

Form 7

(r. 15(2))

AGREEMENT BETWEEN A REGISTERED OUT-GROWERS' INSTITUTION AND
A GROWER FOR SUGARCANE FARMING OR SUPPLY

This AGREEMENT is made on _____ (day) of _____ (month) two thousand
and _____ BETWEEN _____ (names in full) certification of
registration/business registration 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 plot L. R. No
_____ Soil type(s) _____ and is situated in Sub-
location _____ Location _____ Division
_____ Sub-County _____ AND _____ (name in full) of
P.O Box _____ (Town/City) (referred to as the "Out-growers' institution" which
expression shall, where the context so admits include its successors and assignees) whose
institution was incorporated/registered in the Republic of Kenya and having its registered
office at _____ in the Republic of Kenya.

- a. WHEREAS the Out-growers' institution wishes to contract sugarcane farming in
pursuit of its functions and generally —
 - i. promotes and represents the interests of growers;
 - ii. negotiates, arranges, on behalf of grower members, the terms of supply of
sugarcane to the miller and the co-ordination of the production, harvesting and
transport thereof;
 - iii. provides financial credit or otherwise arranges finance for grower members
relating to the production of their sugarcane, including land clearance and
preparation, planting, cultivation and tending, harvesting, transport and the
supply of goods and services relating thereto;
 - iv. provides or procures services, advice and assistance for grower members as
may be required, to carry out or procure the carrying out of such operations for
grower members;
 - v. provides or procures accounting services and books or records for members in
respect of their individual operations;
 - vi. purchases, sells or otherwise deals in, securing or providing such goods,
materials, supplies and services as may be required by members;
 - vii. negotiates sugarcane prices with millers through the umbrella out-growers'
institution; and
 - viii. participates in lobbying for favourable Government policies in the industry
through the umbrella out-growers' institution;
- b. WHEREAS the Out-growers' institution has entered into sugarcane supply contract
with the miller in respect of sugarcane grown by the growers who have
consequently contracted the out growers' institution for the farming and supply of
the growers' sugarcane; and
- c. WHEREAS the growers are willing to grow sugarcane with the assistance of the
out-growers' institution under specific agreements signed between the growers and
the out-growers' institution.

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 may be extended to include the harvesting of

one or more ratoon crops as long as the crops meets 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. The 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 supply by borrowing funds and lending to out growers either 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 cane, 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 parties may harvest, transport and weigh sugarcane on behalf of the Growers or the Out-growers' institution within the terms and conditions agreed between the miller and Out-growers' institution.
4. Sugarcane transportation shall be fast, avoid sugarcane spillage and carry high payload to reduce costs; the miller and sugarcane transporters shall ensure a short turn round time; and transport costs shall be charged based on the weight of delivered sugarcane at zonal rates.
5. Other responsible parties shall maintain sugarcane transport roads to allow transport units to efficiently carry sugarcane in stack units (6 tonnes) or their multiples such as two stacks (12 tonnes) or three stacks (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 for sugarcane spillages during transportation.
7. Sugarcane shall normally be weighed at the factory under the supervision of the sugarcane testing unit who manages all sugarcane weigh bridges.
8. Any party may weigh sugarcane at any agreed location provided the weighbridge, possibly automated, shall be serviced, inspected and stamped by the Weights and Measures department in accordance with the Weights and Measures Act, Cap. 513.
9. An Out-growers' institution or the Grower may install a weighbridge at the mill gate at his own expense for weighing sugarcane provided that the weighbridge shall be subjected to tests and inspection by the weights and measures department in accordance with the law.
10. The sugarcane price payable by any party shall be the price derived through the payment formula provided by the Sugarcane Pricing Committee.
11. The parties to this agreement shall always undertake to conduct their business above Authority 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 strive to pack sugar directly for retail in the market.

OBLIGATIONS OF THE OUT-GROWERS' INSTITUTION

12. The Out-growers' institution 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.

13. The Out-growers' institution shall bear the responsibility of the sugarcane harvesting, loading and transportation to the mill for weighing and milling at the factory.
14. If an Out-growers' institution fails to pay the Grower as specified under subparagraph (1) for any reason other than delay in payment by the miller as specified under paragraph 17(1), the institution shall be liable to pay interest charges at market rates on the sum due and an additional penalty of 3% per month on overdue payment;
15. The Out-growers' institution shall prepare a schedule of all payments to the farmers on weekly basis showing dates of harvest, delivery to the miller and of payment to the Grower, and such schedule of payment shall be open to scrutiny by the Grower, umbrella out-growers' institution and the Authority
16. The Out-growers' institution may require doing anything required to be done for either party in terms hereof provided that, if the Grower fails to facilitate the harvesting of his sugarcane at the appointed time, the Out-growers institution shall refer the matter to the Courts.
17. The Out-growers' institution shall, during each harvest period, deliver to the miller from the Grower, sugarcane in the quantities and on the dates agreed upon between the miller and the Out-growers' institution.
18. The Out-growers' institution may, within the limits imposed by the condition of the roads, provide and operate an efficient system of transport from the field to the mill.
19. The Out-growers' institution shall cause the Growers' sugarcane to be weighed and tested on arrival at the buying point, allow the grower or his representative access to the weigh-bridge to check the weight, maintain in duplicate a written or printed record of the value of each load of sugarcane delivered and give to the Grower or his representative on the day of delivery one copy of such record.
20. The Out-growers' institution shall have absolute charge and control of all equipment machinery, staff and labour concerned with operations on the Grower's land provided that the Out-growers institution shall exercise due care to ensure that the operational costs to be charged to the Grower shall be kept at a reasonable level as agreed.

OBLIGATIONS OF THE GROWER

21. The Grower shall attend meetings and field days convened by the Out-growers' institution for learning the proper sugarcane husbandry, operation and application of goods and services obtained from the Out-growers' institution for the satisfactory yield of sugarcane.

Accessibility of cane plots

22. The Grower member shall offer for sugarcane development only land, which is accessible in case of supply of goods and services throughout the term of this agreement.
23. The Grower shall at all times allow the Out-growers' institution to enter upon his land together with any vehicles, machinery or livestock which the Out-growers'

institution may require to inspect the land and the sugarcane growing thereon, 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 Growers or others provided that any damage to Grower's property by Out-growers' institution agents shall be borne by the Out-growers' institution.

24. The Grower shall not assign his land or any interest therein or any of his rights or obligations under the agreement to another party without the written consent of the Out-growers' institution.

Sugarcane varieties

25. The Grower shall plant or cultivate the most suitable variety of sugarcane recommended by the body responsible for research, which shall avail the sugarcane varieties and expected characteristics, which relate to the various soil types.

Sugarcane husbandry

26. The Grower shall plant or cultivate the most suitable variety of sugarcane recommended by the body responsible for research, which shall avail the sugarcane varieties and expected characteristics, which relates to the various soil types.
27. The Grower shall maintain his sugarcane cultivation to enhance a satisfactory yield by:
 - a. maintaining the sugarcane crop weed-free;
 - b. applying, at the recommended time and in the recommended amounts, all fertilizers and other material recommended by the Out-growers' institution and the body responsible for research;
 - c. undertaking the planting and gapping of sugarcane area at the times recommended by the Out-growers' institution to ensure a high plant population;
 - d. applying all services and goods, which he may have obtained from the Out-growers' institution for the benefit of his sugarcane 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 Out-growers' institution or 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; and
 - 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 the body responsible for research
 - h. maintaining suitable permanent boundary marks and cleared firebreaks for his sugarcane.
28. The Grower shall be responsible for maintaining suitable permanent boundary marks and cleared firebreaks for his sugarcane; take other precautions against fire according to the advice of the Out-growers' institutions; be liable to pay the cost of any damage suffered by other growers because of failure to comply with the terms hereof.

29. The Grower shall offer, for harvest and transport by the Out-growers' institution, all such sugarcane as is derived from his sugarcane plot under this agreement and no other for use either as crop seed or mill sugarcane; 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.

Seed development for sugarcanes

30. The Grower shall allow the cultivation of seed cane nurseries, if the Out-growers' institution desires for the multiplication of seed cane material to be supplied to other growers provided that such sugarcane may be used for milling when it is no longer required for crop seed.
31. Where the Grower has been identified to grow seed cane using the agronomical practices recommended by the body responsible for sugar research the price per tonne of the seed shall be determined separately from the commercial sugarcane provided that the breeder or basic seed shall be provided by the body responsible for sugar research on specific terms to the miller or any bulking institution who will establish A nurseries and in turn shall supply the Out-grower members with seeds for B nurseries in the Out-grower regions. A list of approved nurseries and bulking institutions/farmers shall be maintained by the body responsible for sugar research.
32. The Grower shall plant seed sugarcane at the onset of rains and stop two months before the onset of dry season, except under irrigation where sugarcane shall be planted at any time.
33. The Grower shall allow the cutting of good quality commercial sugarcane of plant and first ratoon crops only to supply seed cane to other growers in the absence of suitable nurseries provided that the age of the seed cane shall be not less than 7 months but not more than 14 months depending on cane variety and agro-ecological zone.
34. Where sugarcane is to be used as seed cane the cost for purposes of paying the Grower or selling to recipient growers shall be determined in accordance with guide notes provided by the Sugarcane Pricing Committee.
35. Where the Out-growers' institution is not the primary provider of crop seed, the Out-growers' institution shall provide requirements for crop seed as part of long-term sugarcane requirements provided an integrated approach to crop seed development shall be worked out by body responsible for research.
36. The Out-growers' institution shall establish seed sugarcane "B" nurseries on Out-grower members' plot for bulking of seed sugarcane to be supplied to other growers, and for this purpose to purchase, harvest and transport such seed sugar-crop after certification by the Out-growers' institution's agronomist as to its suitability for planting; seed crop which fails to be used for seed will be used for milling provided that the grower whose crop is cut for seed will be paid at the price not less than that of mill crop and will not be charged the cost of transport.

Sugarcane harvesting, transport, weighing and selling

37. The Grower shall offer, for harvest, transport and weighing all such sugarcane as is derived from his sugarcane plot under this agreement and no other for use either as crop seed 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.

38. 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 Out-growers' institution specifying the tonnage of sugarcane which may be sold, the date on which the sale may take place and destination of the sugarcane.

If Grower fails to maintain crop husbandry

39. The Out-growers' institution shall, upon 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 which the Out-growers' institution shall consider necessary to ensure that the Grower's quota of sugarcane of satisfactory quality will be delivered on the due date, in which case the Out-growers' institution shall be further entitled to deduct the cost, including a penalty for these operations from the payment to be made for the Grower's sugarcane.
40. In case of a default and upon notice by the Out-growers' institution, the Grower shall allow all or any such work to be carried out at his cost by the Out-growers' institution and its agents or employees working in conjunction with the Grower.
41. Within seven days of receipt of a written notification from the Out-growers' institution that such operations are necessary to achieve a satisfactory yield of sugarcane, the Grower shall allow unimpeded access into his cane plot by the Out-growers' institution and his equipment for the purpose of carrying out any or all operations which the grower has failed to carry out and that notification 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.
42. The Out-growers' institution shall give notice for the work to be undertaken on the Grower's behalf, 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 acknowledge receipt by signing thereof indirect costs shall be agreed by the parties at time of entering into this agreement.

Costs and recoveries

43. The Grower shall bear all direct and indirect costs of the works, goods and services supplied by the Out-growers' institution as specified in the agreement and unless the same are paid earlier allow such costs to be deducted from payment for sugarcane supplied by the Grower provided indirect costs, shall have been discussed and agreed at the time of this agreement.
44. The Out-growers' institution shall charge interest on any credit that may be granted by the Out-growers' institution to the Grower, such credit being only granted in exceptional circumstances at such rate as may, from time to time, be notified by the Out-growers' institution and be entitled to deduct such interest from the payment due to the Grower in respect of the first sugarcane harvest from the Grower's land subsequent to the grant of the credit provided that any interest charges shall have been agreed upon at the time of entering this agreement.
45. The Out-growers' institution shall be entitled to charge the Grower for all works, goods and services supplied to the Grower by the Out-growers' institution in accordance with the Out-growers' institution's Schedule of Charges in force at the date the agreement is signed provided that the said charges shall at all times be as agreed with the grower.

46. The Out-growers' institution 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 growers that the charges from time to time are as agreed under sub-paragraph 43, 44 and 45 herein.
47. The Out-growers' institution shall notify all changes in the Schedule of Charges to the Grower at least thirty days before the charges are due to take effect and where the Grower ends up with a debit balance, the Out-growers' institution shall immediately write to the Grower for arrangement of recovery of the said debt.

Grower's representatives and agents

48. An Grower may appoint a representative in all matters of advocacy in sugarcane development and the financing of sugarcane supply, including negotiations for the price of sugarcane, costs of farm inputs and related services.
49. 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 its weight or value.

FORCE MAJEURE

50. Neither the Out-growers' institution nor the Grower shall be obliged to perform their respective obligations under an 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.
51. Any event of force majeure must be reported by the affected party to the other party within seven days from the date of its occurrence and the said event be certified by the competent authorities of both parties.
52. The obligations of the parties under an agreement shall remain suspended for the period during which the said event of force majeure persists.

DISPUTES

53. Any question or dispute as to the responsibility to fulfil the terms of the specified agreement due to the reason stated above shall be resolved in accordance with the laws of Kenya.

TERMINATION OF THIS AGREEMENT

54. Where the Out-growers' institution is unable to provide the services within the agreed period for whatever reason, the grower may harvest and transport sugarcane to any other miller or out-growers' institution upon three months' notice to the Out-growers' institution.
55. Where the Out-growers' institution offers services at the wrong time, the Grower shall have the option of arranging for alternative services upon notice to the Out-growers' institution.
56. Where the Out-growers' institution ceases to exist, the Grower may deliver the sugarcane to any other miller or out-growers' institution.
57. Where a Grower decides to discontinue the production of sugarcane or terminate the relationship with the Out-growers' institution, 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 Grower will then harvest sugarcane in the normal harvesting 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 Out-growers' institution.

58. Any such termination of this agreement 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 any claim for damages for such breach of this agreement.

SCHEDULE OF CHARGES BY OUT-GROWERS INSTITUTION

ACTIVITY	UNIT	QUANTITY	COST/UNIT	TOTAL COST
SURVEY	Ha			
LAND PREPARATION				
Trimming	Ha			
Ripping	Ha			
Disking	Ha			
1 st Ploughing	Ha			
2 nd Ploughing	Ha			
1 st Harrowing	Ha			
2 nd 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 cutting	Kshs/tonne			
Groover/Lysol/water man	Kshs/tonne			
Chemicals	Kshs/tonne			
Administration	Kshs/tonne			
NSSF Contribution	Kshs/tonne			

Public Holidays	Kshs/ tonne			
Transport 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				
OR				
Band A. 0 – 10km	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			
F. Over 40 Km				
INTEREST ON LOANS	%			
Other charges (specify)	Kshs/ tonne			

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

SIGNED for or on behalf of the registered out-grower institution:

.....

In the presence of:.....

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

In presence of:.....