

Form 6

(r. 14(2))

AGREEMENT BETWEEN A GROWER AND A MILLER FOR SUGARCANE  
FARMING AND SUPPLY

This AGREEMENT is made the \_\_\_\_\_ (day) of \_\_\_\_\_ (month) two thousand and \_\_\_\_\_ BETWEEN \_\_\_\_\_ (names in full) of Identity Card No. \_\_\_\_\_ of P.O. Box.....(Town/City) (referred to as the “grower”, which expression shall where the context so admits, include his successors and assignees) whose farm/plot L. R No \_\_\_\_\_ Soil type(s)..... and is situated in Sub-location \_\_\_\_\_--- Location..... Division..... Sub-County..... County ..... AND ..... (name in full) of P.O. Box..... (Town/City) (referred to as the “miller”, which expression shall where the context so admits include its successors and assignees) whose was incorporated/registered in the Republic of Kenya and having its registered office at \_\_\_\_\_;

- a. WHEREAS the grower is a registered owner/ lessee and grows sugarcane under this agreement in the aforesaid plot/field whose total area planted with sugarcane covering.....hectares and supply the total harvested sugarcane to the miller; and
- b. WHEREAS the grower is not a member of any out-grower institution and wishes to enter into direct agreement to grow and supply sugarcane to the miller; and
- c. WHEREAS the miller is willing to enter into agreement and accept all sugarcane grown under this agreement in the aforesaid plot/field and mill the total harvested sugarcane.

NOW IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

TERMS OF THE AGREEMENT

1. The term of this agreement shall commence on the date it is signed and shall, unless sooner determined under the provisions hereof, continue until the grower has harvested one plant and two ratoon crops, which is a period of up to twenty four months for plant crop and up to twenty two months for each ratoon crop provided that for early maturing varieties, the crop may be harvested earlier as appropriate, and that by mutual consent the said term maybe extended to include the harvesting of one or more ratoon crops as long as the crops meet agreed quality standards, with or without modifications of the terms and conditions herein contained, by a memorandum of extension endorsed hereon not less than three months before the date of the anticipated commencement of harvesting of what would otherwise have been the last ratoon crop under this agreement.
2. This agreement shall cover sugarcane development services such as seed sugarcane supply, land preparation, supply of fertilizers, supply of herbicides and pesticides, extension/ advisory services, financing of sugarcane cultivation and supply by either party in cash or through provision of services as outlined under sugarcane development; negotiating for affordable credit, maintaining proper bookkeeping, transport/ distribution of farm inputs, timely transport of seed crop, provision of educational programmes for farmers, supporting crop diversification programmes for food security and provision of advances to farmers on hypothecation of their crops.

3. Any party may harvest, transport and weigh sugarcane on behalf of the grower or the miller within the terms and conditions agreed between the miller and grower.
4. Sugarcane transportation shall be fast, to avoid sugarcane spillage and carry high payload to reduce costs; the miller and cane transporters shall ensure a short turn round time at all times; and transport costs shall be charged on the basis of the weight of delivered sugarcane at zonal rates.
5. Sugarcane shall be transported efficiently in stack units (6 tonnes) or their multiples such as two stacks ((12 tonnes) or three stacks (eighteen (18) tonnes) to avoid field and transport losses.
6. The sugarcane transporter shall be included in the harvesting programme indicating specific assignment and area of operation and shall be held responsible, by either party, for sugarcane spillage during transportation.
7. The sugarcane price payable by any party shall be the price derived through the payment formula provided by the sugarcane Pricing Committee.
8. The parties to this agreement shall at all times undertake to conduct their business above Board with the aim of ensuring integrity, transparency and accountability and the miller shall ensure sugar products conform to the specifications of the Kenyan Bureau of Standards and also strive to pack sugar directly for retail in the market.

#### OBLIGATIONS OF THE MILLER

9. The miller shall, before the start of each financial year, prepare cultivation and planting programme covering all growers and showing acreage, approximate timings and production quantities anticipated from each grower.
10. The miller shall notify the grower in advance of any planned closure of the mill for any reason, and notification shall be through a detailed annual time account and the provided annual milling programme.
11. The miller shall prepare a cultivation and planting programme to include the area under sugarcane: by crop cycle for farmer; by each variety showing the name(s) of farmer(s), plot number(s); age of sugarcane, area under fallow; anticipated tonnage of sugarcane and yields; expected time of maturity and harvesting per area; expected inputs and their timings; record of growers loan(s) to farmer(s); payment records in respect of sugarcane sales proceeds; record(s) for land preparation and harvesting equipment.
12. Where the miller is not the primary provider of crop seed, he shall provide requirements for seed cane as part of long-term sugarcane requirements provided an integrated approach to seed cane development shall be worked out by the body responsible for research in the seed crop development programme
13. The miller shall, at the appropriate time, prepare a harvesting programme showing the approximate expected time of harvesting the crop of each grower and furnish the grower with copies of such programmes as soon as they are completed, and consult with the growers regarding any significant changes therein that the miller may subsequently consider necessary to make; and a list of all plots showing the acreage of each grower's sugarcane area as specified in his sugarcane supply agreement provided that the programmes referred to herein shall be tentative and their implementation shall be subject to the exigencies of subsequent operation and circumstances.

14. The lead time in harvesting sugarcane shall not be more than twenty-four (24) hours and all the lead sugarcane harvested within the lead- time shall be under the responsibility of the miller, who may arrange to offer the sugarcane to another miller or bear the cost of wastage.
15. The miller shall buy all sugarcane of requisite quality harvested from the area specified in this supply agreement in accordance with the programme provided for herein and the requisite quality of sugarcane shall be as specified by the Authority in respect of the specified sugarcane variety.
16. The miller may reject any sugarcane found not to be of the requisite quality based on parameters established by the Authority.
17. The miller shall pay the grower within seven days of sugarcane delivery provided that the sugarcane will be harvested not later than one month after the maturity period specified by the Authority.
18. If a miller fails to pay the grower as specified by these Regulation and the Schedule to this agreement for the sugarcane, the miller shall be liable to pay a penalty of 1.5% per month on the outstanding grower dues of the affected growers up to the time it completes payment to safeguard the growers' ability to repay the funds to finance sugarcane production.
19. The miller shall maintain and develop adequate milling capacity for sugarcane planted based on agreed planting plans with the growers and further strive to mill sugarcane efficiently to realize maximum returns for both parties by achieving the standards specified by the Authority:
20. The miller shall off-load sugarcane quickly and efficiently by applying the principle of first in first out (FIFO) and no sugarcane shall be stored in the yard for more than 12 hours from mill-time, provided that during the handling of sugarcane in the yard vehicles shall not be used in such a manner as to destroy sugarcane.
21. The miller shall ensure that high impact extraneous matter such as stones, boulders, tree stumps, etc. do not damage equipment by putting a system in place to exclude them and any identified culprit shall be penalized.
22. The miller may harvest, transport and weigh sugarcane on behalf of the grower within the terms and conditions agreed between miller and grower.
23. The miller shall advise the grower of any change in planned activities as soon as the need for such change becomes apparent and he shall issue notices to stop further harvesting of sugarcane in the event of mill breakdowns.
24. The miller shall list charges for all goods and services to be provided in the agreement as shown hereafter to allow the grower to make a choice and such chargeable goods and services shall include, pesticides, herbicides, fertilizers, land development, crop maintenance, harvesting, weighing, transportation and any other specified hereof.

#### OBLIGATIONS OF THE GROWER

##### *Accessibility of sugarcane plot*

25. The grower shall offer for sugarcane development only land, which is accessible in case of supply of goods and services throughout the term of agreement.

26. The grower shall at all times allow the miller to enter upon his land together with any vehicles, machinery or livestock which the miller may require to inspect the land and the sugarcane growing thereon without causing damage to property, sample the sugarcane, gain access to other grower's land, including such construction of access tracks as may be required for the transport of sugarcane produced by the grower or others provided that any damage to property by miller or his agents shall be borne by the miller.

*Sugarcane varieties*

27. The grower shall plant or cultivate the most suitable variety of sugarcane recommended by the body responsible for sugar research; which shall avail the sugarcane varieties and expected characteristics, which relate to the various soil types in the area.

*Crop husbandry*

28. The grower shall maintain his sugarcane cultivation to enhance a satisfactory yield by:
- a. maintaining the sugarcane weed-free;
  - b. applying, at the commended time and in the recommended amounts, all fertilizers and other material recommended by the bodies responsible for research and extension;
  - c. undertaking the planting and gapping of sugarcane area at the times recommended by the bodies responsible for research and extension, to ensure a high plant population;
  - d. applying all services and goods, which he may have obtained from the miller for the benefit of his sugarcane crop solely for that purpose;
  - e. undertaking stubble shaving, inter-row cultivation and trash lining within one month after harvesting provided that the cost of stubble shaving shall be borne by the party undertaking the harvesting;
  - f. inspecting sugarcane for pests and diseases periodically and removing diseased or infested sugarcane and disposing them off in the manner prescribed by extension agents according to the list of pests, diseases and methods of eradication as recommended by the body responsible for research;
  - g. except for seed cane production, planting the sugarcane inter-row, one row only of common beans, soybeans, potatoes, tomatoes, onions, cabbages or carrots and any other crop maturing within four (4) months and recommended by bodies responsible for research and extension; and
  - h. maintaining suitable permanent boundary marks and cleared firebreaks for his sugarcane crops.
29. The grower shall take other precautions against fire according to the advice of the extension agents; be liable to pay the cost of any damage suffered by other growers because of failure to comply with the terms hereof.
30. The grower shall attend meetings and field days convened by the bodies responsible for research and extension; for learning the proper sugarcane husbandry, operation and application of goods and services obtained from the miller for the satisfactory yield of sugarcane.

31. The grower shall grow and supply sugarcane of requisite quality harvested from the area specified in the sugarcane farming and supply agreement in accordance with the programme provided for herein by the miller.

*Seed cane*

32. The grower shall allow the cultivation of seed cane nurseries, if the millers' extension agents' desires for the multiplication of seed cane material to be supplied to other growers provided such sugarcane may be used for milling when it is no longer required for seed cane.
33. Where sugarcane is to be used as seed cane the cost for purposes of paying the grower or selling to recipient grower shall be determined in accordance with guide notes provided by the Sugarcane Pricing Committee.
34. Where a grower has been identified to grow seed cane using the agronomical practices recommended by body responsible for research the price per tonne of the seed shall be determined separately from the commercial sugarcane provided breeder or basic seed shall be provided by body responsible for research on specific terms to the miller or any bulking institution or grower who will establish A-nurseries and in turn shall supply other growers with seeds for B-nurseries. A list of approved nurseries and bulking institutions or growers shall be maintained by body responsible for research.
35. The grower shall allow the cutting of good quality commercial sugarcane of plant and first ratoon crops to supply seed cane to other growers, only in the absence of suitable nurseries provided that the age of the seed cane shall not be less than seven but not more than fourteen months depending on cane variety and cane growing.
36. The grower shall plant seed cane at the onset of rains. Irrigated sugarcane shall be planted at any time.

*Grower fails to maintain sugarcane husbandry*

37. The miller shall, upon a seven-day notice, be entitled, in the event that the grower does not prepare, plant and maintain his land and sugarcane in accordance with the agreement, to carry out all and any such operations on the grower's land, to deduct the cost with interest for these operations from the payment to be made for the grower sugarcane. Such notice shall have either been served to the grower or his representative and acknowledged, or shall have been posted to the grower by registered mail of work carried out.
38. The miller shall give notice for the work to be undertaken on behalf of the grower, detailing work description, costs and penalties involved; and on completion of the said work, a job completion certificate shall be prepared and issued to the grower who shall acknowledged receipt by signing thereof; indirect costs shall be agreed by the parties at time of entering into this agreement.

*Costs and recovery*

39. The grower shall bear all direct and indirect costs of the works, goods and services and interest accruing thereto supplied by the miller in accordance with the Schedule to this Agreement unless the same is paid earlier allow such costs to be deducted from payment for sugarcane supplied by the grower.

Provided that:

- a. the said charges shall always be as agreed with the grower;

- b. the miller shall consult with the grower regarding any proposed changes in the said charges before such charges are proposed to take effect and shall maintain such records as are necessary to show the grower that he charges from time to time are as agreed in (a) above;
- c. the miller shall notify all charges to the grower in reasonable time before the charges are due to take effect; and
- d. where a grower ends up with a debit balance the miller shall immediately write to the grower for arrangement of recovery of the said debt.

*Sugarcane harvesting, transport, weighing and selling*

- 40. The grower shall offer, for harvest, transport and weighing all such sugarcane as is derived from his sugarcane plot under the agreement and no other for use either as seed cane or mill cane; sugarcane which shall be harvested green, cut at ground level de-trashed and topped just below the meristem as specified by body responsible for research and extension; a job completion certificate shall be promptly signed where harvesting and transport has been done satisfactorily.
- 41. The grower shall not sell his sugarcane through a middleman nor dispose of it or any interest therein to any other parties without the written permission of the miller specifying the tonnage of sugarcane which may be sold, the date on which the sale may take place and destination of the sugarcane.

*Grower representatives*

- 42. The grower shall appoint a representative in all matters of advocacy for sugarcane development, financing of sugarcane supply services, costs of farm inputs and related services.
- 43. The grower shall either attend himself or send an authorized representative to the buying point to witness the condition of the sugarcane at the time of delivery and to obtain a ticket showing the weight or value of the sugarcane.

**TERMINATION OF CONTRACT**

- 44. The grower shall not assign his land or any interest therein or any of his rights or obligations under the agreement without the written consent of the miller.
- 45. Where the miller offers services at the wrong time, the farmer shall have the option of arranging for such services upon notice to the miller.
- 46. Where the sugar mill ceases to exist, the grower may deliver the sugarcane to another party without the approval of the miller.
- 47. If any party decides to discontinue the production of sugarcane or terminate the relationship with the other party, he shall give a three months' notice of his intention to do so and shall pay all his dues before the expected time of harvest and the miller or the grower will then harvest sugarcane in the normal manner provided that such notice shall only be effective if the grower shall, within the period of notice, repay in full all loans received by him from the miller. Any such termination of the contract 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 this agreement.

**FORCE MAJEURE**

- 48. Neither the grower nor the miller shall be obliged to perform their respective obligations under this agreement if and to the extent that they or either one of them

may be hindered or prevented from so doing directly or indirectly by an event of force majeure.

49. 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.
50. 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

51. Any question or dispute as to the responsibility to fulfil the terms of this agreement shall be resolved in accordance with the Laws of Kenya.

#### CHARGES BY THE MILLER

	UNIT	QUANTITY	COST per UNIT	TOTAL COST
SURVEY	Ha			
LAND PREPARATION				
Trimming	Ha			
Ripping	Ha			
Disking	Ha			
1 <sup>st</sup> Ploughing	Ha			
2 <sup>nd</sup> Ploughing	Ha			
1 <sup>st</sup> Harrowing	Ha			
2 <sup>nd</sup> Harrowing	Ha			
Furrowing	Ha			
Inter-row cultivation	Ha			
FERTILISERS				
NPK	50 kg bag			
UREA	50 kg bag			
DAP	50 kg bag			
SSP	50 kg bag			
TSP	50 kg bag			
CAN	50 kg bag			
Transport	50 kg bag			
Loading/Off loading	50 kg bag			
CHEMICALS/HERBICIDES ETC.				
Atrane combination	Kg			
Gesapax combination	Kg			
Actril DS.	Lt			
Diuron	Kg			
Round up	Lt			
SUGARCANE HARVESTING				
Sugarcane harvesting	Kshs/tonne			
Groover/Lysol/water man	Kshs/tonne			
Chemicals	Kshs/tonne			

Administration	Kshs/tonne			
NSSF Contribution	Kshs/tonne			
Public Holidays	Kshs/tonne			
Transportation of Sugarcane cutters	Kshs/tonne			
TRANSPORTATION OF SUGARCANE				
Band 0 – 4km	Kshs/tonne			
4.1 – 8	Kshs/tonne			
8.1 – 12	Kshs/tonne			
12.1 – 16	Kshs/tonne			
16.1 – 20	Kshs/tonne			
20.1 – 24	Kshs/tonne			
24.1 – 28	Kshs/tonne			
28.1 – 32	Kshs/tonne			
32.1 – 36	Kshs/tonne			
36.1 – 40	Kshs/tonne			
Over 40 km	Kshs/tonne			
OR				
Band A. 0 – 10 km	Kshs/tonne			
B. 10.1 – 16	Kshs/tonne			
C. 16.1 – 24	Kshs/tonne			
D. 24.1 – 32	Kshs/tonne			
E. 32.1 – 40	Kshs/tonne			
Over 40 km	Kshs/tonne			
INTEREST ON LOANS	%			
Other charges (specify)	Kshs/tonne			

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first hereinbefore mentioned.

SIGNED for or on behalf of the miller: .....

In presence of: .....

SIGNED for or behalf of the grower: .....

In presence of: .....