

Form 5

(r. 12(2), 13(2))

AGREEMENT BETWEEN A GROWER/REGISTERED MILLER/REGISTERED
OUT-GROWER INSTITUTION FOR THE HARVESTING OF
SUGARCANE/TRANSPORTATION OF SUGARCANE

This AGREEMENT is made on the day of..... two thousand and BETWEEN of P. O. Box(referred to as the “Company” which expression shall, where the context so admits, include its successors in title and assignees) AND (harvesting/transportation contractor’s name) of P. O. Box..... (referred to as the “contractor” which expression shall, where the context so admits, include his or its successors and assignees), who, if a body corporate, was incorporated/registered in the Republic of Kenya and has its registered office at within the Republic of Kenya.

- a. WHEREAS the Company intends to engage the contractor to harvest or transport sugarcane in the estate of the Company and grower fields; and
- b. WHEREAS the contractor intends to harvest/transport sugarcane within the estate of the Company and grower fields and, for which the contractor has proof of capability of undertaking the harvesting/transportation services to the satisfaction of the Company for the consideration provided.

NOW IT IS AGREED BETWEEN THE COMPANY AND THE CONTRACTOR AS FOLLOWS:

TERMS OF THE AGREEMENT

1. This agreement shall commence on the date of this agreement and shall remain in force for a period of (months) unless previously terminated or extended in accordance with the provisions herein.
2. The parties to this agreement shall undertake to conduct their business with the aim of ensuring integrity, transparency and accountability.
3. On expiry of the contract period specified in paragraph 1, the parties may renew this Agreement upon the same terms or other conditions as the parties may agree in writing.
4. The contractor shall—
 - a. be a registered employer with the Ministry responsible for labour and shall recruit all their harvesters/transporters;
 - b. recruit and employ adults in accordance with the labour laws of Kenya and regularly bring to the workplace the appropriate number of harvesters/transporters, fully equipped with suitable cane knives;
 - c. provide transport to the harvesters/transporters to and from working sites;
 - d. before signing this agreement, open an account with a suitable and acceptable financial institution in Kenya, the details of which shall be availed to the Company to facilitate payment of their services;

- e. harvest and stack green and accidentally burnt cane in the estate of the Company for which he undertakes to provide a sufficient number of the harvesters/transporters daily and to work under the direction of the Company;
- f. harvest/transport sugarcane in the allocated fields only when a valid work order has been issued and complete their allocated fields before being allocated new ones; on failure to do so, shall be held responsible for any unauthorized harvesting by sugarcane cutters registered under the contractor;
- g. cut all cane stalks at ground level, de-top at the first visible dewlap and remove all dry or green leaves, water shoots, dead stalks and other trash from sugarcane and, while stacking the cane, clearly separate the extraneous matter from sugarcane;
- h. motivate their employees to accomplish designated tasks to enhance harvesting efficiency;
- i. ensure that the sugarcane from each field is stacked separately and appropriately tagged;
- j. be responsible for re-stacking, arranging or combining poorly shaped, sized or low density sugarcane stacks;
- k. be responsible for the social welfare, upkeep and all legal obligations pertaining to their employees and machinery;
- l. be responsible for damage, injury or losses caused by his employees/ agents or vehicles upon third parties and themselves;
- m. provide a list of their harvesters/transporters to the Company;
- n. provide accommodation, if the need arises, and safety gear for his employees;
- o. pay the wages and other benefits of their employees;
- p. meet the cost of any inputs or services availed to the contractor on their request by the Company or will allow the deduction of such charges/expenses from any payment due unless otherwise agreed in writing;
- q. be responsible for any damage caused to the property of the Company and shall be required to make good such damages out of the payment due to the contractor;
- r. be responsible for any loss to the Company through bad harvesting, unharvested sugarcane or sugarcane covered by trash;
- s. ensure that his employees follow all routing instructions and advice from the field staff of the Company;
- t. ensure that discipline amongst the employees is maintained;
- u. not solicit payment of any kind, other than what is provided for under this agreement, from the Company for services rendered under this agreement; and
- v. take insurance to cover his employees, agents, machinery and third parties.

5. The Company shall—

- a. offer for harvest/transportation sugarcane as is derived from its estate and contracted sugarcane fields only, for use either as seed crop cane or mill crop, sugarcane which shall be harvested green, cut at ground level, de-trashed and

topped just below the meristem as specified by the body responsible for research; a job completion certificate shall be promptly signed where harvesting has been done satisfactorily;

- b. set the lead time in harvesting/transporting sugarcane not more than twenty-four hours and all the lead sugarcane harvested/transported within the lead time shall be under the responsibility of the Company, otherwise the contractor shall be held responsible for sugarcane harvested/transported outside the lead time;
 - c. accept all sugarcane of requisite harvesting quality from the area specified in this agreement in accordance with the programme provided for herein and the requisite harvesting quality of sugarcane shall be as specified by the Authority in respect of the sugarcane variety whose extraneous matter shall be less than three per cent;
 - d. ensure that, subject to sugarcane yield and weather conditions, sufficient cane is available to meet the cutting and stacking requirements of the contractor;
 - e. make payments to the contractor at an agreed rate and time;
 - f. make payments every fortnight after the contractor has presented and verified their bills;
 - g. at its discretion, take over any work not done in accordance with this agreement and recover the cost of such from the payments due to the contractors;
 - h. apply strict disciplinary practice and provide formal notification where the required standards of harvesting are not being met;
 - i. not be liable for any loss, damage or injury done to or caused by the contractor to their employees, agents or machinery or third parties whatsoever;
 - j. write delivery notes and any other field records for the sugarcane harvested; and
 - k. notify the contractor to remedy a situation within twenty-four hours where the Company is dissatisfied with the contractor's performance, failure to which the contractor shall bear the cost of the damages.
6. For the sugar cane crop, estimates of tonnages shall be based on accurate sugar cane stack dimensions of sixteen by ten by seven feet all the sugar cane shall be cleared from the ground and remain neatly stacked in the field so as to make a minimum average of one and a half tonnes of stacked sugar cane per cutter per day.

TERMINATION OF CONTRACT

- 7. The contractor shall not assign his services or any interest therein or any of his rights or obligations under this agreement without the written consent of the Company.
- 8. Where the contractor offers poor quality services, the Company may seek for alternative services upon notice to the contractor.
- 9. Where the Company ceases to exist, the contractor may offer its services to another party without the approval of the company.
- 10. If either party decides to discontinue the harvesting of sugarcane or terminate the relationship with the other party, he shall give a notice of thirty days of their intention to do so and shall pay all dues within the period of notice.

11. Termination of the contract pursuant to paragraph 9 shall be without prejudice to all rights accrued and obligations incurred to or by either party prior to the date of termination and shall not prejudice claim for damages for such breach of contract.

FORCE MAJEURE

12. Neither the Company nor the Contractor shall be obliged to perform their respective obligations under this agreement if, and to the extent that they or either one of them, they may be hindered or prevented from so doing directly or indirectly by an event of force majeure.
13. If the performance of this agreement or any part thereof shall become impossible of performance by either party due to force majeure, the party in default shall not be held responsible to the other party for such non-performance.
14. Without prejudice to the generality to the other terms the following events shall for all the purposes of this Agreement fall within the meaning of the term force majeure; fires and explosions at the factory, floods, earthquake, tempest, war, civil commotion, riots, arson, sabotage, labour strikes, lock-outs, other industrial dispute, breakdown or damage to plant machinery, transport or equipment, shortage of supplies fuel, non-availability of shipping space or railway services inability to effect sale and or delivery of sugar produced or transported sugarcane or road conditions and any other causes beyond the control of the parties hereto such that no reasonable measure or vigilance on the part of the parties hereto or their agents could have prevented.
15. The affected party shall report any event of force majeure within seven days from the date of its occurrence and the competent authorities of both parties shall certify the said event.
16. The obligations of the parties under the specified agreement shall remain suspended for the period during which the said event of force majeure persists.

DISPUTES

17. Subject to paragraph 18, any question or dispute as to the responsibility to fulfil the terms of this agreement shall be referred to the Courts .
18. If a dispute arises in the performance of this, the parties may agree, within fourteen days after service by one of the parties hereto on the other, notice of the existence of such dispute, to refer the dispute to two arbitrators who shall be appointed jointly by the Chairman for the time being of the Law Society of Kenya and such arbitration shall be conducted in accordance with and subject to the provision of the Arbitration Act, Chapter 49 of the Laws of Kenya.

IN WITNESS WHEREOF the parties have executed this agreement on the date and year inscribed herein.

SIGNED on behalf of: (Contractor)

BY:.....

In the presence of: (Witness)

SIGNED on behalf of :

(Company)

BY:

In the presence of: (Witness)

REGISTRATION OF SUGARCANE CUTTERS

(p. 4.a.)

Registration number

Name

Sub-location.....

Village.....

- (1) I, harvesting contractor for apply to register as a temporary employee to cut and stack green or accidentally burnt sugarcane.
- (2) I am a Kenyan citizen of Identity card number.....or a foreigner with work permit number.....
- (3) I have been hired for the period of.....months from day of(month) two thousand and
- (4) My minimum daily task shall be one point five tonnes of clean, trashed, ground cut and topped at the last node sugarcane per cane sugarcane.
- (5) I will work in a group of not more than three other cutters to cut enough cane to make a stack of not less than six tonnes.
- (6) I will individually cut four or more rows of sugarcane, whose length will vary according to cane yield, as will be allocated once in the morning by a Supervisor or Field Assistant prior to commencement of cutting or within the first hour of cutting.
- (7) I will stack the sugarcane properly according to the field Assistants directive ensuring grooves are not blocked and that all stack sides and corners are regular and of uniform length, width and height all round.
- (8) I will also avail myself to do other tasks related to cane harvesting namely re- stacking, cutting and slashing poor cane cutting and carrying cane to a suitable stack site. I will also avail myself for transportation to other area than my own area for the purposes of harvesting cane as contained in the contract.
- (9) Payment will be based on the tonnage of sugarcane cut and Stacked or on a daily basis for re-stacking, slashing and will be according on the following rates.
 - (a) cutting and stacking green cane at Kshs..... per tonnes of cane;
 - (b) cutting and stacking burnt cane at Kshs.....per tonnes of cane; and
 - (c) carrying cane at Kshs.....per tonnes of cane.
- (10) I have read and understood the contents of this agreement to the best of my ability.

NameSignature.....

Signed on behalf of the Harvesting Contractor:

NameSignature.....

In the presence of

NameSignature.....