

REPUBLIC OF KENYA

Marketing Brokerage/Agency Agreement

BETWEEN

New Kenya Planters Co-operative Union Public Limited
Company
(as the “**Broker /Agent**”)

AND

[..... Coffee Estate
(as the “Grower”)

(Relating to the provision of Coffee Brokerage and Export Agency services.)

REPUBLIC OF KENYA

Marketing Brokerage/Agency Agreement

This Agreement has been entered into this..... day of20.....

BETWEEN New Kenya Planters Co-operative Union Public Limited Company a State Corporation and Public Limited Company of Post Office Box Number 59638-00200 Nairobi of registered office at Wakulima House 5th floor Haile Selassie Avenue of License No.....and Registration No.....(Hereinafter called the “Broker /Agent”, which expression shall where the context so admits include its successors and assignees) **OF THE FIRST PART;**

AND

.....**Coffee Estate** a duly registered Coffee Grower of coffee Registration No of Post Office Box Number (Hereinafter called the “Grower”, which expression shall where the context so admits include its legal representatives and assigns) **OF THE SECOND PART:**

DEFINITION AND INTERPRETATIONS

In this agreement unless the context otherwise so requires, the following terms, expressions and abbreviations shall have meaning ascribed to them as stated below

“**NKPCUPLC**” shall mean the New Kenya Planters Co-Operative Union Public Limited Company incorporated under the companies Act 2015.

“**First Charge**” shall mean a lien by the creditor against any funds available from the proceeds of the sale of the coffee as satisfaction of the advanced funds.

“**Grower**” shall mean..... a duly registered Coffee Estate.

“**Broker**” shall mean New Kenya Planters Co-Operative Union Public Limited Company.

“**Agent**” shall mean New Kenya Planters Co-Operative Union Public Limited Company.

“**The Act**” shall mean the Crop Act 2013

“**Currency**” shall mean the currency used in payments either Kenya shillings (KSHS) and or United States Dollars (USD)

“**Regulations**” shall mean the Crop Act (Coffee General) Regulations 2019, and the Capital Markets (Coffee Exchange) Regulations 2020

“**Agreement**” shall mean this agreement

“**Parties to Agreement**” shall mean the entities whose duly authorized representative have attested and /or signed this agreement as binding between them.

“**Crop Year**” shall mean two seasons within which coffee is ready for harvesting being 1st of October to 30th September of every successive year.

“**Out-Turns and Grading**” shall mean the end product after milling at as per the grading of the coffee

WHEREAS:

- a) New KPCU (Plc) is duly licensed as a Coffee Broker under the Capital Markets (Coffee Exchange) Regulations 2020 and as an agent under the Crop Act, 2013 (Coffee General) 2019.
- b) New KPCU (Plc) is capable of identifying competitive prices and facilitation of transactions relating to the sale of clean coffee.
- c)Coffee Estate has appointed new KPCU plc as its Coffee Broker and Export Agent to sell and identify competitive prices for the sale of coffee upon the terms and conditions hereinafter appearing.
- d) Coffee Estate is capable of entering into this agreement with New KPCU(Plc) on behalf of its farmer members for purposes of coffee brokerage and export
- e) Coffee Estate has agreed to the recovery of the brokerage and agency fee and other legal deductions out of the coffee sales proceeds through the Direct Settlement System (DSS).

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **THAT**.....Coffee Estate has appointed Broker /Agent as its Coffee Broker and Export Agent to sell and identify competitive prices for the sale of coffee upon the terms and conditions hereinafter appearing and for the duration of this Agreement, .
2. **THAT** the Broker /Agent hereby agrees to take over any contractual obligations of the grower in respect of handling, milling and warehousing charges by facilitating and supplying of relevant documents to co-operative bank of Kenya through the Nairobi Coffee Exchange for purposes of initiating the direct settlement system
3. **THAT** in carrying out its obligations under this Agreement, Broker /Agent undertakes to conduct its business diligently and professionally at all times so as to enhance transparency, traceability and accountability of the coffee in the best interest of the grower;
4. **THAT** Broker /Agent shall sell through the Nairobi Coffee Exchange Auction platform or Direct Markets the clean coffee and obtain the best price available with the coffee sales proceeds remitted to the grower's account upon sale through the Direct Settlement System (DSS) net the Agency, Brokerage, Handling, Warehousing, Cherry Advance (if any) and any other Legal Deductions.
5. **THAT** this Agreement shall bind the parties for a period of one coffee crop year from 1st October to 30 September from the date of its coming into operation;
6. **THAT** at any time after the first anniversary of the coming into operation of this agreement, either the grower or the marketing agent may terminate this Agreement by giving the other at least 1 months' notice in writing prior to the proposed date of termination.

Provided that:

- (i) No such termination shall in any way affect any accrued right of either party hereunder;
- (ii) No such notice of termination by the grower shall be valid without the

consent of the miller; and.

(iii) Where the grower is a co-operative society and the rules of the society so provide, no such notice of termination shall be valid if it was given in Contravention of the rules of the society or any agreement to which the society and any party to this agreement are parties;

7. **THAT** the Coffee sold by Broker /Agent on behalf of.....Coffee Estate either through Auction Market or Direct Sales Market shall be sold on condition that ownership of coffee shall not pass to the buyer unless and until it has been paid for fully and the of the proceeds of sale transmitted to the grower through the direct settlement system (DSS) net the agency, brokerage, handling, warehousing ,cherry advance and any other legal deductions
8. **THAT** by this AgreementCoffee Estate recognizes its indebtedness to third parties, secured by the hypothecation of the coffee crop and irrevocably authorizes and directs Co-operative Bank of Kenya as the managers of the Direct Settlement System (DSS), through the Nairobi Coffee Exchange to deduct and liquidate all financial liabilities in favour of third parties including but not limited to charges related to handling, milling warehousing brokerage, agency and all other deductions such as coffee advance and bank credit facilities (if any).
- a) As soon as practicable but in any event not later than five (5) days from the prompt date,
 - b) In United States dollars or such other hard currency as may from time to time be agreed and;
9. **THAT** parties undertake to honour their respective obligations among them including, but not limited to, all irrevocable payment instructions that may be issued by New KPCUPlc to Co-operative Bank of Kenya through the Nairobi Coffee Exchange from time to time.

OBLIGATIONS OF THE PARTIES

(A)“Broker /Agent”

Shall have the following obligations to perform

- i. In compliance with regulation 41(4) of the Capital Markets (Coffee Exchange) Regulations 2020 supply to Co-operative Bank of Kenya through the Nairobi Coffee Exchange all necessary particulars of..... Coffee Estate for purposes of initiating the settlement system
- ii. In compliance with regulation 41(5) of the Capital Markets (Coffee Exchange) Regulations 2020 to supply to Co-operative Bank of Kenya through the Nairobi Coffee Exchange the following documents for purposes of initiating the settlement system.
 - a) Marketing Agreement between new Kenya planters co-operative union public limited company and Coffee Estate
 - b) Coffee Cherry Advance Agreement between New Kenya Planters Co-operative Union Public Limited Company and Coffee Estate (if any)
 - c) The schedule of the Coffee Cherry Advance amount recoverable from..... Coffee Estate owing to New Kenya Planters Co-operative Union Public Limited Company (if any)
- iii. To supply to Co-operative Bank of Kenya through the Nairobi Coffee Exchange all necessary particulars relating to..... Coffee Estate and New Kenya Planters Co-operative Union Public Limited Company for purposes of initiating the settlement system including
 - a) Bankers Names for both Coffee Estate and New Kenya Planters Co-operative Union Public Limited Company
 - b) Bank Account Numbers and Branches for both Coffee Estate and New Kenya Planters Co-operative Union Public Limited Company
 - c) Schedule of amounts recoverable as Coffee Cherry Advances from Coffee Estate to New Kenya Planters Co-operative Union Public Limited Company (if any).
- iv. Broker /Agent shall keep up to date record of all remittances and proceeds from the sale and deliveries including the out turns and statutory deductions;
- v. Broker /Agent shall identify markets for best prices at the Coffee Exchange (Auction) or through Direct Sales Markets System and obtain the best price possible in the particular crop year and ensure the same is appropriated as agreed under paragraph 4 and 8 of this agreement;

- vi. The marketer shall where necessary appoint a duly licensed auctioneer to auction the coffee in case of the coffee sold through the exchange;
- vii. Broker /Agent shall sell the coffee on the grower's behalf on condition that the ownership shall not pass to the buyer unless and until the same is paid for in full and the of the proceeds of sale transmitted to Co-operative Bank of Kenya for onwards transmission to the growers account net the milling, handling, warehousing and other legal deductions
- viii. Broker /Agent shall ensure updated records on remittances toCoffee Estate including all statutory deductions kept and shared on request by the grower are furnished and supplied to the Co-operative Bank of Kenya through the Nairobi Coffee Exchange.

(B) "THE GROWER"

- a) The grower shall at all times during the tenancy of this agreement deliver coffee parchment to Broker /Agent after harvest for purposes of sale by Auction or Direct sales
- b) The grower shall inform the marketer of any outstanding financial liability with any other person(s) and keep records of the remittances made by self or to Broker /Agent towards the repayment of the advance facility afforded to the grower (if any);
- c) The grower is under an obligation to disclose to Broker /Agent all or any such dealings in the sale of all or part of his/her coffee where the same is not remitted to the marketer during the tenancy of this agreement and ensure timely remittances are done without fail;

13. **THAT** any dispute arising from or in connection with this Agreement, its breach, termination or cancellation shall, in the absence of the parties resolving the dispute amicably, be finally resolved by reference to arbitration in accordance with the provisions of the Arbitration Act, Chapter 49 of the Laws of Kenya **OR** for court annexed mediation provided that;

- a) If the dispute is referred for arbitration it shall be by a sole arbitrator to

be appointed by a mutual agreement between the parties;
- b) If the dispute is referred for court annexed mediation ,it shall be by a sole

mediator to be appointed by a mutual agreement between the parties and;
c) Such arbitration and/ or mediation shall take place in Kenya and where

Any matter is not covered by such Rules, the provisions of the Arbitration Act, 1995 Laws of Kenya shall apply.

14. **THAT** any Notice under this agreement shall be in writing and shall be deemed to have been duly given or made if delivered at the offices for the time being of the parties hereto or sent by pre-paid letter of post to the last known address of the parties hereto **OR** by Electronic Mail , and if sent by post such notice shall be effective four days after the date of posting thereof and in proving service by post it shall be sufficient to prove that the letter containing the notice was properly stamped, addressed and duly posted at a post office.

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

SIGNED for and on behalf of the **Broker /Agent (New Kenya Planters' Co-Operative Union Public Limited Company)**

NAME.....

MANAGING DIRECTOR

SIGNATURE

.....

IN THE PRESENCE OF

NAME.....

DESIGNATION.....

SIGNATURE.....

SIGNED for and on behalf of the.....Coffee Estate

NAME.....

AFFILIATION NUMBER.....

SIGNATURE.....

IN THE PRESENCE

NAME.....

ID NUMBER.....

SIGNATURE.....