWD, National Statistics Office, CSOs, Development Partners</p>
Private sector	Contract buyers	Purchasing farm output from contracted farmer(s)	Farmers, Farmer organisations, CFTC, Legal advisors, MoAIWD, MoITT
		Provision of farm inputs	Contract buyers, Farmers, Agribusinesses, CFTC, MBS
		Provision and management of finance and credit to farmers	Contract buyers, Farmers, Financial institutions, CFTC
		Provide extension services	Contract buyers, Farmers, Financial institutions, MoAIWD, ARET, DAES, CFTC
		Marketing and exportation	Contract buyers, Farmers, Financial institutions, CFTC, MoAIWD, MCCCI, MoITT
		Capacity building	MoAIWD, MoITT, Farmers, Financial institutions, ARET
		Quality Control	MoAIWD, MBS, Farmers, Farmer organizations, CSOs
Private sector	Farmers	Farm production	Contract buyers, Farmers, Financial institutions, CFTC, transporters, auction floors
		Sale of farm output to contract buyers	Contract buyers, Farmers, Financial institutions, CFTC, transporters, auction floors
		Natural resource management	MoAIWD, MoLHUD, Contract buyers,
		Compliance to contract agreement with contract buyers	MoAIWD, CFTC, CSOs, Farmer organisations
		Compliance to labour laws in contract farming	MoAIWD, MoLMD, CFTC, CSOs, Farmer organisations
Financial sector	Banks, Micro-financial Institutions, Cooperatives	Provision and management of finances for contract farming	Contract buyers, Farmers, Financial institutions, CFTC
		Provision of ancillary financial services for contract farming	Contract buyers, Farmers, Financial institutions, CFTC

Sector	Lead Institution	Roles and Responsibilities	Additional contributors
Civil Society	Civil Society Agriculture Network	Dispute resolution	Contract buyers, farmers, MoAIWD, CFTC Judiciary. MoITT, MoLHUD,
		Awareness creation	MoAIWD, Contract buyers, Farmers, CFTC, Financial institutions
		Lobbying	MoAIWD, Contract buyers, Farmers, CFTC, Financial institutions
Academic/Research Institutions	University of Malawi	Generating research evidence on contract farming	FAO, IFPRI, World Bank, LUANAR, International universities
Development Partners	DCAFS	Supporting value chain investments to enhance contract farming arrangements	MoAIWD, MoFEPD, MoFAIC, CSOs, Farmer organisations

#### 4.2.2 Priority Actions for Strategy Implementation

In order to effectively implement the Strategy the following priority actions will be undertaken. Table 3, below, shows the priority actions and the key institutions responsible.

**Table 3: Actions in Implementation of the Contract Farming Strategy**

Sequence	Actions (What)	Rationale (Why)	Means (How)	Responsible Institution (Who)	Proposed Deadline (When)
1	Declare intentions to amend Competition and Fair Trading Act	To prepare stakeholders	Letters and advertisements	CFTC and MoAIWD	October 2016
2	Review legal status of CFTC as the institution to oversee contract farming.	To ensure legal validity of CFTC and convey authority onto it	Review document	CFTC, Ministry of Justice and Constitutional Affairs (MoJCA); MoAIWD	February 2017
3	Draft an amendment Bill and present to MoJCA for vetting	To incorporate contract farming in the mandate of the CFTC	Consultations; Drafting and Introduction of Parliamentary Bill	CFTC, Ministry of Justice and Constitutional Affairs (MoJCA); MoAIWD, Parliamentary Committee on Legal Affairs	July 2017

<b>Sequence</b>	<b>Actions (What)</b>	<b>Rationale (Why)</b>	<b>Means (How)</b>	<b>Responsible Institution (Who)</b>	<b>Proposed Deadline (When)</b>
4	Tabling of Amended Bill to Parliament	Approval and Enactment	Act Gazetted	Parliament, MoJCA	November 2017
5	Formally transfer powers to oversee contract farming to CFTC	To initiate the transfer of powers to the CFTC	Letters	MoAIWD	January 2018
6	Develop regulations and guidelines for contract farming	To operationalise the Act	Subsidiary Regulations put in place	CFTC, MoAIWD	March 2018
7	Conduct training workshops on mandate, regulations and operations of CFTC in contract farming	To inform sectors on what is required of CFTC and how to comply	Invite sector stakeholders, provide venue, present needs, and facilitate initiation of CFTC	CFTC, MoAIWD; contracted facilitator; sector stakeholders	April 2018
8	Determine, relevance and feasibility of regulation compliance.	To refine regulations for commodity sub-sector to ensure sustainable operation of contract farming arrangements on equitable basis	Presentation of GoM proposals at workshops with discussion towards conclusions	MoAIWD, MoLHUD, MoLMD, MoJCA, MoFEPD, MoGCDSW, contract buyers, farmers, farmer organisations	June 2018
9	Pilot implementation of standard pre-approved and registered contracts in commodity sub-sectors	To test the implications and feasibility of the conditions of the standard contracts	Sub-sector Monitoring Reports	CFTC, MoAIWD, Farmers, farmer organisations, contract buyers	Production and marketing season of 2018/19

<b>Sequence</b>	<b>Actions (What)</b>	<b>Rationale (Why)</b>	<b>Means (How)</b>	<b>Responsible Institution (Who)</b>	<b>Proposed Deadline (When)</b>
10	Monitor and evaluate operation of standard contracts	To inform refinement of the standard contract provisions	Terminal Monitoring and Evaluation Report	MoAIWD, CFTC	Jan, April, July, 2019
11	Refine the standards for pre-approved and registered contracts and roll out	To take into account lessons learned on applicability and relevance of contract provisions	Repetition of negotiation process in light of M&E reports and stakeholder experience	CFTC, MoAIWD, Farmers, farmer organisations, contract buyers	August 2019

Development of contract farming enterprises and systems will be predominantly demand driven, but facilitated and enhanced through government support and guided by regulations derived from experience gained through monitoring and evaluation in collaboration with stakeholders. The GoM will need to engage the services of legal advisers to draft the regulations and legal documents that must be enacted into law in order for them to become effective.<sup>4</sup>

In order for standard contracts to effectively address the constraints, risks and opportunities of sustainable contract farming, Government and all other stakeholders should be aware of the issues highlighted in the Strengths, Weaknesses, Opportunities, and Threats analysis in the background paper for this Contract Farming Strategy. These should be continuously evaluated in the context of the evolving state of contract farming in Malawi and the prospects for refinement of regulations affecting contract farming.

This evaluation will initially include an assessment of the feasibility and efficacy of the application of regulations in order to determine how they may be modified for sustainable and effective application to the industry. This must be a collaborative process between government and private sector to avoid the imposition of inappropriate measures on viable commercial commodity industries.

#### **4.2.2.1 Roles, strategic actions and expected outcomes**

Tables 4 to 8 list the roles, strategic actions, and expected outcomes and results for the major stakeholders in contract farming systems of Malawi – government, farmers, buyers, civil society organizations, and the financial sector:

<sup>4</sup> See report on Legal Frameworks for Contract Farming and Child Labour in Agriculture. October 2014

**Table 4: Government of Malawi roles, actions, and outcomes within the context of contract farming**

<b>Role</b>	<b>Strategic Action</b>	<b>Expected Outcomes and Results</b>
Policy guidance and regulation	Develop guidelines and regulations for establishment and efficient operation of contract farming systems with principles of good management enshrined in contract models for all agricultural commodities.	Enabling environment for growth of contract farming, aligning contract management with national contract farming strategy and existing labour laws, good agricultural practices, and good natural resource management
	Sensitise contracting parties on mediation and arbitration principles	Awareness by contracting parties of principles of mediation and scope for arbitration of contract farming disputes
	Conduct awareness campaigns, on a continual basis, to farmers and buyers for compliance with contract obligations	Improved culture of compliance with contractual obligations, including adherence to good agricultural practices, resistance to side-selling and unfair practices by contracting parties
Amendment of laws	Amend laws and regulations on contract farming	Legally substantiated platform for redress of non-compliance with contractual obligations
Agricultural extension and capacity building	Intensify delivery of agricultural extension services for all agricultural practices	Increased agricultural productivity and quality of output supplied to contract buyers
	Conduct capacity building programmes among farmer groups for improved engagement with contractual obligations.	Improved responsibility towards contractual obligations and capacity to negotiate terms
	Conduct capacity building on sanitary and phytosanitary management	Improved safety and quality of agricultural commodities  Improved access to export markets
Integrate biometric identity system into contract farming arrangements	Link existing identity systems to database of contracts	Improved security in financing  Reduced incidence of defaulting on loans  Enforcement of contracts facilitated
Integrate registrar of companies and cooperatives databases into contract farming arrangements	Link existing registrar of companies and cooperatives databases to database of contracts	Improved security in financing  Reduced incidence of defaulting on loans  Enforcement of contracts facilitated

<b>Role</b>	<b>Strategic Action</b>	<b>Expected Outcomes and Results</b>
Sanitary and phytosanitary management	Regulate sanitary and phytosanitary issues	Enhanced farmers' incomes and profits for contract buyers, through improved marketability of agricultural commodities  Enhanced prevention of the spread of plant and animal diseases
Oversight of contract farming arrangements	Monitor and evaluate contract farming arrangements  Provide guidance to buyers and farmers on best practices	Improved compliance with best practice and reduced scope for malpractice  Improved compliance with best practice and reduced scope for malpractice
Promotion of labour laws, human rights and corporate social responsibility	Develop guidelines and regulations that will incorporate labour laws, human rights and responsible agricultural investment issues  Promote and facilitate corporate social responsibility actions and investments by contract buyers	Improved working conditions, sustainable management of natural resources, and elimination of child labour and gender inequality in contract farming  Improved culture of responsibility by buyers to communities
Ensure fairness	Identify mediation and arbitration bodies or individuals	Improved access to advice and fair arbitration by farmers and contract buyers

**Table 5: CFTC roles, actions, and outcomes within the context of contract farming**

<b>Role</b>	<b>Strategic Action</b>	<b>Expected Outcomes and Results</b>
Regulation and Guidance	Develop guidelines and regulations on contract farming Disseminate regulations on contract farming	Regulated and enabling environment for contract farming Increased awareness by contracting parties of the regulations on contract farming
Mediation and Arbitration	Amend the laws	Improved mediation and arbitration of disputes
Maintain register of contracts	Conduct registration and approval of contracts meeting minimum standards  Link existing identity systems to database of contracts Link existing registrar of companies and cooperatives databases to database of contracts	Improved quality of contracts  Improved traceability of contracting parties Improved accountability of contract buyers

Role	Strategic Action	Expected Outcomes and Results
	Collect data on contracts for monitoring and evaluation purposes	Enhanced evidence-based adjustments of contract farming arrangements
Capacity building	Train stakeholders on the laws and regulations governing contract farming	Improved responsibility towards contractual obligations and capacity to negotiate terms
	Enhance capacity of the CFTC (both physical and human)	Improved service delivery

**Table 6: Farmers roles, actions and outcomes within the context of contract farming**

Role	Strategic Action	Expected Outcomes and Results
Agricultural production	Acquire production skills	Increased farm productivity High quality agricultural produce
	Negotiate and understand terms of contract, including price	Improved contract execution
	Register contract with CFTC	Improved mediation and arbitration of contract disputes
Group formation	Participate in contract farming through groups (especially cooperatives) Engage in capacity building on farmer group organisation	Increased incomes Improved bargaining/negotiation of contracts Improved access to markets Improved access to extension services Improved access to credit
Contract compliance	Understand terms of contract	Reduced cost of contract farming Improved long term profitability
	Observe contractual obligations	Reduced side-selling

**Table 7: Contract buyer roles, actions and outcomes within the context of contract farming**

Role	Strategic Action	Expected Outcomes and Results
Marketing	Identify markets and determine their respective needs	Increased access to markets
	Formalise market	Increased income
	Develop specifications for each commodity	Improved quality of output and market requirement compliance
	Identify farmers/farmer groups and areas of specific commodity production	Increased productivity

<b>Role</b>	<b>Strategic Action</b>	<b>Expected Outcomes and Results</b>
Project design and management	<p>Undertake feasibility study</p> <p>Secure funding</p> <p>Design contract and submit to CFTC</p> <p>Sign contracts after CFTC pre-approval</p>	<p>Feasible plan</p> <p>Finances for implementation accessed</p> <p>Enhanced legally-binding partnership</p>
Execute contract	<p>Provide farm inputs, credit and extension services</p> <p>Monitor production</p> <p>Grade and collect produce</p> <p>Pay farmers and recover input costs</p> <p>Repay creditors</p>	<p>Increased agricultural productivity</p> <p>Increased quality of output</p> <p>Good business reputation established</p>
Contract default management	<p>Advocate on contract compliance</p> <p>Conduct transparent negotiations on substantiated data</p> <p>Incentivise complete compliance</p> <p>Determine and publicise penalties for default</p> <p>Monitor default trends and analyse causes</p>	<p>Improved contract compliance</p> <p>Reduced default rates</p>
Capacity building	<p>Organize farmers into groups or cooperatives</p> <p>Conduct training of trainers and farmers</p> <p>Increase awareness on environmental safeguards and gender mainstreaming</p>	<p>Increased productivity</p> <p>Increased quality of output</p> <p>Improved contract compliance</p> <p>Enhanced care for the environment and gender mainstreaming</p>

**Table 8: Civil society and farmer organisations roles, actions and outcomes within the context of contract farming**

<b>Role</b>	<b>Strategic Action</b>	<b>Expected Outcomes or Results</b>
Advocacy: Awareness creation & Lobbying	Conduct awareness campaigns around contract farming arrangements, opportunities, objectives, and obligations	Improved understanding of contract farming arrangements
		Increased number of players engaging in profitable contract farming
Capacity building	Build capacity of farmers on contract farming	Improved knowledge on contract farming Increased bargaining power
	Advocate for formation of farmer groups (especially cooperatives)	Increased number of farmer groups engaging in contract farming arrangements
		Increased access to markets and incomes
Market development	Linking farmers to potential markets that are orderly and transparent	Improved engagement in formalised markets
	Support provision of necessary market intelligence information	Increased market access
Mediation	Assist in analysing contracts and advice farmers	Increased contract compliance Reduced incidences of disputes
	Facilitate in contract dispute resolution	Increased number of disputes resolved amicably
Monitoring and Evaluation	Conduct independent monitoring and evaluation of contract farming	Negative environmental and social effects of contract farming reduced

**Table 9: Financial sector roles, actions and outcomes within the context of contract farming**

<b>Role</b>	<b>Strategic Action</b>	<b>Expected Outcomes or Results</b>
Financing and credit management	Improve access to finance for farmers and contract buyers	Increased agricultural production and productivity
	Engage in warehouse receipts system	Increased financing of contract farming groups
	Create financing mechanisms for buyers and farmers engaging in contract farming	Increased access to credit
Financial Literacy	Conduct promotion campaigns on financial services in contract farming	Increased financing of contract farming groups
		Improved loan repayment culture
	Conduct capacity building of loan officers on contract farming	Increased agricultural knowledge on loan departments
Risk management	Provide risk management tools to farmers and contract buyers	Improved financial security against disasters

## **5. MONITORING AND EVALUATION**

### **5.1 Overview**

The purpose of monitoring and evaluation (M&E) is to track progress on the implementation of the Strategy and improve planning, targeting, and timely decision making through feedback from relevant stakeholders. The M&E plan of the Contract Farming Strategy is aligned with the broader frameworks of the National Agriculture Policy and the Agriculture Sector-Wide Approach and will utilise existing data and reporting systems thereof, where appropriate. It will also involve separate data collection and analysis exercises where necessary, albeit being cognisant of the need to minimise costs associated with M&E activities.

### **5.2 Objectives**

The Contract Farming Strategy M&E objectives are to:

- a) Improve effectiveness of guidelines and regulations of contract farming;
- b) Improve efficiency of implementation and management of the Strategy;
- c) Promote transparency and accountability between participants in contract farming arrangements;
- d) Determine the impact of contract farming on agricultural production and processing systems and on ancillary corporate responsibility activities;
- e) Determine the impact of contract farming arrangements on communities and their environment; and
- f) Guard against exploitation and malpractices that damage the viability of the system.

### **5.3 Indicators**

The following are the M&E indicators at impact and outcome levels, which will be tracked to monitor progress in implementation of the Strategy. Where appropriate, these indicators will be disaggregated by commodity, gender, age and geographic location of the contract buyers and producers.

#### **5.3.1 Impact Indicator**

Income of producers and buyers derived from contract farming arrangements;

#### **5.3.2 Outcome Indicators**

- a) Volume of farm output marketed via contract farming arrangements (disaggregated by profitability);
- b) Number of farmers accessing profitable farm output markets through contract farming
- c) Share of agricultural profits accruing to farmers from value added markets through contract farming

- d) Share of agricultural profits accruing to farmers from export markets supplied through contract farming
- e) Volume of agricultural inputs accessed by farmers through contract farming arrangements;
- f) Number of farmers accessing extension advice on good agricultural practices through contract farming arrangements;
- g) Value of output diverted from contract farming deals to side-selling in spot markets;
- h) Number of contracts voluntarily submitted for pre-approval and registration with the CFTC
- i) Number of contract farming disputes and complaints raised with the CFTC
- j) Number of amicably mediated and resolved disputes in contract farming arrangements.
- k) Perception of child labour use in contract farming arrangements;

#### **5.4 Frequency of Monitoring and Evaluation**

Monitoring of implementation of the Strategy will be an on-going process in order to periodically assess progress towards set targets and provide feedback to inform decision making. Data will primarily be collected by the CFTC in collaboration with the MoAIWD. Quarterly reports will be produced and will inform annual reports. Independent assessments of contract farming activities, commissioned by the CFTC and MoAIWD, will be undertaken to evaluate contract farming arrangements in Malawi. A detailed M&E plan for the Strategy will be developed by the CFTC and MoAIWD, in conjunction with stakeholders, to outline specific baselines, milestones and targets.

## **ANNEXES<sup>5</sup>**

### **ANNEX 1: CONTRACTS, RULES AND REGULATIONS THE KEY INSTRUMENTS OF POLICY IMPLEMENTATION**

#### **Role of Government in Contract Farming**

Guidelines on the formulation of clear, complete, enforceable, and effective rules, regulations and contracts between buyers and farmers will be provided by MoAIWD in collaboration with the Ministry of Industry, Trade and Tourism (MoITT), the CFTC and appropriate legal experts.

Rules and regulations must include clauses on good agricultural practice, good agricultural labour practices, good natural resource management practices, and safe and reliable chemical use. However the CFTC in the interim will only be able to regulate conducts that are provided for under its current mandate, until when necessary amendments have been made to CFTC's mandate. The inclusion of clauses on these issues in the rules and regulations will grant a measure of control to the line ministries over the sustainability of land use and productivity, the use of labour, environmental management practices, health and safety risks in agriculture, and commodity quality standards as they relate to contract farming. The Commission will therefore engage the relevant stakeholders, in the event that there are disputes emanating from these regulations. These areas of oversight are in addition to those already attached to general agricultural production and indicate the extent to which government can influence contract farming practices. These areas of oversight will be further refined following monitoring and evaluation of contract farming arrangements as guided by preselected indicators.

#### **Basic Principles of Contract Farming Contracts**

A basic requirement of any agreement is that both parties must agree to the conditions that it contains. In the case of a buyer compiling a contract to be agreed upon by a farmer, it is a fundamental requirement that the farmer fully understands the contract and the attendant rules and regulations. They must be explained to the farmer in a language that he or she is familiar with and must be translated into a written version in that language. The explanation of the agreement to the farmer must include a clear description of the objectives of the agreement and rules and regulations. The both the farmer and buyer must have an opportunity to negotiate the terms of the contract and the opportunity to have the contract vetted by a legal expert or advisor if the farmer and/or buyer so chooses.

Although contract farming can be a vehicle for attaining government's policy objectives, it is important to note that private parties must be free to enter into contracts with other parties so long as the rules and regulations encompass the Government policy on resource use and remain within the law. The GoM recognises that a heavy regulatory burden through the medium of the contracts may contravene the provisions of the Constitution of the Republic of Malawi

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<sup>5</sup> These annexes are just samples, the Strategy has advocated for development of contract farming guidelines and all the related laws and regulations, as such there is high likelihood of changes as the Strategy is implemented.

## **Limitations and Constraints to the Effectiveness of Contracts**

As clearly stated in the legal report prepared to guide the content of this Strategy<sup>6</sup>, the existence of a well-appointed and signed contract does not guarantee that the conditions that it embraces can be effectively enforced.

Until biometric identity cards for all Malawians and land titles for all farmland are issued, contract buyers have to largely rely on the honesty of farmers to use the inputs and services they provide to produce the desired crops, and that they will allow the costs of those inputs to be recovered from the sale of the crops. In the meantime, options for reducing side-selling are limited. However, they are improved by registration of contracted farmers and buyers by the CFTC, and by improving cohesion and coordination within each commodity sub-sector.

Although the efficacy of the CFTC in reducing side-selling is constrained by the lack of identity cards and land titles, the organization should be able to begin the process of creating a database of farming contracts using identity documents and related biometric data that are already available and can be made accessible to it, including the registry of passports, drivers licenses, companies and cooperatives, among others. The CFTC should therefore be able to uphold the laws pertaining to contract farming arrangements and ensure compliance with environmental and social management standards through mediation and arbitration.

### **General requirements of agreements**

In the interests of simplification, contractual arrangements should be encompassed by two components:

1. A set of rules and regulations applicable to all farmers and buyers within a sector, and
2. A contract that will be unique to each farmer.

#### *Rules and regulations*

It is unnecessary for every farmer to receive his or her own copy of the full set of rules and regulations. However, the rules and regulations must be made available on request in relevant languages and it must be verbally described to farmers before they sign their contracts. The contract should include a box to be signed, to acknowledge that the rules and regulations had been explained to them and fully understood.

It is the rules and regulations and the means by which they are to be made known to farmers that will be approved by the CFTC. There will be only a few variants in these rules and regulations, such as the details of the agricultural commodities, marketing structures and locations, but the main features will be common to several subsectors. It is therefore anticipated that their approval will not impose a burden on CFTC.

### **Rules and regulations to be made available to all contracted farmers**

Confirmation that the rules and regulations have been explained to all contracted farmers and understood by them must be indicated on the contracts to be signed. The rules and regulations will include the following:

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<sup>6</sup> Nkhata, M.J. 2014. "Legal Frameworks for Contract Farming and Child Labour in Agriculture in Malawi" A report for the Commercial Agriculture, Agro-processing, and Market Development Technical Working Group.

- a) Specification of the method of production or reference to extension advice or literature to be followed by farmer;
- b) Records to be maintained by the farmer;
- c) Charges, if any, to be made against the farmer for extension services and the farmer's obligations to attend, receive, or otherwise engage in training;
- d) Standards to be applied by the farmer on use of labour, prohibition of child labour, gender issues and environmental management techniques, and the onus of responsibility for observing those standards. These conditions will reflect the government policies and will be approved by government;
- e) Penalties to be imposed on the farmer if the farm inputs provided by the buyer either are not applied to production of the specified crop or returned to the contract buyer;
- f) Obligations on the farmer to provide or construct specified infrastructure for use in production, grading and storing of the produce as required for each enterprise;
- g) Obligations of the farmer in marketing the produce;
- h) Restrictions on farmer selling produce through alternative channels to those specified by the contracting company, including penalties to be applied in the event of side-selling;
- i) Options for disposal of product that is surplus to the farmer's contractual obligations or contract buyer's requirement;
- j) Penalties to be applied to the farmer in the event of breach of the contract by the farmer;
- k) Grading standards (including reference to the grader, time of grading and grading method(s) to be used) and acceptance procedures for the produce;

#### **Rules and regulations relating the buyers' obligations and conditions**

These rules and regulations will also require CFTC approval and must be explained to farmers before signing of the contract. Copies must be made available in local languages on request. It is not necessary to attach the rules and regulations to each contract but indication that this information has been explained to farmers and understood by them must be given on the contract.

- l) Services to be provided to the farmer by the buyer and any costs for the services to be charged against the farmer;
- m) Extension advice, broad description of coverage or curriculum, and training materials to be distributed to contracted farmers;
- n) Penalties to be imposed on the buyer in the event that inputs or services are not delivered according to contract and the means by which the penalties will be enforced;
- o) Obligations of buyer and farmer for maintenance or construction of off-farm and on-farm infrastructure;
- p) Quantity and quality of farmer's produce that the company guarantees to purchase;

- q) Method or formula for calculating the price to be paid for the farmer's crop will be clearly explained, discussed, and agreed upon between the buyer and farmer prior to the farmer's commitment to production. However, there will be need for Government involvement, specifically in terms of monitoring the terms and conditions of the contract, including the prices at which the produce is sold and the input and extension service costs levied to the farmer. This is mainly to protect farmers from being exploited by the contract buyer, which is often in the vantage position with respect to market information and bargaining power. The methods used for determining the price must be appended to the contract by the buyer in a language familiar to the farmer and formally acknowledged by signature or mark of the farmer and witnessed by an identifiable and responsible witness.
- r) Payment procedures, including time of payment;
- s) Enumeration of all possible deductible charges;
- t) Any special conditions or escape clauses attached to the agreement by either party, such as *force majeure*;
- u) Conditions that may require obligatory insurance, due to scale of operation or value of inputs or crop and respective risk being covered; and
- v) Options for mediation, arbitration or resolution of disputes between buyer and farmer, in case of need.

### **Components of the contract unique to each farmer**

In the case of contract farming, the legal contract between the producer and the buyer normally states that the producer agrees to use a specified area of land to produce a specified crop to specified standards, and the buyer agrees to purchase a specific quantity of the producer's specified product with specified quality standards using predetermined and agreed price or price formula. It may also include clauses on the provision of technical advice and production inputs on credit against sale of the crop to the contract buyer.

The specific components of the contracts used in contract farming arrangements must contain the following information:

### **Identification of parties to the contract and their location**

- a) The name, address, and contacts of the contracting buyer and the representative of the buyer in the locality of the farmer;
- b) The name, identity reference (if any), and residential address or location of the farmer, farmer group, or cooperative and the means by which they may be contacted (Post Office box, cell phone, local chief, relatives, place of employment);
- c) The coordinates of the production field or fields, landmarks in the vicinity, road map, and proximity to village and town;
- d) Location of extension contact, whether a private extension worker for the contract buyer or another agricultural advisory service provider;
- e) Location of produce processing, grading, packing, and collection facilities;

### **Specification of production obligations**

- f) Quantities of inputs, with their specifications, to be provided to the farmer by the contract buyer, the latest time of delivery or availability of those inputs, delivery point for inputs, the cost of the inputs to the farmer at point of delivery or collection, and the means by which the costs will be recovered from the contracted farmer by the supplier;
- g) The area to be brought under production in each location for the specified enterprise, or, in the case of livestock products, the quantity and description of product to be produced and made available to the buyer;
- h) Specification of the product to be produced by the farmer as required by the buyer – variety, type, quantity, or product quality criteria;
- i) The accessibility and location of production in relation to specified infrastructure.
- j) Official stamp of the buyer organisation, or signature, name, and location of the buyer’s authorised representative; and,
- k) The name and signature of the witness to the contract.

Three copies of the contracts must be signed:

1. Original for the farmer
2. One for the buyer, and
3. One to be submitted to CFTC.

### **Incorporation of Government policy**

Government regulations on resource use for each sub-sector will be made available to the buyers through MoAIWD and CFTC to accompany the contracts. These may vary according to the unique characteristics of production and marketing for each commodity. These regulations will be the channel through which Government policy on contract farming arrangements will be expressed and delivered to the private sector operators.

They will aim to protect against exploitation of all parties to the contracts – the buyers, the farmers, and third-party service providers. Transparent compliance with labour laws, environmental care, health and safety, good agricultural practices, commercial integrity, and any other factors that need to be observed will be inherent to any contract farming arrangements established. The regulations for a commodity sub-sector will make provision for the formalised mediation of any contract-related disputes that arise between the parties to the contract, and they will be open to adjustment as lessons are learned through M&E and experience is gained.

In summary, the government regulations for a commodity sub-sector will formalise the determination of conditions under which contract farming can be undertaken in value chains in the sub-sector in compliance with government policy.

## **Further considerations on contracts**

### *Limitations on scale of production*

In some cases, it may be appropriate to specify the maximum area that may be planted in relation to available production resources like land, labour, and inputs or alternative land use requirements, such as food security or woodlots. Such limitations may arise in recognition of quotas or other constraints to scale of production, such as finance or export licences on the part of the contract buyer.

### *Duration and succession*

For annual crops, a contract will be issued only for a single season, with renewal to be negotiated at the appropriate time. For perennial enterprises, such as sugar, tea, or tree crops and livestock, a longer-term contract will be needed in view of the implied investment by contract buyer and farmer and in view of the longer payback period. Long-term contracts must include provision for transfer of ownership in the event of incapacity or death.

The duration of the agreement must be specified in the contract, along with the procedures for its renewal, transfer, or renegotiation. If disposal of contracts is to be restricted, this should be clearly stated. The terms under which a transfer can take place also should be made clear.

### *Charges*

The contract must enumerate the charges to be paid by the contracted farmer and specify what they relate to – whether inputs supplied on credit, interest on loans, cess or levy on produce delivered or collected, transport charges, service charges related directly to the cost of services rendered by buyer, or any other cost.

Records of delivery and receipt of chargeable inputs must be countersigned by the recipients. These charges must be transparent and open to scrutiny by farmers, farmers' agents, monitoring and evaluation agencies, or appointed mediators or arbitrators.

If the charges are variable or subject to periodic increase and if they include a proportion of the overhead costs of the company, the basis of calculation of the charges must be clearly explained. A fair and mutually acceptable balance between the rights and obligations of both parties to the agreement must be achieved.

### *Enforcement*

The contract must contain an explicit clause on enforcement of the conditions contained in the agreement for both buyer and farmer. These may include obligations on the farmer to repay the cost of inputs provided if they are not applied to production of the specified crop or payment for the cost of re-grading in the event that quality standards have not been adhered to. Enforcement of these obligations may imply seizure of farmers' assets if the contract is considered legally binding within the context of existing laws in Malawi.

The means of enforcement of obligations of the buyer must also be described in the contract. This may arise when farmers commit their resources to production against an agreement that the product would be purchased by a buyer but the buyer fails to purchase the product or fails to provide inputs and services as described in the contract. Provided that the contract is legally binding in the context of the legal system in Malawi, the buyer can be legally obliged to remedy the loss to the farmer.

### *Remedy*

In the event that a contract is unilaterally terminated by the buyer, provision should be made for payment of compensation to the farmer for buildings erected, unexhausted improvements made in order to meet the obligations of the contract, and any standing crops or livestock produced in compliance with that contract.

If a farmer receives inputs and services and does not produce a crop according to the contract he or she must repay the buyer that provided them unless *force majeure* can be established whereby the risk is borne by the buyer. The circumstances under which *force majeure* is applicable must be clearly defined in the contract.

### *Mediation and arbitration*

While most disputes between buyers and farmers relating to the terms of the contract should be avoided through the use of sound, comprehensive contracts, those that cannot be resolved by simple mediation should be referred to an Arbitration Committee composed of key stakeholder representatives, which should be formed on an ad hoc basis at district level to support conflict resolution. The committee should be selected by the CFTC for fair representation of all parties to the dispute and guided by a standardised format for resolving disputes and imposing sanctions as specified in the contract or other applicable regulations. If resolution cannot be achieved by this process, the issue must be referred to the higher authority of the District Labour Office, commercial courts or to the appropriate line ministry.

### *Style and Presentation of the Contract*

The contract document should be prepared in terms and in a language that is comprehensible to parties involved. If necessary, a summary should be prepared and translated into the local language. The contents of the contract should be carefully explained to farmers before they are asked to sign the document.

The form of the standard contract for each type of enterprise should be reviewed by the CFTC for compliance with government regulations and legal integrity as per the contract laws in force in Malawi. The standard contract for a specific commodity sub-sector should be certified by a lawyer, paid for by the buyers in the sector, to ensure that the precedents contained in the contract are suitable for enforcement under Malawi Law and that none of the precedents in the contract are “objectionable” or “unconscionable” in law. However, for the contract to be effected, it has to be reviewed and cleared by the Commission.

### *Registration of parties to contracts.*

A record of each signed contract must be maintained by the buying organisation that has entered into the arrangement. This register of contracted farmers will remain confidential to the buyer but the CFTC will retain the right to demand sight of it in the event of a dispute that requires knowledge of the identity of the contracted parties.

## ANNEX 2: SAMPLE RULES AND REGULATIONS AND CONTRACTS

### Example of rules and regulations for one commodity

*The rules and regulations will be specific to one commodity and to one buyer but will be applicable to all farmers engaged by that buyer to produce the specified product. Different commodities to which contract farming applies will share the majority of rules and regulations and only minor changes will therefore be needed when modifying the rules and regulations for another enterprise.*

*Rules and regulations must be explained to all farmers who are to be contracted in a language that they understand and they must confirm that they have understood them by marking their contracts in a designated box. Farmers requesting a copy of the rules and regulations must be supplied with it in a language that they understand.*

#### **Rules and regulations**

These rules and regulations are applicable to contract farming arrangements in connection with *commodity* as managed by ..... **Limited**, hereinafter **The Buyer**, and all farmers hereinafter called **The Farmer** engaged with ..... **Limited** in production of *commodity*.

#### **Obligations of the Farmer**

- 1. Production method.** The Farmer shall be provided with specifications on the production method prescribed by The Buyer and detailed in training sessions and manuals.
- 2. Attendance to training sessions.** The farmer shall attend training sessions as prescribed in the contract. Failure to attend may jeopardise future involvement in contract farming arrangements and may undermine opportunities for effective redress in the event of a dispute.
- 3. Record keeping.** The Farmer shall maintain records or cause records to be maintained on the following production management parameters: *details of records to be kept*. The records are to be made available to the agent of The Buyer upon request. The purpose of keeping such records is to gain insights into opportunities for improvement of production management and thereby of productivity and profitability. Failure to maintain records may jeopardise future involvement in contract farming arrangements and may undermine opportunities for effective redress in the event of a dispute.
- 4. Standards to be applied in resource use in the course of production.** The Farmer will adhere to the regulations on application of resources as stipulated *here: Good Agricultural Practice ... ; Environmental care ... ; employment of labour ... ; regard to gender issues ... ; others as determined from time to time by GoM*. Failure to abide by or conform to these standards may result in fines imposed by the relevant national authorities or other sanctions as prescribed by the national laws. Transgressions may also result in prohibition from further involvement in contract farming arrangements.

5. **Application of inputs.** The inputs provided to The Farmer by The Buyer will be applied to the specified production enterprise in accordance with recommendations from the Buyer. Failure to abide by the recommended practice for application of the inputs or unauthorised disposal of the inputs may result in the obligation to repay The Buyer for the value of the inputs at farm-gate value to be specified in the contract.
6. **Installation of infrastructure and equipment.** Where the contract requires the acquisition or construction of infrastructure or equipment for the sole use of the production enterprise these will be installed in compliance with the terms of the contract and with national regulations in regard to planning permission and safety regulations.
7. **Marketing of specified product.** The Farmer shall deliver or otherwise make available the specified product according to the specifications of the contract. Failure to comply with the terms of the contract on delivery of produce may result in confiscation of The Farmer's assets to the value of the inputs and services provided in order for The Buyer to recover their cost. The Farmer may claim *Force Majeure* or appeal for mediation. In the event that The Farmer is found to have sold the specified product or portion of it to a rival buyer he or she will be guilty of breach of contract unless it is shown that The Buyer (contracting) has failed to acquire the product within the time frame specified in the contract. Redress for such side selling may entail confiscation of The Farmers assets to the value of inputs and services provided and/or black-listing of The Farmer with the CFTC against being engaged by alternative contract buyers.
8. **Quality standards applied to contracted product.** The Farmer shall strive to achieve the product quality standards as specified in the contract. The contract shall describe the standards required and the penalties and rewards applicable to product that diverges from the standards.

### **Obligations of the Buyer**

1. **Provision of inputs.** The Buyer will list in the contract the inputs to be provided to The Farmer and include their value or the cost to the farmer if any. The buyer should also indicate the source of the inputs, as to whether the Buyer got a loan from a bank and what interest rates are applicable.
2. **Provision of services.** The Buyer will list in the contract the services to be provided to The Farmer and the cost of those services to The Farmer if any. The services will include technical training on the use of inputs provided or required for the production of the specified product.
3. **Penalties for misuse of inputs provided.** The Buyer will describe in the contract the penalties that may be applied to farmers who fail to apply the inputs as prescribed.
4. **Sanction against unauthorised buying of produce contracted to another buyer.** The sanctions to be applied against The Farmer by The Buyer in the event that The Farmer sells the contracted produce to a third party without the authority of The Buyer must be enumerated in the contract.

- 5. Performance of the Buyer.** The contract shall describe the redress available to The Farmer in the event that The Buyer fails to deliver inputs as prescribed, provide services as prescribed or purchase the product as prescribed in the contract.
- 6. Installation of infrastructure and equipment.** The contract shall describe the obligations of The Buyer in respect of the need for The Farmer to install infrastructure or equipment required for the production or processing of the specified product.
- 7. Producer price structure.** The means or formula by which the price to the farmer for the specified product is determined will be transparently explained to The Farmer. A process of negotiation between The Buyer and The Farmer's representative should be applied in the development of the formula. The method of payment and the timing of payment must be described in the contract together with penalties for late payment by The Buyer. However, the Government should closely monitor the process to avoid incidences of the farmers being exploited.
- 8. Charges applied to The Farmer.** The Farmer must be made aware of all the standard and potential charges that will be made against his or her account.
- 9. Obligatory insurance.** If The Buyer requires The Farmer to acquire insurance cover for the product this must be clearly explained to The Farmer.
- 10. Escape clauses.** Any clauses in the contract that provide scope for The Buyer to avoid paying The Farmer such as *Force majeure* must be clearly explained to The Farmer.
- 11. Payment by The Buyer to The Farmer.** The contract shall specify the means of payment and the due date for payment.
- 12. Options for mediation and redress.** The contract must indicate the means by which an aggrieved farmer may seek redress through mediation.

## Sample of a Contract

*The Buyer is at liberty to design his own conditions that may include incentive structures and classification of farmers according to their performance and to include these with the approval of the CFC. The following sample contract must be seen simply as an example of basic arrangements between Buyer and Farmer.*

### Contract

This contract is made on *Date*..... between .....**Limited**, hereinafter the **Buyer**, and  
....., hereinafter called the **Farmer**.

**Contract Number: AAA 001**

### Obligations of the Farmer

- 1. Production method.** The Farmer will be instructed in the production method prescribed by The Buyer and will be obliged to follow that prescribed method in the production of the *specified product*.
- 2. Attendance at training sessions.** The Farmer is obliged to attend to *number* training sessions at *place* on *dates* and to have his/her attendance recorded by the agent of The Buyer.
- 3. Failure to comply with the production system as specified in the attendant rules and regulations.** In the event that The Farmer fails to comply with any of the clauses relating to Good Agricultural Practice, environmental care or use of labour as specified in the rules and regulations or fails to comply with corrective measures as specified by The Buyer or his agent The Buyer reserves the right to cancel the agreement with The Farmer or to place a charge against the purchase of The Farmer's specified product and refer The Farmer to appropriate authorities for redress. (*Where The Buyer has a scheme for classification of his contracted farmers he may describe the consequences of failure in respect to his classification status.*)
- 4. Application of inputs.** The *inputs* provided to The Farmer by The Buyer will be applied to the *specified production enterprise* in accordance with recommendations from the Buyer. Failure to abide by the recommended practice for application of the inputs or unauthorised disposal of the inputs may result in the obligation to repay The Buyer to the value of *Kwacha amount*.
- 5. Record keeping.** The Farmer shall maintain records or cause records to be maintained on the following production management parameters: *details of records to be kept*. The records are to be made available to the agent of The Buyer upon request. The purpose of keeping such records is to gain insights into opportunities for improvement of production management and thereby of productivity and profitability. Failure to maintain records may jeopardise future involvement in contract farming arrangements and may undermine opportunities for effective redress in the event of a dispute.
- 6. Installation of infrastructure and equipment.** The Farmer shall *e.g. construct a grading shelter of .....square metres; purchase/hire/borrow a knapsack sprayer* ..... In the event that The Buyer cancels the contract due to his own

constraints he will compensate The Farmer for the infrastructure and equipment to the value of *MK* .....

- 7. Quantity of product.** The Farmer shall make available exclusively to The Buyer *quantity in units of specified product* or shall dedicate *area in units* for the production of *specified product*.
- 8. Quality of product.** *The product* to be made available exclusively to The Buyer shall meet the following quality standards: *description of the standards*.
- 9. Divergence from quantity.** If the quantity (weight/volume) of specified product made available by The Farmer to The Buyer is less than that specified above by more than *percentage* The Buyer reserves the right to reduce the price per *unit* by an *amount/percentage* or decline to accept the product. If the quantity of specified product made available to The Buyer exceeds that specified above The Buyer will purchase the additional *quantity* at *percentage* over the agreed price. *(This clause is optional and is more relevant when The Buyer provides significant value of inputs and services and needs to ensure recovery of investment and/or incentivise further productivity from the inputs provided.)*
- 10. Divergence from quality.** *(The content of this clause will depend on the grading system and pricing structure of the buyer and the value to The Buyer or on the open market of the surplus product.)*
- 11. Standards to be applied in resource use in the course of production.** The Farmer will adhere to the regulations on application of resources as elaborated here: *Good Agricultural Practice* .....; *environmental care* .....; *afforestation* ..... ; *employment of labour* ...; *regard to gender issues* ...; *others as determined from time to time by GoM*. Failure to abide by or conform to these standards may result in fines imposed by *the relevant national authorities* or *other sanctions* as prescribed by the national laws.
- 12. Transfer of product.** The Farmer will make the specified product available for collection from *place* on *date* and The Buyer or his agent will provide a delivery note for the quantity and quality collected which bears the name of The Buyer and his agent and the name of The Farmer. *(This clause will describe where the product will be delivered to or collected from including times, packaging, acceptance procedures etc.)*
- 13. Sanction against side selling.** In the event that The Farmer sells the specified product to a buyer other than .....*Limited* The Farmer will be guilty of an offence and ..... *Limited* will have the right to claim the cost of inputs and services provided by ..... *Limited* plus the reasonable cost of recovering their value as approved by CFTC from The Farmer.
- 14. Failure to make the specified product available to The Buyer.** In the event that The Farmer fails to make the product available to The Buyer at the specified time and place The Farmer will be obliged to proffer an explanation. If the cause of failure does not fall within the description of *Force Majeure* as detailed below The Farmer will be required to return the inputs or their value to The Buyer and may be excluded from subsequent contractual arrangements with The Buyer. *Force Majeure* will be

applicable in the case of *drought, flood, fire, disease, sickness of The Farmer or other causes to be determined by The Buyer with the approval of the CFC.*

### **Obligations of the Buyer.**

- 15. Provision of inputs.** The Buyer hereby undertakes to provide *list of inputs and quantities* to The Farmer at *collection point* by *date* specifically for the production of *specified quantity of specified product*. The cost of the inputs will be *cost* and will be charged *against production at time of sale or recovered from The Farmer in kind in the event of the product not being made available to The Buyer.* (These conditions will vary according to the policy of The Buyer as approved by CFTC.)
- 16. Provision of services.** The Buyer, through his agents, will provide *technical advice in the form of number of training sessions at a place between dates and times* to be attended by The Farmer. The agent of The Buyer will record the attendance of The Farmer at the training sessions. The Buyer will establish demonstration plots *as appropriate and at the discretion of The Buyer.*
- 17. Failure to provide inputs or services.** In the event that The Buyer fails to provide inputs as specified in Clauses 15 and 16 he will be obliged to proffer redress to The Farmer as agreed with CFTC and The Farmer unless *Force Majeure* is applicable. Conditions under which *Force Majeure* would apply include *specified conditions.*
- 18. Purchase of specified product.** The Buyer will purchase from The Farmer *quantity of specified product* from *delivery point* between *dates* provided that the quality of the product falls within the quality standards specified in Clause 8 above.
- 19. Payment by The Buyer to The Farmer.** The Buyer will pay The Farmer for the specified produce according to the following schedule: *payment schedule.*
- 20. Failure of The Buyer to purchase the specified product.** In the event that The Buyer fails to purchase the agreed quantity and quality of product within *the timeframe and price agreed* The Farmer will have the right to dispose of the product on the open market or to gain compensation from The Buyer with approval of the CFC or its appointed agent (*nominated here if appropriate*). In the event that The Buyer fails to pay The Farmer within the agreed schedule The Farmer will have the right to interest accruing to the amount owed at the annualised rate of *interest rate per day/week.*
- 21. Options for mediation and redress.** Either party to this agreement may seek mediation or redress in the event of a dispute over contractual issues. Such mediation will initially be sought from CFTC or District Labour Office depending on the issues under dispute. Further arbitration may be sought in the MoAIWD or Industrial Courts.

### **Identity and coordinates of The Buyer and The Farmer**

- 22. The Buyer:** ..... Limited. CF Contact person ..... Plot .....  
Street..... Town..... Telephone ..... email@.....
- 23. The Farmer:** ..... Address..... Location.....  
Cell phone no.....

**24. Chief name..... Neighbour name and contact.....**

**Referee/witness.....**

**25. By marking this box  the farmer confirms that the content and meaning of the rules and regulations and the contract have been explained to him/her in a language that s/he understands and that s/he has understood the conditions contained in them.**

**26. Name of the Buyer agent .....**

**27. Signature of the Buyer agent .....**

**28. Date of signing.....**

**29. Name of the Farmer .....**

**30. Signature (or mark) of The Farmer .....**

**31. Date and place of signing. ....**

**32. Name of the Witness .....**

**33. Address of the Witness .....**

**34. Signature of the witness.....**

**35. Date of signing .....**



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