

MARKETING AGREEMENT

Between _____

And Mr. Mrs. Ms. _____

THIS CONTRACT is entered into this _____ day of _____, in the year Two Thousand and Eleven. BETWEEN _____ (the “seller”) of _____ AND _____ (the “buyer”), of _____, Jamaica.

1. In consideration of the payment of the price set out in the 1st Schedule and 2nd schedule item 10 hereto, the **seller** agrees to sell to the **buyer** an estimated initial minimum total of _____ **lbs/** (_____ **kg**) of crops namely; _____ that may be agreed on by the parties (hereinafter called “the produce”), subject to and pursuant to the terms and conditions set out in the 2nd Schedule.
2. The buyer by his/her signature hereto acknowledges that he/she has contracted to purchase produce of merchantable quality and fit for the buyer’s particular purposes save that the seller reserves the right of ownership of the produce until payment is made and maintains an unpaid seller’s lien as provided by Section 40 of the Sale of Goods Act.
3. The quality of the produce shall conform to those standards agreed on by the buyer and the seller herby attached as an addendum to this contract.
4. It is expressly understood and agreed that: -
 - (a) Title to the produce shall not pass until the seller has received payment for the said produce in accordance with the 1st schedule, and in the meantime the risk of the produce shall pass to the buyer.
 - (b) This contract contains the terms of the entire agreement between the parties there-unto and cannot be modified nor added to by any agreement not expressly stated herein.
 - (c) The seller agrees to indemnify and hold the buyer harmless from and against any claims from third parties in respect of damages or liabilities for personal injury and/or property damage arising out of the negligence in delivery of the produce to the buyer and/or any interest defect in the produce.
 - (d) The buyer agrees to indemnify and hold the seller harmless from and against any claims from third parties in respect of damages or liabilities for personal injury and/or property damage arising out of the negligence in receipt of the produce to the seller and/or any interest defect in the produce.
 - (e) The buyer shall not have the right to transfer or assign its obligations hereunder, except with the written approval of the seller

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- (f) The seller shall not have the right to transfer or assign its obligations hereunder, except with the written approval of the buyer
- (g) Where there is cause for mediation between the contracting parties with regards to the performance of the contract or any reasonable associated consideration, the course of mediation between the contractual parties is laid out in the fifth schedule.

1ST SCHEDULE

PRICE

1. The price of the produce shall be the **price** as set out below and shall only change where market forces or other price determinants evidently impact the sale prices. Any such changes must be upon mutual agreement between the parties and must be in writing. The price as set out below will be maintained for the period set out in schedule 3, item 1 and as specified in 10, 11, 12, 13 and 14 of the 2nd schedule.

Monthly supply Schedule

Produce	J\$ / kg	Total kg req'd/ month
Total		

2. Same shall be payable on delivery SAVE that the parties shall have the right to defer/ negotiate payment on a later date not exceeding 14 clear days.
3. The price, produce and period for which this contract is valid shall be as outlined in the 1st schedule and items 10, 11, 12, 13, and 14 of the 2nd schedule, will not be changed except by written accord, mutually agreed upon by both parties.

2nd SCHEDULE

CONDITIONS

1. The seller shall assure the buyer that they will apply appropriate agricultural practices in the production of the produce rendering same produce wholesome for consumption (meeting the phytosanitary, and toxicity - minimum residual levels (MRL) of the importing country.
2. The seller hereby grants and gives to the buyer and/or his/her employees, agents, contractors and licensees, the right of reasonable access to and from the farms for the purpose of the initiation of transactions, collection and the inspection of the produce and the evaluation of cultural practices.
3. The seller agrees to fully co-operate with the buyer in adopting and/or installing new proven management/quality practices designed to enhance quality and productivity of produce.
4. The seller will immediately notify the buyer in all matters relating to acts of God, which may result in the inability of the seller keeping its obligations under this contract. The seller will also notify the buyer when new harvesting cycles are to begin.

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5. The seller will keep accurate daily records of production practices; dates and types of chemicals used and such other records as may be necessary to ascertain wholesomeness of produce in accordance with item one above.
6. The seller agrees to package the produce in packaging material appropriate for the efficient delivery of produce to the buyer
7. The buyer agrees to be present with sufficient helpers when produce are received /delivered. The buyer also accepts full responsibility for all produce delivered to him/her by the seller and signed for by the buyer or his/her agent(s). It is understood that upon receipt of good quality produce, it is critical that the buyer places the produce expeditiously in proper storage to preserve the quality.
8. The buyer agrees to absorb all costs associated with the buyer's inspecting, collecting, storing and accepting/selling/using the produce and making payment to the seller's bank/office and any other cost incidental to the resale/repackaging/use of the produce or sale of any product emanating from the produce.
9. The buyer and seller agree to accurately weigh and record the weight of the produce immediately upon delivery/ receipt of produce.
10. The seller will compensate buyer for shrinkage by providing an additional five (5) pounds of produce per one hundred pounds of produce purchased by buyer.
11. The buyer agrees to pay the seller for the full weight mutually agreed upon by the seller and buyer at the time the buyer collects the produce. The seller shall however, upon request of the buyer, and presentation of physical evidence and the appropriate documentations, accept losses due to spoilage caused by any action or activity on the part of the seller that predisposes the produce to degeneration in quality. This degeneration in product must be brought to the attention of the seller within 24 hours after delivery of produce. At the same time the buyer must demonstrably satisfy the seller that all reasonable steps were taken to preserve the quality of the product.
12. The seller hereby agrees to adhere to the delivery dates mutually agreed upon, as set out in item 1 of schedule 3, and delivery of produce shall commence on that said date, when the **seller** shall deliver, and the **buyer** shall purchase the produce and pay in accordance with the 1st and 2nd schedules.
13. The buyer will purchase the full amount agreed upon in this contract, in a manner consistent with items 1 through to 14 of the 2nd schedule and as set out in the supply schedule.
14. The seller shall supply the full amount agreed upon in this contract, in a manner consistent with items 1 through to 14 of the 2nd schedule and as set out in the supply schedule.
15. The supply schedule is subject to variation only where the two parties have expressly reached an agreement. Such agreement must be duly noted and signed by both parties. Such variations will form an addendum to this contract.

3rd SCHEDULE

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1. TERM

This agreement shall continue in effect for **six (6)** months with delivery commencing within **six (6)** months after the signing of this contract

2. RENEWAL

- a. This agreement shall be renewable at the end of the current term for a successive six months term unless either party gives written notice of its intention not to renew 120 days before expiration of the current term.
- b. Either party shall notify the other of any changes in the terms of the Agreement at least 30 days prior to the date of renewal

3. EXCLUSIVE REMEDY.

If upon delivery to Buyer the produce appears not to meet the agreed quality standards, the Buyer shall immediately notify the respective parish Rural Agricultural Development Authority (RADA) who shall have a right to inspect the produce. The Buyer shall not return, or dispose of any goods that fail to meet the quality standards within 72 hours of delivery without RADA's written consent. In the event the Seller breaches the quality specification, the Buyer's sole and exclusive remedy and Seller's sole and exclusive liability shall be limited to replacement of non-conforming produce with conforming produce or return of the purchase price.

4. FORCE MAJEURE.

- a. The Seller shall be excused for failure to deliver or delay occasioned by conditions beyond the Seller's reasonable control, including, but not limited to, Acts of God, fire flood, windstorm, acts of governmental authorities, strikes unavailability of planting materials, breakdown, shortage or non-availability of transportation facilities or equipment or any similar event not within the Seller's control. If the Seller declared force majeure hereunder, the Seller may cancel any unperformed portion hereof upon seven (7) clear days notice to Buyer.
- b. The Buyer shall be excused for failure to accept delivery or delay to accept delivery occasioned by conditions beyond the Buyer's reasonable control, including, but not limited to, Acts of God, fire flood, windstorm, acts of governmental authorities, strikes, breakdown of storage facility, shortage or non-availability of transportation facilities or equipment or any similar event not within Buyer's control. If Buyer declared force majeure hereunder, the buyer may cancel any unperformed portion hereof upon seven (7) days notice to Seller until such extenuating conditions are remedied.

5. DEFAULT.

If Buyer (1) refuses to accept any shipment properly tendered hereunder, (2) fails to tender any payment hereunder when due, or (3) fails to perform in any other respect according to its obligations set out in the terms herein (each of which shall be a material breach of contract), the Seller may treat such default as (a) a total breach of the entire Contract, and/or (b) partial breach of Contract, e.g., a breach only as to the individual shipment or installment

If Seller (1) refuses to deliver any shipment properly scheduled when due hereunder, (2) fails to perform in any other respect according to its obligations set out in the terms herein (each of which shall be a material breach of contract), the Buyer may treat such default as (a) a total breach of the

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entire Contract, and/or (b) partial breach of Contract, e.g., a breach only as to the individual shipment.

4th SCHEDULE

TERMINATION

1. This Agreement is subject to termination by either party upon at least one hundred and twenty (120) days notice prior to the end of the current contract period
2. Either party may terminate this agreement effective upon 120 days notice to the other if the other party commits any material breach of this Agreement that remains uncured during such notice period. Examples of material breach include but are not limited to non-payment of any amount when due and or failure to accept produce duly delivered in accordance with the supply schedule and quality specifications
3. In the event that either party believes that the other has committed a material breach of any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have 30 days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the 30 days, the non-breaching party shall have the right to terminate the Agreement in accordance with the item 1 of termination clause set out herein 3rd schedule of this contract.
4. In the event of early termination permitted by this Agreement, the association shall be entitled to payments on all outstanding invoices payable prior to and from the date of termination.
5. Termination notice can only be considered served upon hand-delivery of the notice of termination to the offending party or within seven clear days, where such notice is posted by registered mail.
6. Where no clear breach of contract occurs both parties are required to honour the arrangements of the contract, whether explicitly stated in the contract document or supply schedule hereafter attached, or any agreed variations – written and implied (gentleman's agreement) and ensure the interest of both parties is served.

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5th SCHEDULE

ARBITRATION

If any difference shall arise between the parties hereto touching the construction of these clauses or the respective rights, duties or liabilities of the parties under or arising out of these clauses, the matter in dispute shall be referred to Arbitration in accordance with/and subject to the provisions of the Arbitration Act or any statutory modification or amendment thereof for the time being in force. The arbitration panel shall consist of three arbitrators, a chairman and two others each of who is selected by the disputing parties. The chief arbitrator shall be Permanent Secretary of the Ministry of Agriculture and Fisheries or his/her nominee. The ruling of the arbitrators shall be binding on all parties concerned. Such reference to arbitration shall be a condition precedent to litigation in the Jamaican courts.

Signed by:

_____ COMPANY STAMP	_____ DATE
_____ WITNESS	_____ DATE
_____ SELLER SIGNATURE	_____ DATE
_____ WITNESS	_____ DATE