

Form 8

(r. 16(2))

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

This AGREEMENT is made the \_\_\_\_\_ (day) of \_\_\_\_\_ (month) two thousand and \_\_\_\_\_ BETWEEN \_\_\_\_\_ (names in full) of Certificate of Registration/Business Registration No. \_\_\_\_\_ of P. O. Box \_\_\_\_\_ (referred to as the "out-growers' institution", which expression shall, where the context so admits include its successors and assignees) 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) who 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 has 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 about 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 maybe required, to carry out or procure the carrying out of such operations for grower members;
  - v. purchases, sells or otherwise deals in, securing or providing such goods, materials, supplies and services as may be required by members;
  - vi. provides or procures services and books or records for members in respect of their individual operations;
  - vii. negotiates sugarcane prices with millers through the Apex Body of the sugarcane growers; 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 agreement with the miller in respect of sugarcane grown by the growers who have an agreement with the out-growers' institution;
- 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-grower's institution; and
- d. WHEREAS the miller is willing to buy all sugarcane of requisite quality from the out-growers' institution specified in this agreement.

NOW IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

TERMS OF 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 out-growers' institution has supplied 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 the agreement.
2. Any party may harvest, transport and weigh sugarcane on behalf of the out-growers' institution or the miller within the terms and conditions agreed between the miller and Out-grower institution.
3. Sugarcane transportation shall be fast, avoid sugarcane spillage and carry high payload to reduce costs; the miller and cane transporters shall ensure a short turn round time always; and transport costs shall be charged based on the weight of delivered sugarcane at zonal rates.
4. 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 (eighteen (18) tonnes) to avoid field and transport losses.
5. 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.
6. Sugarcane shall normally be weighed at the milling factory under the supervision of the Sugarcane Testing Unit who shall manage all sugarcane weighbridges.
7. Any party approved by the Authority may weigh sugarcane at any agreed location provided that 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.
8. The sugarcane price payable by any party shall be the price derived through the payment formula provided by the Sugarcane Pricing Committee.
9. 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

10. The out-growers' institution shall specify sugarcane growing areas by using identity of fields such as location, land reference numbers, size, growers' identity cards, soil types, etc.

11. The out-growers' institution 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.
12. The cultivation and planting programme shall include: the area under sugarcane by crop cycle for each farmer; by each variety showing the name(s) of farmer(s), plot number(s); age of sugarcane, area under fallow; anticipated tonnages of sugarcane and yields; expected time of maturity and harvesting per area; expected inputs and their timings; record of loan(s) to farmer(s); payment records in respect of sugarcane sales proceeds; record(s) for land preparation and harvesting equipment.
13. At the appropriate time, the out-growers' institution shall prepare a harvesting programme showing the approximate expected time of harvesting the crop of each grower and furnish the miller with copies of such programmes as soon as they are completed, and consult with the miller regarding any significant changes therein that the out-growers' institution may subsequently consider necessary to make; and a list of all growers 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 operations and circumstances.

#### OBLIGATIONS OF THE MILLER

14. 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 sugarcane variety(s) \_\_\_\_\_ - whose harvest-to- mill time for green sugarcane shall ideally not exceed seventy-two (72) hours, and in case of accidentally burnt sugarcane harvest-to-mill time shall ideally not exceed forty-eight (48) hours; with extraneous matter of less than three per cent (3%); of Pol % cane of twelve percent (12%) or above and fibre content of 15% but not more than 17.5% at maturity.
15. The miller shall notify the out-growers' institution 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.
16. The miller shall advise the out-growers' institution 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.
17. 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 responsibility of the miller, who may arrange to offer the sugarcane to another miller or bear the cost of wastage.
18. The miller may reject any sugarcane found not to be of the requisite quality based on parameters established by the Authority and as specified in this agreement and sugarcane rejection parameters shall include:
  - a. extraneous matter of more than 10 %;
  - b. harvest-to-mill time of green sugarcane of three (3) or more days;
  - c. two (2) or more days for burnt sugarcane with zero day being the day of cutting or burning where mill time shall be the time recorded on entry at the weighbridge;

- d. 82 % or less absolute juice purity; fibre content outside the range of 15.0 to 17.5 %;
  - e. Pol % cane of less than 12 % or sugarcane of a variety not specified in this agreement and not recommended by the body responsible for research.
19. The miller shall pay the out-growers' institution within seven days of sugarcane delivery provided that the sugarcane will be harvested not later than twenty-four months for plant crops and not later than twenty-two months for subsequent ratoons.
  20. If a miller fails to pay the out-growers' institution as specified by the Crops (Sugar) (General) Regulations, 2020, the miller shall be liable to pay interest charges at market rates and a penalty of 1.5% per month on the outstanding grower loan accounts of the affected growers up to the time it completes payment to safeguard the growers' ability to repay the funds to finance sugarcane production.
  21. 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 following standards:
    - a. in the case of sugar cane, tonne cane/tonne sugar ratio of 9 or renderment of 10%;
    - b. mill extraction of 94%;
    - c. preparation index of 90%;
    - d. boiling house recovery of 88%;
    - e. factory time efficiency of 92%;
    - f. overall time efficiency of 80 %; and
    - g. overall time utilization of 75%.
  22. The miller shall off-load sugarcane quickly and efficiently by applying the principle of first-in-first-out 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.
  23. 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 is penalized.

#### SUGARCANE HARVESTING, TRANSPORT, WEIGHING AND SELLING

24. The out-growers' institution shall decide to harvest, transport and weigh all such sugarcane as is derived from the growers' sugarcane plots under agreements 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 the body responsible for research.
25. The out-growers' institution shall not sell a grower's sugarcane nor dispose of it or any interest therein to any other parties, other than through this agreement, 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.

#### COSTS AND RECOVERY

26. The charges for all goods and services to be provided by either party shall remain as listed in the agreement.

27. The out-growers' institution shall bear, on behalf of the growers all direct and indirect costs of the works, goods and services supplied by the miller or other parties as specified in their agreements 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 the agreement.

#### OUT-GROWERS' INSTITUTION REPRESENTATIVES

28. The out-growers' institution shall appoint a representative in all matters of advocacy for sugarcane development, financing of sugarcane supply, costs of farm inputs and related services.
29. The out-growers' institution shall send an authorized representative or its employee 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 delivered.

#### TERMINATION OF THIS AGREEMENT

30. The out-growers' institution shall not assign any interest therein or any of his rights or obligations under the agreement without the written consent of the miller.
31. Where the miller offers services at the wrong time, the out-growers' institution may arrange for alternative services upon notice to the miller.
32. Where the miller ceases to exist, the out-growers' institution may deliver the sugarcane to any other miller.
33. Where the out-growers' institution ceases to exist, the miller may harvest, transport and mill the sugarcane without further reference to the out-growers' institution.
34. If any party decides to discontinue the supply 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 supply; any such termination of the 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 claim for damages for such breach of agreement.

#### FORCE MAJEURE

35. Neither party to this agreement 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.
36. The affected party shall report any event of force majeure within seven (7) days from the date of its occurrence and the competent authorities of both parties shall certify the said event.
37. 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

38. 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.

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 out-growers' institution: .....

In presence of: .....