

(Legislative Supplement No. 58)

LEGAL NOTICE No. 99

THE CROPS ACT

(No. 16 of 2013)

THE CROPS (SUGAR) (GENERAL) REGULATIONS, 2020

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## THE CROPS ACT

(No. 16 of 2013)

IN EXERCISE of the powers conferred by section 40 of the Crops Act, 2013, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives in consultation with the Agriculture and Food Authority and the County Governments, makes the following Regulations—

## THE CROPS (SUGAR) (GENERAL) REGULATIONS, 2020

## PART I—PRELIMINARY

1. These Regulations may be cited as the Crops (Sugar) (General) Regulations, 2020. Citation.
  
2. In these Regulations, unless the context otherwise requires— Interpretation.
  - “agreement” means an agreement specifying the standard provisions that govern the rights and obligations of a grower, miller, out-growers’ institution, harvester or transporter, in the farming or supply of sugarcane or a sugarcane product;
  
  - “directorate” means the Directorate for the time being responsible for sugar established pursuant to section 11(4) of the Agriculture and Food Authority Act, 2013; No. 13 of 2013.
  
  - “extraneous matter” means any matter other than sugarcane delivered with and weighed as sugarcane;
  
  - “grower” means a person who cultivates sugarcane in Kenya;
  
  - “independent grower” means a grower who—
    - (a) is not a member of any out-growers’ institution;
    - (b) does not depend on a miller for any assistance in cultivating his sugarcane; and
    - (c) depends solely on his own resources to develop and supply sugarcane directly to any miller as per an agreement;
  
  - “industry” means the Kenyan sugar industry;
  
  - “interested party” means a stakeholder in the industry and includes the Government, a miller, millers’ association, grower or out-growers’ institution;
  
  - “mill gate” means a site designated as such by the Authority where sugarcane weighing and sugarcane testing facilities have been set up;

“miller” means a person who operates a sugarcane mill to produce sugar jaggery or other products of sugarcane;

“out-growers’ institution” means a legal entity composed of small-holder growers and includes a co-operative society;

“sugar inspector” means a person appointed as an inspector under section 27 of the Crops Act; No. 16 of 2013.

“sugarcane” means sugarcane (*Saccharum*) or sugar beet (*beta vulgaris*) grown for the production of sugar or other products;

“sugarcane nursery” means a site where sugarcane varieties are progressively grown under strictly controlled agronomic conditions for eventual establishment of the sugarcane crop; and

“working day” means a day other than a Saturday, Sunday or public holiday.

## PART II—REGISTRATION PROVISIONS

3. (1) Registered millers may organise themselves into an association and register with the Authority as an umbrella association to represent and advocate for the millers’ interests.

Registration of  
umbrella millers’  
associations.

(2) An association of millers that intends to be registered as an umbrella millers’ association shall apply to the Authority for registration as an umbrella millers’ association in Form 1 set out in the First Schedule.

(3) The Authority shall consider the application made under sub-regulation (2) and—

- (a) within thirty days of submitting an application, issue to a successful applicant a certificate of registration; or
- (b) within fifteen days issue the applicant a notice of their rejection of the application specifying the reasons for the rejection.

(4) An applicant who is dissatisfied with the rejection of their application made under sub-regulation (3) (b) may within fourteen days of the decision, resubmit the application after addressing the reasons raised in the rejection.

(5) Upon resubmission of a satisfactory application under sub-regulation (4), the Authority shall issue the applicant a certificate of registration as an umbrella millers’ association, within thirty days.

(6) Where the Authority rejects an application resubmitted under sub-regulation (4), the applicant may appeal to Court within thirty days after the date the applicant receives the notice of the rejection of the application from the Authority.

(7) The Authority shall issue a certificate of registration as an umbrella millers' association under this regulation in Form 2 set out in the First Schedule subject to such conditions it deems necessary.

4. (1) A miller shall maintain a register of the registered out-growers' institutions, growers and other dealers in sugarcane or sugarcane products, with whom the miller has entered into an agreement for the farming or supply of sugar cane.

Registers maintained by millers.

(2) The register maintained under sub-regulation (1) shall contain—

- (a) the particulars of the registered out-growers' institutions;
- (b) the particulars of the growers;
- (c) the miller's location, land registration number, registration number, and agreement numbers;
- (d) the particulars of the sugarcane harvesters;
- (e) the particulars of the transporters; and
- (f) the particulars of the acreage, varieties, crop cycles and yield of sugarcane per acreage.

5. (1) A grower may register with any out-growers' institution of their choice.

Registration of growers.

(2) A grower may register with a miller of their choice.

6. (1) An out-grower institution which has registered growers in accordance with regulation 5 (1) shall register with the Authority.

Registration of out-growers' institutions.

(2) An out-grower institution that intends to be registered as an out-growers' institution shall apply to the Authority for registration in Form 3 set out in the First Schedule.

(3) The Authority shall consider the application made under sub-regulation (2) and—

- (a) within thirty days of submitting an application, issue to a successful applicant a certificate of registration; or
- (b) within fifteen days issue the applicant a notice of their rejection of the application specifying the reasons for the rejection.

(4) An applicant who is dissatisfied with the rejection of their application made under sub-regulation (3) (b) may within fourteen days of the decision, resubmit the application after addressing the reasons raised in the rejection.

(5) Upon resubmission of a satisfactory application under sub-regulation (4), the Authority shall issue the applicant a certificate of registration, within thirty days.

(6) Where the Authority rejects an application resubmitted under sub-regulation (4), the applicant may appeal to Court within thirty days after the date the applicant receives the notice of the rejection.

(7) The Authority shall issue a certificate of registration as an out-growers' institution under this regulation in Form 4 set out in the First Schedule subject to such conditions it deems necessary.

(8) A certificate of registration issued under this regulation shall not be transferable.

7. (1) A registered out-growers' institution shall—

Obligations of a registered out-growers' institutions.

- (a) organize its out-growers' farms into viable economic units to enable its farmers pool resources for bulk procurement of farm inputs, services and machinery;
- (b) promote and represent the interests of its growers;
- (c) ensure that its members comply with their obligations as per their agreements;
- (d) negotiate the terms of supply of sugarcane to the millers;
- (e) co-ordinate the production, harvesting and transport of sugarcane to the millers;
- (f) provide financial credit or arrange for financing of its growers for the production of their sugarcane, land clearance and preparation, planting, cultivation and tending, harvesting, transport and the supply of goods and services relating thereto;
- (g) provide services, advice and assistance for its growers as may be required;
- (h) provide accounting services and record keeping services for its members in respect of their individual operations; and
- (i) purchase, sell or otherwise deal in, securing or providing such goods, materials, supplies and services as may be required by its growers.

(2) An out-growers' institution which does not comply with the provisions of this regulation commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a period not exceeding one year, or to both.

8. (1) An out-growers' institution shall maintain a register of its members and the growers who have entered into an agreement with it for the farming or supply of sugarcane.

Registers maintained by out-growers' institutions.

(2) The register maintained under sub-regulation (1) shall contain the particulars of the locations, land registration numbers, identity card numbers, agreement numbers, sugarcane harvesters, transporters, acreage, varieties, crop cycles and yield of sugarcane per acreage of its members and the growers who have entered into an agreement with it for the farming or supply of sugarcane.

(3) An out-grower institution which registers smallholder growers shall forward a copy of the register of their smallholder growers to the respective county government and to the Authority at least once in every six months.

(4) A registered out-growers' institution shall notify the Authority of any change in its ownership, by-laws and shareholding.

(5) A registered out-grower institution shall notify the Authority of the appointment of a principal officer or a director within thirty days of the making of such appointment.

(6) An out-growers' institution which does not comply with the provisions of this regulation commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a period not exceeding one year, or to both.

9. (1) Registered out-growers' institutions may organise themselves into an umbrella out-growers' institution and register as such with the Authority to represent and advocate for the interests of its members and the growers who have entered into an agreement with it for the farming or supply of sugarcane.

Registration of umbrella out-growers institutions.

(2) An umbrella out-growers' institution that intends to be registered as such shall apply to the Authority for registration in Form 1 set out in the First Schedule.

(3) The Authority shall consider the application made under sub-regulation (2) and—

- (a) within thirty days of submitting an application, issue to a successful applicant a certificate of registration; or
- (b) within fifteen days issue the applicant a notice of their rejection of the application specifying the reasons for the rejection.

(4) The Authority may in consultation with the County Governments register an out-growers' institution as an umbrella out-growers' institution based on—

- (a) whether the institution is duly registered as an association under existing laws;
- (b) the by-laws or constitutional provisions relating to membership, voting rights, rights and obligations of members including the right to join or leave the institution; and
- (c) the number of its members.

(5) An applicant who is dissatisfied with the rejection of their application made under sub-regulation (3) (b) may within fourteen days of the decision, resubmit the application after addressing the reasons raised in the rejection.

(6) Upon resubmission of a satisfactory application under sub-regulation (6), the Authority shall issue the applicant a certificate of registration as an umbrella out-growers' institution, within thirty days.

(7) Where the relevant county government rejects an application resubmitted under sub-regulation (5), the applicant may appeal to Court within thirty days after the date the applicant receives the notice of the rejection.

(8) The Authority shall issue a certificate of registration as an umbrella growers' institution under this regulation in Form 2 set out in the First Schedule subject to such conditions it deems necessary.

(9) A certificate of registration issued under this regulation shall not be transferable.

10. (1) The Authority shall suspend the registration of a umbrella millers' association, an out-growers' institution or an umbrella out-growers' institution if—

- (a) the association or institution made a false declaration in the application for registration;
- (b) the association or institution engaged in corruption or fraud to obtain the certificate of registration;
- (c) without reasonable cause, the association or institution has not complied with a condition of its registration;
- (d) the institution has contravened regulation 7; or
- (e) the association or institution has not complied with the law under which it is registered.

(2) When the Authority suspends the registration of an association or institution under sub-regulation (1), the Authority shall issue the association or institution a notice of the suspension.

Revocation and suspension of registration.

(3) The notice issued under sub-regulation (2) shall set out the reasons for the suspension and the corrective measures that the association or institution should undertake to reinstate their registration.

(4) The Authority shall reinstate the registration of an association or an institution, who complies with the corrective measures set out in the notice issued under sub-regulation (3).

(5) The Authority shall revoke the registration of an association or an institution, who does not comply with the corrective measures set out in the notice issued under sub-regulation (3).

11. All registered millers and registered out-growers' institutions shall submit to the Authority and the relevant county government, annual returns of the registers maintained under this Part before the thirty-first date of January every year following the conclusion of the data collection period.

Returns by millers and out-growers' institutions.

### PART III—AGREEMENTS FOR DEALING IN SUGARCANE AND SUGARCANE PRODUCTS

12. (1) A grower may enter into an agreement with a miller, out-growers' institution or any other person, for the harvesting of the grower's sugarcane.

Agreements for the harvesting of sugarcane.

(2) An agreement for the harvesting of sugarcane on behalf of a grower, shall be in Form 5 set out in the First Schedule

13. (1) A grower may enter into an agreement with a miller, out-growers' institution or any other person, for the transportation of the grower's sugarcane.

Agreements for the transportation of sugarcane.

(2) An agreement for the transportation of sugarcane on behalf of a grower, shall be in Form 5 set out in the First Schedule.

14. (1) A grower may enter into an agreement with a miller for the farming or supply of the grower's sugarcane.

Agreements between growers and millers.

(2) An agreement referred to in sub-regulation (1), shall be in Form 6 set out in the First Schedule.

(3) Despite sub-regulation (1), a grower may enter into an agreement with a miller for the leasing of part of their land to the miller on the terms and conditions mutually agreed between them.

15. (1) A grower may enter into an agreement with a registered out-growers' institution for the farming and supply of the grower's sugarcane.

Agreements between out-growers' institutions and growers.

(2) An agreement referred to in sub-regulation (1) shall be in Form 7 set out in the First Schedule.

16. (1) A registered out-growers' institution shall enter into an agreement with a miller for the farming or supply of the sugarcane on behalf of the growers who the institution have entered into an agreement under regulation 14.

Agreements between out-growers' institutions and millers.

(2) An agreement referred to in sub-regulation (1) shall be in Form 8 set out in the First Schedule.

17. A person who enters into an agreement in accordance with this Part shall submit the agreement to the Authority for registration.

Registration of agreements.

#### PART IV—MISCELLANEOUS PROVISIONS

18. (1) A miller shall develop and submit a sugarcane development plan to the Authority and the respective County Government.

Sugarcane development plans.

(2) An out-growers' institution shall develop and submit a sugarcane development plan to the Authority and the respective County Government.

(3) A sugar development plan shall be based on the number of growers, the size of the land under cultivation, sugarcane varieties cultivated, yields of the sugarcane cultivated and the maturity profile of the sugarcane.

(4) The purpose of a sugarcane development plan shall be to facilitate economic harvesting and transportation.

(5) A sugarcane development plan shall be developed in consultation with the growers.

19. (1) Subject to sub-regulation 19 (2), a miller shall ensure that they have adequate milling capacity in accordance with the sugarcane development plan developed and submitted in accordance with regulation 18.

Adequate milling capacity.

(2) A miller shall operate their mill in accordance with the registered milling capacity, the terms of sugarcane throughput per day and the sugar recovery percent set by the Authority.

(3) A miller may in writing apply to the Authority for authorization to change the installed milling capacity by more than twenty percent of the registered capacity.

(4) A miller who makes any variation of the installed capacity without prior authorisation from the Authority, commits an offence.

20. (1) A grower who is a member of a registered out-growers' institution shall report any changes to the name of the grower's farm, land reference number or any other particulars, to the out-growers'

Report of changes to millers.

institution the grower has registered with and the miller with whom the grower has entered into an agreement for the farming or supply of the grower's sugarcane.

(2) An independent grower, shall report any changes to the name of the grower's farm, land reference number or any other particulars, to the miller with whom the grower has entered into an agreement for the farming or supply of the grower's sugarcane.

21. A grower shall only use seeds that are certified in accordance with the Seeds and Plant Varieties Act.

Use of certified seeds.  
Cap. 326.

22. (1) A miller shall issue a grower with whom the miller has entered into an agreement in accordance with regulation 14, a payment statement that indicates the quantity of sugarcane delivered, the price and agreed deduction or recovery on the payment, as agreed upon by the grower and the miller.

Payment statements.

(2) A registered out-growers' institution shall issue a grower with whom the institution has entered into an agreement in accordance with regulation 25, a payment statement that indicates the quantity of sugarcane delivered, the price and agreed deduction or recovery on the payment, as agreed upon by the grower and institution.

(3) A miller shall issue a registered out-growers' institution with whom the institution has entered into an agreement in accordance with regulation 16, a payment statement that indicates the quantity of sugarcane delivered, the price and agreed deduction or recovery on the payment, as agreed upon by the miller and institution.

23. (1) There is established a Sugarcane Pricing Committee.

Sugarcane Pricing Committee.

(2) The Sugarcane Pricing Committee shall comprise of—

- (a) a chairperson appointed by the Cabinet Secretary from amongst the members of the Sugarcane Pricing Committee;
- (b) one person nominated by the Ministry responsible for matters relating to agriculture and appointed by the Cabinet Secretary;
- (c) two persons nominated by the Authority and appointed by the Cabinet Secretary;
- (d) two persons nominated by the registered umbrella out-growers' institution and appointed by the Cabinet Secretary ;
- (e) two persons nominated by the registered umbrella millers association and appointed by the Cabinet Secretary; and
- (f) three persons nominated by the Council of Governors from the county governments from the sugarcane growing areas and appointed by the Cabinet Secretary.

(3) The quorum of the Sugarcane Pricing Committee shall be two-thirds of its members.

(4) The members of the Sugarcane Pricing Committee who were appointed under sub-regulation (2) (d) and (e) shall hold office for a period of three years and shall be eligible for re-appointment only once for a further term of three years.

(5) The members of the Sugarcane Pricing Committee who were appointed under sub-regulation (2) (d) and (e) may resign from office by a letter addressed to the Cabinet Secretary.

(6) The office of a member of the Sugarcane Pricing Committee shall become vacant if the member—

- (a) has been absent from three consecutive meetings of the committee without the permission of the chairperson;
- (b) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
- (c) is convicted of an offence involving dishonesty or fraud;
- (d) fails to comply with the requirements of Chapter 6 of the Constitution;
- (e) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (f) is incapacitated by prolonged physical or mental illness or is otherwise deemed unfit to discharge his duties as a member of the committee.

(7) The objective of the Sugarcane Pricing Committee shall be to ensure equitable returns to the growers and millers.

(8) The principal function of the Sugarcane Pricing Committee shall be to determine the Sugarcane Pricing Formula.

(9) In determining the formula under sub-regulation (8), the Sugarcane Pricing Committee may consider—

- (a) revenue sharing between the grower and the miller;
- (b) the distribution of the proceeds of the milling of sugarcane among growers on the basis of sugarcane quality, sugarcane production and handling costs; and
- (c) the outcome of the sugarcane testing services.

(10) The Sugarcane Pricing Committee may review the formula determined in accordance with sub-regulation (8) from time to time to provide for continuous improvements in sugarcane testing and revenue sharing systems.

24. (1) The Sugarcane Pricing Committee may conduct sugarcane testing services to determine the sucrose content of sugarcane to determine the Sugarcane Pricing Formula. Sugarcane testing services.
- (2) The Sugarcane Pricing Committee may contract the services of an expert in conducting sugarcane testing services.
25. (1) A miller may accept burnt sugarcane subject to the following conditions — Burnt sugar.
- (a) a grower had authorised the harvesting of his burnt sugarcane before the sugarcane was harvested;
  - (b) the harvested sugarcane was delivered to the mill weighbridge while still fresh; and
  - (c) sugarcane of an acceptable quality was harvested.
- (2) The authorisation referred to in sub-regulation (1) (a) shall be in the form of a separate agreement between a grower and a miller and shall set out conditions for the miller's acceptance the grower's burnt sugarcane.
- (3) An agreement referred to in sub-regulation (2) shall be in Form 9 set out in the First Schedule.
26. (1) A miller shall manufacture, package, transport or store in a warehouse, sugar and by-products of sugar in accordance with the Kenyan specifications for sugar set out in the Second Schedule. Approved standards.
- (2) All brands for packaging, including a brand which is repackaged for sale by a distributor, shall register with the Authority for purposes of traceability.
- (3) A dealer shall apply for registration under sub-regulation (2) in Form 10 set out in the First Schedule.
- (4) The Authority shall issue a certificate of Registration in Form 11 as set out in the First Schedule to a successful applicant.
- (5) A person who fails to comply with sub-regulations (1) or (2) commits an offence.
27. Any person against whom a decision to revoke or suspend their registration, may request for stay of the execution of that decision for thirty days within which he may effect remedial action. Stay of execution.

## FIRST SCHEDULE

## FORMS

(r. 3(2), 3(7), 6(2), 6(7), 9(2), 9(9), 12(2), 13(2), 14(2), 15(2), 16(2), 25(3), 26(3), 26(4))

## Form 1

(r. 3(2), 9(2))

APPLICATION FOR REGISTRATION AS AN UMBRELLA MILLERS'  
ASSOCIATION/ UMBRELLA OUT-GROWERS' INSTITUTION

To

Agriculture and Food Authority,

1. I/We.....(Officials of  
.....(Name of  
Association/Institution)
2. Physical Address:.....Market.....Location .....  
Sub-County .....
3. Land Ref. No.....
4. Postal Address:..... Tel:.....  
Fax: .....E-mail .....
5. .... (name of body) apply for the  
recognition of ..... (name of  
body).
6. The registered office of the body will be at .....
7. Copies of the following documents are attached to this application—
  - a. the Constitution;
  - b. the Certificate of Registration;
  - c. the profiles of officials;
  - d. the register of members.
8. The Head Office of the body will be situated at .....
9. The registered officials are:
  - a. ....
  - b. ....
  - c. ....
10. Project Objectives
  - a. ....
  - b. ....
  - c. ....

Contact Details:

Name: ..... Title: .....

Telephone:..... Fax: .....

Email: .....

Form 2

(r. 3(7), 9(9))

CERTIFICATE OF REGISTRATION AS AN UMBRELLA MILLERS' ASSOCIATION/ UMBRELLA OUT-GROWERS' INSTITUTION

TO.....

THIS IS TO CERTIFY that the above-named body is duly registered as an umbrella millers' association/umbrella out-growers' institution in the sugarcane industry.

Date of issue.....

.....

DIRECTOR-GENERAL

Agriculture and Food Authority

Form 3

(r. 6(2))

APPLICATION FOR REGISTRATION AS AN OUT-GROWERS' INSTITUTION

To

Agriculture and Food Authority,

1. I/We.....(Manager/Director(s) /agent of .....(Name of out-grower institution)
2. Physical Address:.....Market.....Location ..... Sub-County .....
3. Land Ref. No.....
4. Postal Address:..... Tel:.....
5. Fax: .....E-mail .....
6. .... (name of business enterprise) apply for the registration of ..... (name of out-grower institution).
7. The registered office of the institution/ company will be at .....
8. Copies of the following documents are attached to this application—
  - a. the memorandum and articles of association/or partnership agreement;

- b. the Certificate of Incorporation/Registration;
  - c. the profiles of the investor(s) and directors/principal officers;
  - d. a copy of the project profile or feasibility study showing the implementation period, program of implementation and operation dates;
  - e. the evidence of financing and land ownership for the project; and
  - f. the register of members.
9. The Head Office of the institution /Company will be situated at .....
10. The Principal Officers of the Company and their qualifications are:
- a. ....
  - b. ....
  - c. ....
11. The date of the end of the financial year is .....
12. The Auditors of the out-grower institution are .....
13. The authorized share capital of the out-grower institution is Kshs./US\$: .....
14. The intended capital investment of the out-grower institution is Kshs./US\$ .....
15. The affiliated sugarcane mill(s):
- a. ....
  - b. ....
  - c. ....
16. Sugarcane mill(s) acceptance:
- ..... (name of each registered miller)  
 confirms that acceptable arrangements have been concluded for delivery and acceptance  
 of cane to be supplied by the applicant under agreement  
 No.....
- Registered miller's Director/Principal Officer .....
- .....
- Signature
- .....
- Registered miller's stamp
- .....
- Apex Body's Recommendation stamp
17. Applicant's Declaration
- I, ..... of Post Office Box Number .....  
 ..... sincerely declare that I am a

manager/director/principal officer/duly authorized agent of .....(name of out-grower institution) AND that all the requirements of the Crops Act, 2013 in respect of matters precedent to the registration of this out-grower institution and the business enterprise under other Acts and incidental thereto have been complied with, AND I make this declaration believing the same to be true.

Declared at ..... }

officer } ..... Authorized

The .....day of ..... 20...}

Before me:

.....

Commissioner for Oaths/Notary Public

Attach certified copies of documents only where applicable

APPLICATION SUMMARY (for official use only)

Company Name: .....

or

Out-grower Institution Name: .....

Certificate(s) of Incorporation (COI)/ Business Reg. Number(s): ..... Company Status: .....

COI/ Registration Date: .....

Post Box Number: .....

Town: .....

Investment Financing Plan in Million US\$/Kshs:

Foreign Equity Local Equity Foreign Loan Local Loan ..... .....

Project Objectives:

- a. ....
b. ....
c. ....

Capacity: .....(turnover or production p.a.)

Employment:

Foreign: .....

Local: .....

Total: .....

Implementation Period: .....

Estimated life of project:.....

Project Location

Site/Plot/Block No.: .....

Street: ..... Sub-County: ..... Region: .....

(Attach sketch map showing project location)

Shareholders	Nationality	%
.....	.....	.....
.....	.....	.....

Investment Breakdown US\$/Kshs.M

Pre-expenses .....

Land/Buildings .....

Plant and equipment .....

Vehicles .....

Furniture & Fittings .....

Working Capital .....

Others .....

TOTAL .....

Contact Details:

Name: ..... Title: .....

Telephone:..... Fax: .....

Email: .....

Form 4

(r. 6(7))

**CERTIFICATE OF REGISTRATION AS AN OUT-GROWERS' INSTITUTION**

TO.....

THIS IS TO CERTIFY THAT the above-named body is duly registered as an out-grower institution.

Date of issue.....

.....

DIRECTOR-GENERAL

Agriculture and Food Authority

## 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.

Name .....Signature.....

Signed on behalf of the Harvesting Contractor:

Name .....Signature.....

In the presence of .....

Name .....Signature.....

## 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: .....

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 sugarcanes.

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 <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.				
Atrinet 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 behalf of the grower:.....

In presence of:.....

## 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: .....

Form 9

(r. 25(3))

AGREEMENT BETWEEN A GROWER AND MILLER FOR SUPPLY OF BURNT SUGARCANE

This AGREEMENT is made the \_\_\_\_\_ (day) of \_\_\_\_\_ (month) two thousand and \_\_\_\_\_ BETWEEN \_\_\_\_\_ (names in full) 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 \_\_\_\_\_ 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) which was incorporated/registered in the Republic of Kenya and has its registered office at \_\_\_\_\_ in the Republic of Kenya.

- a. WHEREAS the grower is desirous of entering into an agreement with the miller in respect of the supply of burnt sugarcane by the grower;
- b. WHEREAS the grower is willing to grow sugarcane without the assistance of the miller under a specific agreement signed between the grower and the miller; and
- c. WHEREAS the miller is willing to buy all sugarcane of requisite quality from the grower 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 provision of clauses hereof, continue until the grower 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 this agreement.
2. The grower shall, before the start of each financial year, prepare cultivation and planting programme covering all his fields and showing acreage, approximate timings and production quantities anticipated for each plot.

3. The cultivation and planting programme shall include: the area under sugarcane by crop cycle for each plot; by each variety showing, plot number(s); age of sugarcane, area of plot, anticipated sugarcane yields and expected time of maturity.
4. At the appropriate time, the grower shall prepare a harvesting programme showing the approximate expected time of harvesting the crop of plot 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 miller may subsequently consider necessary to make; and a list of plots showing the acreage of each sugarcane area as specified in this 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.
5. The miller may harvest, transport and weigh sugarcane on behalf of the grower within the terms and conditions agreed between both parties
6. 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.
7. The miller shall buy all sugarcane of requisite quality harvested from the area specified in this 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(ies) \_\_\_\_\_ 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%); Pol % cane of eleven percent (11%) or above and fibre content of 15% but not more than 17.5% at maturity.
8. 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, and mill time shall be the time recorded on entry at the weighbridge;
  - d. 82% or less absolute juice purity;
  - e. fibre content outside the range of 15.0 to 17.5%;
  - f. pol% cane of less than 11%; or
  - g. sugarcane of a variety not specified in this agreement and not recommended by body responsible for research.
9. 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.

10. 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.
11. 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.
12. 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 sugarcane mill breakdowns.
13. The miller shall pay the grower 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 and that the sugar cane price will have been derived through the payment formula provided by the Sugarcane Pricing Committee.
14. If a miller fails to pay the grower as specified by this agreement, the miller shall be liable to pay a penalty of 1.5% per month on the outstanding accounts of the grower.
15. The miller shall maintain and develop adequate milling capacity for sugarcane planted based on agreed planting plans with the grower and further strive to mill sugarcane efficiently to realize maximum returns for both parties by achieving the following minimum standards:
  - a. in the case of sugarcane, tonne cane/ tonne sugar ratio of 9 or rendement of 10%; mill extraction of 94%;
  - b. preparation index of 90%;
  - c. boiling house recovery of 88%;
  - d. factory time efficiency of 92%;
  - e. overall time efficiency of 80 %; and
  - f. overall time utilization of 75%.

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

16. The grower shall plan to harvest, transport and weigh all such sugarcane as is derived from its 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.
17. A sugarcane transporter shall be included in the harvesting programme indicating specific assignments and areas of operation and may be held responsible for sugarcane spillages during transportation.
18. 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.
19. The miller or 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 twelve (12) tonnes or eighteen (18) tonnes to avoid field and transport losses.

20. Sugarcane shall normally be weighed at the factory under the supervision of the sugarcane testing unit, otherwise any party under an agreement shall weigh sugarcane at any agreed location provided the weigh-bridge shall be serviced, inspected and stamped by the Weights and Measures department in accordance with the Weights and Measures Act, Cap. 513.
21. An grower may install a weighbridge at the farm-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.
22. The sugarcane-testing unit shall manage all sugarcane bridges and where possible the weighbridges shall be automated.
23. The grower shall not sell his sugarcane 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.
24. The parties to this agreement shall always undertake to conduct their business 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.

#### TERMINATION OF THIS AGREEMENT

25. The grower shall not assign any interest therein or any of his rights or obligations under this agreement without the written consent of the miller.
26. Where the miller offers services at the wrong time, the grower shall have the option of arranging for alternative services upon notice to the miller.
27. Where the miller ceases to exist, the grower may deliver the sugarcane to another party without the approval of the miller.
28. If any party decides to discontinue the supply of sugarcane or terminate the relationship with the other party, he shall give a three (3) 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 the agreement.

#### FORCE MAJEURE

29. 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.
30. 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.
31. 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

32. 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 herein.

SIGNED for or on behalf of the MILLER:

Name.....

In presence of:

Name.....

SIGNED for or behalf of the GROWER:

Name.....

In presence of:

Name.....

Form 10

(r. 26 (3))

APPLICATION FOR REGISTRATION OF SUGAR  
BRANDS

To

Agriculture and Food Authority,

1. I/We.....(Official of  
.....(Name of  
Association/Institution)
2. Physical Address:.....Market.....Location .....  
Sub-County .....
3. Land Ref. No.....
4. Postal Address:.....  
Tel:..... Fax: .....E-mail .....
5. .... (name of applicant) apply for the  
recognition of ..... (name of  
brand).
6. Copies of the following documents are attached to this application—
  - a. Trademark registration certificate;
  - b. Sample of the brand
  - c. Certificate of Incorporation or Business name.
  - d. ID or Passport of Directors

8. Project Objectives

- a. ....
- b. ....
- c. ....

Contact Details:

Name: ..... Title: .....

Telephone:..... Fax: .....

Email: .....

Form 11

(r. 26(4))

CERTIFICATE OF REGISTRATION AS A BRAND

TO.....

THIS IS TO CERTIFY that the above-named body is duly registered as a sugar brand in the sugarcane industry.

BRAND:

Date of issue.....

.....

DIRECTOR-GENERAL

Agriculture and Food Authority

## SECOND SCHEDULE

(r. 26(1))

## KENYAN SPECIFICATIONS FOR SUGAR

## A. REFINED SUGAR

STANDARD : KS EAS 5: 2009

Characteristic	Requirement
Polarisation °S (Min)	99.7
Invert Sugar Content, % m/m (Max)	0.04
Conductivity Ash, % m/m (Max)	0.04
Loss on drying (Max) (3 hours at 105°C)	0.1
Colour, in ICUMSA units (Max)	60

## B. PLANTATION (MILL) WHITE SUGAR

STANDARD : KS EAS 16: 2000

Characteristic	Requirement
Polarisation °S (Min)	99.5
Invert Sugar Content, % m/m (Max)	0.1
Conductivity Ash, % m/m (Max)	0.1
Loss on drying (Max) (3 hours at 105°C)	0.1
Colour, in ICUMSA units (Max)	500

## C. BROWN SUGAR

STANDARD :KS EAS 749: 2010

Characteristic	Requirement	
	Light Brown	Brown
Polarisation, °Z (Min)	99.2	99.0
Invert Sugar Content, % m/m (Max)	0.2	0.2
Conductivity Ash % m/m (Max)	0.3	0.3
Loss on drying (3 hours at 105°C ± 2°C) (Max)	0.15	0.2
Colour, in ICUMSA units (Max)	700	1,300

## D. RAW CANE SUGAR

STANDARD :KS EAS 8: 2010

Characteristic	Requirement
Polarisation, °Z	94 - 99

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Invert Sugar Content, % m/m (Max)	1.2
Conductivity Ash % m/m (Max)	1.0
Moisture Content, % (Max) (3 h at 105°C ± 2°C)	1.0
Colour, in ICUMSA units at 420 nm	>1,300 – 6,000

PETER MUNYA,  
*Cabinet Secretary,*  
*Ministry of Agriculture, Livestock, Fisheries and Co-operatives.*