



REPUBLIC OF KENYA

MINISTRY OF INDUSTRY,  
TRADE AND COOPERATIVES

STATE DEPARTMENT FOR TRADE

# STUDY ON KENYA RETAIL SECTOR PROMPT PAYMENT

For the Prompt Payment Working Group (AK3, KAM, RETRAK) and State  
Department of Trade Ministry of Industry, Trade and Cooperatives







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REPUBLIC OF KENYA

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AND COOPERATIVES**

STATE DEPARTMENT FOR TRADE

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**Dr. Chris Kiptoo, CBS**  
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**The retail trade sector is one of the key sectors that have been singled out by Vision 2030 for transformation of the Kenyan economy to a trade competitive economy through efficient outlet of goods from farms and industries in Kenya as well as imported goods.**



## FORWARD

The retail trade sector is one of the key sectors that have been singled out by Vision 2030 for transformation of the Kenyan economy to a trade competitive economy through efficient outlet of goods from farms and industries in Kenya as well as imported goods.

The sector holds promise to agricultural and industrial sector development because as the country develops, efficient consumer outreach is through formal retail outlets. This fact is recognized in Vision 2030 where the government targeted to raise the share of products sold through the formal retail channels, such as supermarkets, from 5% in 2007 to 30% by 2012. This dream was to be achieved through establishment of at least three new Retailers with more than 10 stores each in the Kenyan economy. This dream has to a large extent been achieved, as evidenced by the number of high end supermarkets with very elaborate branch networks.

This achievement needs to be harnessed because of the interdependence between the sector and the agricultural and industrial development. A well-functioning retail sector will stimulate agricultural development as farmers are encouraged to produce targeting millions of consumers who pick their daily bread, milk, eggs, grains, pulses and other products in the retail stores. The sector also holds a key to industrial development and innovations as Kenyan industries target to produce products for the emerging strong middle income group that has been behind the surge in Kenya's import bill of consumables.

The National Trade Policy has set ground on which to ensure the sector is shielded from any systemic challenges that lead to its failure. This is to be done through an enabling legal framework that guarantees all stakeholders - consumers, retailers and suppliers fair trade practice.

The challenges that the retail sector has faced in the last two years, which as documented in this study threatens to the survival of the sector and Kenya's agricultural and industrial development, have underscored the need to quickly implement the provision of the National Trade Policy on 'Enabling Legal and Regulatory Framework' for the Retail Sector.

The road map towards the development of this framework has now been defined and the approximation of what that framework will look like has also been agreed by the stakeholders in the retail trade sector. This includes a 'Retail Trade Sector Prompt Payment Regulation' and 'Retail Trade Sector Code of Practice' that are to be developed to take care of the challenges that the sector has been facing.

This remarkable achievement is attributed to the hard work of the Retail Sector Prompt Payment Working Group that was Chaired by the State Department of Trade and steered by Retail Trade Association of Kenya (RETRAK), Association of Kenya Suppliers (AKS) and Kenya Association of Manufacturers (KAM).

I wish to acknowledge the over two years tireless efforts of chairpersons of RETRAK - Mr. Willy Kimani, AKS - Mr. Kimani Rugendo and KAM - Mrs Flora Mutahi to seek lasting solution for the sector leading to the outcome that we now have in form of this report. The CEOs of these organizations Wambui Mbarire - RETRAK, Ishmail Bett - AKS and Phylis Wakiaga - KAM were instrumental in the timely delivery of this product.

Lastly the contribution of the staff of Department of International Trade, led by the Director, Mrs Joyce Ogundo was valuable in situating the work within the government policy making process.

*Dr. Chris Kiptoo, CBS*  
*Principal Secretary*

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION</b>	<b>4</b>
1.1	Overview and prospects of Kenya's Retail Sector	4
1.2	Recent developments that pose a threat to the future of the sector	5
1.3	Methodology	6
<b>2.0</b>	<b>SITUATIONAL ANALYSIS - EXPERIENCES OF SUPPLIERS, MANUFACTURERS AND RETAILERS</b>	<b>7</b>
2.1	Experiences of Suppliers and their proposed position on prompt payment system	7
2.1.1	Experiences of the Suppliers	7
2.1.2	Impact of late payment	10
2.1.3	Recommendations for prompt payment system	10
2.2	Experiences of manufacturers and their proposed position on prompt payment system	11
2.2.1	Experiences of the manufacturers	11
2.2.2	Recommendations for prompt payment system	13
2.3	Experiences of Retailers and their proposed position on prompt payment system	14
2.3.1	Experiences of Retailers	14
2.3.2	Recommendations for prompt payment system	18
<b>3.0</b>	<b>CASE STUDIES</b>	<b>20</b>
3.1	Case studies of SMEs affiliated to Association of Kenya Suppliers	20
3.1	Case studies of SMEs affiliated to Kenya Association of Manufacturers	22
<b>4.0</b>	<b>CAUSAL FACTORS TO DELAYED PAYMENTS IN KENYA RETAIL SECTOR</b>	<b>23</b>
<b>5.0</b>	<b>INTERNATIONAL BEST PRACTISE PAYMENT SYSTEMS</b>	<b>25</b>
5.1	International Best Practice on Prompt Payment Standards	25
5.2	International Best Practice - Prompt Payment Code of Practice	27
5.2.1	Situation of the Code of Practice Judicial system	27
5.2.2	The features of the Code of Practice	27
<b>6.0</b>	<b>PROPOSED STANDARDS AND FRAMEWORK FOR KENYA'S PROMPT PAYMENT SYSTEM</b>	<b>32</b>
6.1	Regulation	32
6.1.1	Objective and proposed content of the Regulation	32
6.1.2	Process of developing the Prompt Payment Regulation	37
6.2	Code of Practice	37

6.2.1	Comparative analysis of the Code of Practice positions of the Retailers and the Suppliers/manufacturers	37
<b>7.0</b>	<b>RECOMMENDED WAY FORWARD</b>	<b>39</b>
7.1	Regulation	39
7.2	Code of Practice	39
	Annex 1: Amount owed to 22 Suppliers as at 31st December 2016	40
	Annex 2: KAM Members Owings by Retailers as at 31st December 2016	46
	Annex 3 - Supplier/Manufacturers proposed Code of Practice	67
	Annex 4 - Retailers Proposed Code of Practice	75



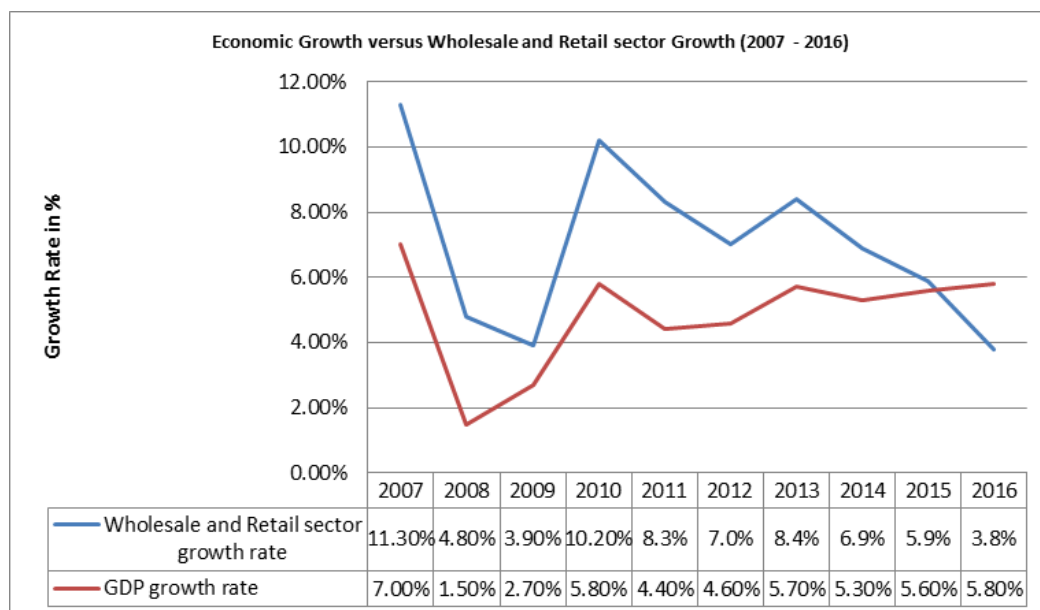
## 1.0 INTRODUCTION

### 1.1 Overview and prospects of Kenya's Retail Sector

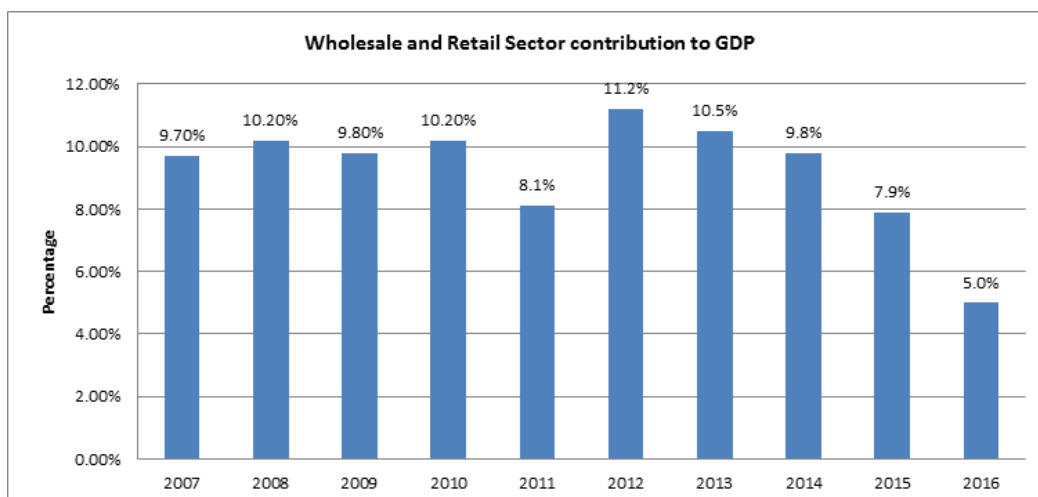
Retail trade is defined in the National Trade Policy as *'the re-sale (sale without transformation) of goods to the general public, for personal or household consumption or utilization'*. The significance of the retail trade as an engine for Kenya's economic growth is underscored in Vision 2030 where the government targeted to raise the share of products sold through the formal retail channels, such as supermarkets, from 5% in 2007 to 30% by 2012. This was envisaged to trigger an increase in GDP by KES50bn, stimulate consumer demand driven investment opportunities, especially among SMEs and the agricultural sector. This was to be achieved through attraction of at least three new Retailers with more than 10 stores each in the Kenyan economy.

The Vision 2030 retail sector projected growth has however been elusive as demonstrated by the performance of the sector in the last ten years. As evidenced in the graph below, the sectors growth rate of 11.3% in 2007, the Vision 2030 base year for the sectors development, have remained elusive in the last 10 years. The bar chart below reveals existence of two shocks that seem to have disrupted the projected growth.

The first shock in the post-election violence, which saw the sectors growth rate plummet to 4.8% in 2008, down from 11.3% in 2007. The second was witnessed in 2014 when the sector's growth rate started a sustained downward spiral culminating to a growth rate of 3.8% by 2016, a level lower than that witnessed during the post-election violence. As evidenced later in this study, the latter shock is attributed to the crises in the retail sector, which is characterized by late payment.



The effect of this deteriorating performance was manifested in the decline in the sector's share in total GDP from a high of 11.2% in 2012 to 5.0% in 2016, a level much lower than 2007.



The sustained decline in the sector performance is a clear demonstration of underlying fundamentals that unless addressed, the Vision 2030 dream is most likely to remain a pipe dream.

The gleam of hope on which to galvanize efforts towards addressing the deteriorating performance of the sector are recent developments within the retail sector that demonstrates investors' faith and hope in the sector. This is evidenced by the over 5 major supermarkets that have emerged since the launch of the Vision 2030, with elaborate branch network scattered in major cities throughout the country.

The effect of this investor push is further attested in the retail market outlook reports of 2016 which showed Kenya's retail sector to be on the upswing. For instance, Oxford Business Group ranked Kenya as the second most developed sector in Africa after South Africa (<http://www.oxfordbusinessgroup.com/news/kenya%E2%80%99s-retail-sector-rise>). Euro monitor, on the other noted that "Over the past five years, the average value of consumer spending has risen by as much as 67%, making Kenya the continent's fastest growing retail market". According to Cytonn Kenya's retail sector analysis report, the drive in retail sector growth is attributed to 85% of the consumers preferring to shop in formal retail stores. This has triggered unprecedented development of retail space and retail branch networks to response to consumer demand for shopping convenience that the supermarkets offer.

Investor faith in the Kenyan retailing market, as observed by the above quoted Oxford Business Group report, is further evidenced by the recent increased "penetration of international Retailers that have opened outlets in Kenya. International companies such as Massmart Holding's Game, Carrefour and Botswana's Choppies entered the market ...." According to this report, this changing shopping culture amongst the urban consumers, will stimulate further formal retail growth, "as Retailers seek to meet consumer needs and tap into their wallets".

The Government through the National Trade Policy has set stage to stimulate growth of the retail sector through measures that include establishment of a business friendly legal and regulatory framework, aimed at spurring the sector's growth to the heights that are envisaged in Vision 2030.

## 1.2 Recent developments that pose a threat to the future of the sector

The success of the retail sector has so far been driven by a robust supply chain, tapping from a vibrant manufacturing sector for locally produced goods and liberalized trade regime for imported products. According to suppliers and manufacturers<sup>1</sup> the future of the retail sector in Kenya is now at a cross road due to late payment culture, which is traced to the past two years. The significance of this challenge is manifested in the estimated over KES40bn outstanding payments for goods delivered, with some payments having been delayed by between 180 and 240 days! RETRAK, however, asserts that overdue credits amount to less than KES1bn and observes that Kshs40billion entail short and long term financing instruments which are still in service as no defaults have been reported by any financier. The Government places the amount owed to suppliers at an even higher figure than KES40bn given disclosures obtained from troubled retailers whom the government has engaged in trying to understand their challenges.

Despite the conflicting numbers of the amount owed, all parties are in agreement that late payment is a challenge that requires urgent action.

The Government is therefore concerned by the level of outstanding debt in the retail sector because of the threat it poses to the Vision 2030 goal of promoting a vibrant retail sector as an outlet of agricultural and manufactured products.

The Suppliers, manufacturers and Retailers, through a process being facilitated by the State Department of Trade have established a Task Force to address this challenge and propose remedial measures taking into account international best practice on prompt payment. This study is a contribution to this effort and seeks to: -

- 1) Document the situation through consultations with ASK, RETRAK and KAM with a view to answering the following research questions
  - a) What are the estimated outstanding payments to Suppliers and over what period of time?
  - b) What are the key factors contributing to delays in payments to Retailers?
  - c) How have a selected sample of Suppliers, particularly small Suppliers and manufacturers been affected by delays in payment?
- 2) Document international best practice on prompt payment and identify provisions that could be applied in resolving the Kenyan situation
- 3) Recommend an appropriate framework to address the prompt payment challenge in Kenya

## 1.3 Methodology

According to the preliminary information we obtained on commencement of the assignment, the suppliers, manufacturers and retailers have had engagement for over one year trying to explore several options of resolving the challenge of late payment. In order to build on this momentum, we obtained background documents and positions of the three associations. In-depth review of these documents was undertaken to inform design of the study and analytical framework to be applied in the assessment of the late payment in the retail sector.

We proceeded to design analytical framework, addressing each of the TOR requirements, with an aim of ensuring the study yields the envisaged output. Structured questionnaires targeting retailers, suppliers and

<sup>1</sup> This is in accordance to the memorandum prepared by Association of Kenya Suppliers and the Kenya Association of Manufacturers

manufacturers association was designed taking on board analytical frameworks parameters. Field work using structured questionnaires and follow up dedicated meetings with ASK, RETRAK and KAM was undertaken to obtain further information and data for use in the analysis and reflection in formulating the proposed Kenya's Prompt Payment Standards. Case studies targeting SMEs affected by late payment were done, based on firms introduced to us by AKS and KAM.

A key limitation which the study faced was unwillingness of the suppliers, manufacturers and retailers to provide the requested information. For instance, the questionnaire to RETRAK, which sought to obtain holistic information on the magnitude of outstanding payment by period and retailers was not availed. This information was considered as proprietary and hence unavailable for public sharing. The same case was with suppliers association, where they only managed to provide information of 22 out of 1,000 of their members for similar reason. The information given was summary of amount owed to suppliers by various retailers, without names of the beneficiary companies for fear of reprisal and delisting by retailers. Similar limitation was also encountered in KAM, where information of 37 out of a membership of about 650 companies doing business with retailers was provided. Information about this companies cannot be disclosed in this report because it was given in confidence. Despite this challenges, we were able to conduct the study to arrive at retail sector-wide consensus that in deed there is a challenge with late payment which all players were in agreement need to be resolved.

The rest of this report is organized as follows: Section 2.0 is on Situational Analysis; Section 3.0 is on case studies, focusing on impact of late payment on select SMEs; Section 4.0 is on International Best Practice; Section 5.0 is on the proposed standards for Kenya Prompt Payment System while Section 6.0 is on Recommendations and proposed way forward.

## **2.0 SITUATIONAL ANALYSIS - EXPERIENCES OF SUPPLIERS, MANUFACTURERS AND RETAILERS**

### **2.1 Experiences of Suppliers and their proposed position on prompt payment system**

#### **2.1.1 Experiences of the Suppliers**

The Association of Kenya Suppliers is a key partner in retail trade with 1,000 out of its 1,300 members doing business with the retail sector, supplying goods to various supermarkets (refer annex 1 for the list of supermarket that a sample of 22 Suppliers reported having supplied goods to. The Suppliers have complained of unfair trade practices perpetrated on them by Retailers due to imbalance in the bargaining power between the Retailers and the Suppliers. The sum total of these practices is late payment to the Suppliers, which is estimated at KES40bn.

As evidenced in the table below, using data from only 22 Suppliers (Refer Annex 1 for detailed table of distribution of amount owed by retailer and period owed), the challenge of late payment is real. The debts outstanding for 60 days and above amounting to KES335m as at 31<sup>st</sup> Dec. 2016 or 42% of total amount owed.

**Table 1: Amount owed to a sample of 22 Suppliers (members of AKS) by Retailers as at 31<sup>st</sup> Dec 2016**

Duration owed	Amount in KES	% Share in total owed
<b>less than 30</b>	246,452,310	31%
<b>30 days</b>	210,421,447	27%
<b>60 days</b>	72,219,626	9%
<b>90 days</b>	63,332,347	8%
<b>Above 90</b>	199,911,140	25%
<b>Total</b>	792,336,871	100%

Source: Association of Suppliers of Kenya

Five supermarkets account for 92% of the total debt owed for 60 days and above as illustrated in the table below. Nakumatt and Uchumi alone accounting for 73% of the debt.

**Table 2: Lead Retailers in Later Payment, status as at 31<sup>st</sup> December 2016**

Retailers name	Debt Owed 60 days and above	% share in total outstanding debt of 60 days and above
Nakumatt Holdings Limited	136,450,025	41%
Uchumi Super Markets Limited	106,758,588	32%
Tuskys Ltd	30,263,208	9%
Naivas Supermarket	25,273,596	8%
Chandarana Supermarket Ltd	10,407,401	3%
Sub-total	309,152,818	92%
Others	26,313,826	8%
<b>Total</b>	<b>335,466,644</b>	<b>100%</b>

Source: Association of Suppliers of Kenya

The unfair trade practices that the Suppliers complained about are as detailed below:

**1. Late payment and issuing bouncing cheques**

- Retailers are not honoring the agreed terms of payment, some taking as a long as over a year whereas the agreed period was 90 or 120 days.
- Retailers owes over Ksh 40bn in arrears, which besides affecting Suppliers cash flow adversely has eroded margins, in some cases to the negative.
- Some Suppliers have been forced out of business operations, since they could not service loans they borrowed from Banks.

**2. De-listing and threat of de-listing**

- Unilaterally termination of a commercial relationship without notice, or subject to an unreasonably short notice period and without an objectively justified reason. This has led to unnecessary losses
- Use of delisting threats to obtain undue advantage and suppress Suppliers from raising genuine complains against the Retailers. Consequently, the Suppliers feel pushed to the wall where they complain of being reaped of their little margins.

**3. Unjust return of goods**

- a) Practice of some Retailers returning goods in all or in part, which the Retailer itself or its franchisees purchased from a Supplier. This practice is abated by unilateral change of contract by Retailers from a purchase contract to a consignment sales contract or replacing the goods with other goods
- b) Return of unsold goods to Supplier at the Suppliers' expense, including fresh produce that cannot be resold

**4. Transfer of commercial risk**

- a) Retailer's unpredictable transfer of costs or risks to Suppliers by imposing a requirement for the Suppliers to fund the cost of a promotion,
- b) Transferring commercial risks otherwise meant to be on Retailer's part to the Suppliers.

**5. Forcing Suppliers to lower prices for bargain sales**

Retailers setting of delivery prices for particular goods at levels that are excessively lower than the ordinary delivery prices of equivalent goods to the Retailers. This forces Suppliers to deliver the goods at the set prices irrespective of their business dictated margins, thus under mining the Suppliers' cash flow.

**6. Refusal to receive specifically ordered goods**

Retailer refuses delivery of all or part of specific goods for reasons not attributable to the Supplier after having entered into a contract in which the large-scale Retailer designated specific standards, designs, types, etc. of the good to be delivered. This actions always results to huge unnecessary losses

**7. Unjust receipt of economic benefits**

- a) Retailer coerces a Supplier into providing the Retailer with economic benefits including money and services that the Supplier clearly should not have to offer or
- b) that exceeds the limit recognized as reasonable in consideration of the benefits reaped by the Supplier. for example, forced discounts, resale at loss, Unscheduled promotions to clear over ordered stock or to outsell rivals.
- c) Deliberately disrupting delivery or reception schedule to obtain unjustified advantage.

**8. Additional payment requirements**

- a) Retail imposing listing fees that are disproportionate to the risk incurred in stocking a new product together with other unjustified fees e.g slotting fee to gain access to shelf space, joint marketing contributions. are unfair dealings to the Suppliers
- b) Demanding retrospective payments, extra discounts, and after-sale rebates. 'managing (Retailer's) profitability is also unfair trading practice by Retailers

**9. Misuse of private labels**

- a) Private labels brings about unjustified competition by allowing two same products from same Supplier to compete- one cheaper under private label and the other under Supplier own brand
- b) Retailers have become direct competitors through private labels products. By Promoting Retailers' own brands (private labels)
- c) Private labels are Squeezing out national brands from the market. By shrinking shelf space
- d) Retailers exploit advance information on products and plans that they have access to in their

capacity as purchaser of national brands products. Thus causing unfair competition to the national brands.

- e) Retailers selling their own branded products at relatively lower prices than national brands are causing serious undercutting that national brands find it hard to cope with

#### 10. Unfavorable treatment

Manipulation of Suppliers through unfavorable treatment, which include: -

- a) Some Retailers by demanding lower buying prices than all other Retailers;
- b) Demanding limitations on supplies to other Retailers thus limiting the availability of the subject products
- c) Demand among some Retailers for high price margins that threaten Suppliers' profit margin. Where Suppliers resist raising the margin in order to safeguard their profit margin, the only option that they give is for Retailers to raise shelf price to earn the margin they are targeting for the product. The Retailers agree to do this on condition that the Suppliers raise prices of the goods in other retail store to the Retailer margin loaded prices. This is given as a condition for the goods to be listed in the retail store that is seeking higher margin. Painfully the Suppliers abide in order to remain in business. The practice is quite recent traced to the last 18 months when the Retailers margin short from 18% to 30%.

#### 11. Agreements – written / unwritten

Some Retailers refusal or avoiding to put essential terms in writing. This makes it more difficult to establish the intent of the parties and to identify their rights and obligations under the contract

#### 12. Information

- a) Retailers withholding essential information relevant to the other party in contractual negotiations and which the other party could legitimately expect to receive is becoming a serious issue.
- b) Retailers using or sharing with a third party, sensitive information provided confidentially by the Suppliers, without the latter's authorization, in their business dealing with a competitor Supplier to obtain better margins in return of them granting competitor Suppliers better terms, including shelf positions within the stores. This is grossly unfair trade practice that have seen some Suppliers loose business and their profitability.
- c) Exploiting advance information on products and plans that the retail stores have access to in their capacity as purchaser of these products, and using such information to develop their own private labels

##### 2.1.2 Impact of late payment

Late payment was cited by the Suppliers association as a key factor to closure of businesses, uncompetitive products due to high finance costs associated with borrowing as they await to be paid, loss of good will with other players in the supply chain who the Suppliers are not able to be due to cash flow constraints associated with later payments. The list of negative impact is endless. The table below gives just a few companies that the Suppliers associations gave as an example of companies that have been adversely affected by late payment culture.

**Table 3: Impact associated with late payment**

Name of Supplier	Impact associated with late payment
Tharaka honey	Stopped production in March 2017 <sup>1</sup>
Kapari ltd	<input type="checkbox"/> High Interest Charges because of additional borrowing to fund the business. <input type="checkbox"/> Loss of goodwill because we also cannot pay our Suppliers in time <input type="checkbox"/> Loss of good employees due to delayed salaries. <input type="checkbox"/> Loss of discounts from Suppliers and sundry creditors. <input type="checkbox"/> Risk of being auctioned.
Seal diamond ltd	<input type="checkbox"/> Late payments to our overseas Suppliers leading to lack of trust and affecting other businesses we are in. <input type="checkbox"/> Took an secured loan to finance the uchumi account hoping get paid and this has really hurt and crippled us financially leading to a near auction.
Acinon ltd	Shrink in working capital
Eastern gas Distributors	Forced to increase loans to remain in business.

Source: Association of Kenya Suppliers<sup>2</sup>

### 2.1.3 Recommendations for prompt payment system

#### a) Standards of prompt payment

The following standards for prompt payment were recommended by the Suppliers: -

- ☐ Payment to be made between 30 and 45 days and 15 days for fresh produce
- ☐ Retailers must not vary or change supply agreements retrospectively, or delay payments without approval by the Supplier.

A review of the Code of Practice jointly developed by the Suppliers, manufacturers and Retailers but not finalized due to differences between Suppliers and manufacturers and Retailers on the other hand shows more trade terms that are later discussed through the comparative analysis of the Suppliers and manufacturers and Retailers position on the code of practice.

#### b) Regulations

The Suppliers recommended a Regulation aimed at establishing a Regulator to govern the retail sector focusing on unfair trade practices, capital base and expansion of retail outlets. Through the Regulation, the retail stores will disclose their capital base and shareholders in order to facilitate the Suppliers to assess risks of the retail stores. The regulation should bar Retailers that are unable to meet Suppliers obligation from further expansion through opening of new branches unless the overdue payments are settled in full.

The Regulation to provide for a mechanism for Supplier and Retailers Associations to collect and share information on complaints on unfair trade practices filed by either Party for purposes of ensuring prompt resolution through the complaints/dispute settlement that will be provided in the Regulation. The Suppliers



also recommended admissibility of complaints from anonymous complainants. This should however be discouraged to avoid unfounded complaints being level against either the Supplier or Retailers.

### c) Code of Practice

The Suppliers recommend a Joint Code of Practice for the Suppliers, Manufacturers and Retailers. This code is attached to this report as Annex 1. The Code is further discussed through a comparative analysis of the Suppliers and manufacturers position and Retailers position on the Code of Practice in the context of international best practice.

## 2.2 Experiences of manufacturers and their proposed position on prompt payment system

### 2.2.1 Experiences of the manufacturers

Kenya's manufacturing sector is a key Supplier to the retail sector, and thus a primary contributor to the phenomenal growth of the sector. This is evidenced by strong support by 650 manufacturers, out of the KAM membership of 1,000 who supply the supermarkets with assorted manufactured products.

**According to the data provided by KAM from a sample of 37 of their members, the late payment problem is quite acute.**

The debt that is over 60 days due is estimated at KES1.6bn or 82% of total amount owed. The rest, amounting to KES351m or 18% of the total amount owed being less than 60 days.

**Table 4: KAM 37 Members (out of 1,000 members) summary of unpaid debt by Retailers and age of debt**

Period of outstanding debt	Amount (KES)	% share in total outstanding debt
Over 60 days	1,621,623,825	82%
Less than 60 days	350,647,612	18%
Total Owed	1,972,271,437	100%

Source: KAM Secretariat

Annex 2 gives the distribution of the debts by company owed, with names of companies having been withheld as requested by KAM. As evidenced in the table below, six supermarkets account for 93% of the total debt owed for 60 days and above. The lead supermarkets in terms of debts owed for more than 60days are Nakumatts Holdings Ltd (34%) followed by Tuskys Ltd and Naivas which account for 18% and 14% respectively.

**Table 5: Lead Retailers in Late Payment, status as at 31<sup>st</sup> December 2016**

Supermarket	Amount Owning	% share
1. Nakumatt Holdings LTD	552,309,168	34%
2. Tuskys Limited	497,535,571	31%
3. Naivas	220,388,144	14%
4. Uchumi Supermarket Ltd	196,359,153	12%
5. Chandarana Supermarkets Limited	28,570,192	2%
Sub-total	1,495,162,229	93%
Other supermarkets	111,666,927	7%
Total	1,606,829,156	100%

Source: KAM Secretariat

### Unfair trade practices and challenges faced by manufacturers

The following are a highlight of unfair trade practices and challenges which the manufacturers pointed out as requiring immediate attention through the process of searching from prompt payment system,

- a) Delayed payments spanning up to 240 days.  
Despite this delay, the manufacturers have continued to supply the retail stores as a way of preserving their market share from being lost to competitors whom the Retailers can easily switch to if the aggrieved manufacturer stops supply as a result of non-payment. They sustain supply without pay through borrowing. The effect of this is to remove the burden of cash flow from Retailers to manufacturers, who end up producing uncompetitive products that constant face threat of being replaced by cheaper imported competitor goods.
- b) Some Retailers are making requirements that manufacturers supply them with alternate goods which they can package under their brand names. This forces manufacturers to create goods that compete with their branded product. The enticing price for introducing competition for own brand is Retailers reduction of margin and other 'favorable' terms such as prompt payment.
- c) In addition, other unscrupulous Retailers impose restrictions to new manufacturing entrants to surrender their branding rights in favour of theirs, in order to have their goods in their retail outlets. This practice is not only impeding growth of manufacturing in Kenya but also discourages small enterprises and start ups.
- d) Conflict of interest that is being caused over retail outlets giving priority to their branded goods on the shelves at expense of other Suppliers. This practice continues to constrain the trade relationship between Suppliers and Retailers.
- e) Stringent financial situation has limited flexibility for manufacturers (in particular the SMEs) posing a threat for foreclosure by banks.
- f) Late payments is stifling innovations and investments in manufacturing plans by discouraging companies from rolling out innovation driven new products and investments for fear of facing acute cash flow challenges as a result of unpredictable payments from Retailers.

Therefore, local manufacturers and upcoming small manufacturing companies need to be protected by the State and through promotion of Fair Trade Practice in the Retail Sector.

### 2.2.2 Recommendations for prompt payment system

#### a) Standards of prompt payment

**The manufacturers proposed the following standards to be upheld in the development of prompt payment system**

- i) Ensure that Suppliers and Retailers have agreements with clear contractual terms
- ii) Period of payment
  - ☐ Payment terms of fresh produce not exceeding 7 days
  - ☐ For Fast Moving Consumer Goods (FMCG) - payment terms not exceeding 45 days
  - ☐ Other goods - payment terms not exceeding 60 days
- iii) There should be clear guideline and timelines to complete Joint Business Plans (JBPs).
- iv) Introduce interest in case of delayed payment, after three months it will attract penalty which goes to the regulator.
- v) Introduce capitalization requirements with the following features: -

- Minimum capital requirement per branch (According to tiers)
- Capital Adequacy: Core capita should at any given time be 20% of the turnover
- Capital equivalent to 20% of turnover to be held in Supplier Protection Fund as Retailers Interest earning resources to be used by the Regulator in settling overdue payments after successful arbitration cases and if Retailers are unable to pay the Suppliers further to the ruling of arbitrators.

#### **b) Regulation on prompt payment**

The manufacturers, in view of the unfair trade practices in the retail sector and challenges being faced, which have potential to derail the country's industrial development agenda recommend a Retail Sector Regulation aimed at promoting prompt payment as crucial feature of a functioning and competitive value chains. The regulation to include the following among other provisions on prompt payment: -

- ☐ Establishment of a Regulatory Authority that will ensure that the retail sector does not continue to delay payments to Suppliers beyond their agreed terms.
- ☐ Retailers capital adequacy tied to turnover and branch network expansion
- ☐ Governance of the retail stores aimed at weeding out bad managers and workers in the retail sector
- ☐ Dispute resolution mechanism
- ☐ Monitor and evaluate prompt payment system in the country

#### **c) Code of Practice**

The Suppliers recommend a Joint Code of Practice for the Suppliers, Manufacturers and Retailers. This code is attached to this report as Annex 2. The Code is further discussed through a comparative analysis of the Suppliers and manufacturers position and Retailers position on the Code of Practice in the context of international best practice.

### **2.3 Experiences of Retailers and their proposed position on prompt payment system**

#### **2.3.1 Experiences of Retailers**

##### **1) Magnitude of amount owed to Suppliers**

Retail Traders Association of Kenya, has a membership of 100 Retailers with over 600 outlets throughout the country, who include all major supermarkets. Effort to get data on the magnitude the amount due to Suppliers, to correlate to the figure of KES40bn that the Suppliers have given as money owed by Retailers. The Retailers were not willing to share this information and instead urged that Retailers compile comprehensive list which should form the basis of Retailers addressing the outstanding debt. This will help both the Suppliers to also address any underlying factors that may have caused the delays based on Business to Business arrangement that may have surrounded the specific supplies.

The Retailers, commenting on the magnitude of the amount given by the Suppliers noted that given the current turnover and assuming a 30 days payment period, the amount that Retailers should owe the Suppliers at any one time is between KES30bn and KES35billion. At this level, therefore, the amount of concern in the figure given b the Suppliers is KES5bn.

Without data from Retailers, it was hard to validate this view. Under the circumstance, the launching pad for the way forward is acceptance by Retailers that there are serious cases of late payment which require urgent attention.

## 2) Reasons for delayed payment

### a) Cash flow limitations

One of the major retail stores which was rated by the Suppliers and manufacturers as one of the best paying Retailers, gave cash flow limitations as the key factor contributing to late payment. They wondered how a Retailer can accept supplies and then fail to pay the Supplier even after selling the goods on cash. This is a pointer to poor cash flow management and excessive overheads plus unnecessary expenses during setting up stage of new branches.

The retail store was however quick to say that the cash flow challenge is purely a business issue and it does not need to be addressed through regulation. This view notwithstanding, the magnitude of the outstanding unpaid debts requires a rethink and innovation that would ensure that Retailers cash flow mismanagement does not end up being a retail sector problem.

Further interrogation on the genesis of the cash flow challenges pointed out to the branch network expansion, where a retailer is able to open a new branch with credit given on account of goodwill rather than capacity to pay. The issuers of such credit are developers of malls who, in search of brand retail stores offer enticing rent concessions that make it possible for the retailer to acquire the space with minimal down payment and pressure for rent in the immediate future. Suppliers also provide goods to be stocked on goodwill basis without basing the business relationship on ability of the Retailer to pay for supplied goods through proceeds from the new branch. With low capital for the new branch and overhead costs, the Retailers end up facing cash flow challenges that can only be attributed to the unchecked growth of branch network with no known capital.

### b) Delays in processing invoices for frequently supplied and high volume supplies

Retailers attribute part of the delayed payments to the challenge that the Suppliers face in processing invoices for frequently supplied and high volume supplies. A case in point is milk deliveries which are done in the morning and afternoon generating large volume of invoices that require time to review and process for payment.

The Retailers, citing a case of a milk Supplier who invested in a system that automated invoicing, strongly recommended that the other Suppliers invest in automation of invoicing to ease the work of Retailers in processing payment. For the milk Supplier that was quoted as a case in point, the investment has paid dividend to the Supplier through assuring them of guaranteed payment at the time agreed in the terms of supply.

The Retailers, citing their own experience with the milk Supplier, should also automate invoice processing to ensure a Supplier/Retailer system to system communication on invoices. This will address the delays associated with reconciliation of manual invoices.

### c) Delays in dealing with returned and damaged goods

The Retailers attributed some cases of delayed payments to Suppliers delays in dealing with returned or damaged goods. This is worsened by weak follow up on the part of Suppliers where such cases are raised against them. As a result Retailers resort to holding payments pending resolution of these cases.

**d) Shrinkage**

The Retailers complained of shrinkage of goods delivered by Suppliers arising from two levels. The first cause of shrinkage is damaged goods because of handling during delivery and display. Without clear arrangement of how the Supplier related shrinkage would be addressed, the dispute arising from such cases end up delaying payments.

The other source of shrinkage is shoplifting. The Retailers complained of existence of a cartel of shoplifters who are caught daily by Retailers. The Retailers make arrest of shoplifters and handover them to the police. However, so soon after the arrest, the shoplifter is released on bond and the case takes ages to be finalized. There are also cases where the Suppliers indicated the shoplifters buying their freedom through corrupt means. The Retailers are left exposed, with lost goods undermining their cash flow and contributing to delayed payments.

**3) Measures being taken to resolve delayed payment**

Some of the Retailers have initiated measures to resolve delayed payments. Retailers are encouraging Suppliers and manufacturers to adopt the culture of Joint Business Plans to create win-win solutions across the trade value chain. Several of the Retailers have entered financing solutions with banks where Suppliers/manufacturers are listed so as to ensure that they are paid in accordance with the agreed trade terms.. Collaborating this fact, the manufacturers reported having experienced these improvements in Tuskys and Naivas. Uchumi through collaborative arrangement with the Suppliers has addressed the challenge of late payment through opening of Escrow Accounts from where the Suppliers are paid for their deliveries in time.

The Suppliers and manufacturers confirmed this development noting that the delayed payment culture has now been addressed in Uchumi since the introduction of the Escrow Account arrangement. A good indicator of the impact of these measures on delayed payment is outstanding taken and the impact made would be to separate what Retailers should owe as per existing trade terms at any given time, and what they actually owe. The difference would be the true value of the size of the delayed payments value.

While the above efforts are commendable, they do not address the fundamentals that contributed to the late payments. This is a fact that the Retailers have recognized leading to their proposal for introduction of a Code of Practice for Retailers and the Suppliers (Refer Annex xx). The code, which is analyzed later in section 4.2 embraces the some of the factors the contributed to the late payment.

**4) RETRAK clarifications on issues raise by suppliers**

To ensure a balanced approach to seeking a lasting solution to the challenges that Retail sector is facing, RETRAK offered the following highlights to issues raised by suppliers. This helps in ensuring a balanced debate to the search for a solution to late payment.

**Table 6: RETRAK Views on the unfair trade practices that the Suppliers complained about are as detailed below:**

Issues Raised by Suppliers	RETRAK Position
<p><b>1. Late payment and issuing bouncing cheques</b></p> <ul style="list-style-type: none"> <li>○ Retailers are not honoring the agreed terms of payment, some taking as long as over a year whereas the agreed period was 90 or 120 days.</li> <li>○ Retailers owes over Ksh 40bn in arrears, which besides affecting Suppliers cash flow adversely has eroded margins, in some cases to the negative.</li> <li>○ Some Suppliers have been forced out of business operations, since they could not service loans they borrowed from Banks.</li> </ul>	<p>Issue has been brought about by poor sales due to prevailing economic climate and access to credit limitations.</p> <p>In all instances, RETRAK members have strived explain their position to affected suppliers with a view to striking an amicable settlement.</p>
<p><b>2. De-listing and threat of de-listing</b></p> <ul style="list-style-type: none"> <li>□ Unilaterally termination of a commercial relationship without notice, or subject to an unreasonably short notice period and without an objectively justified reason. This has led to unnecessary losses</li> <li>□ Use of delisting threats to obtain undue advantage and suppress Suppliers from raising genuine complains against the Retailers. Consequently, the Suppliers feel pushed to the wall where they complain of being reaped of their little margins.</li> </ul>	<p>Listing and delisting of various SKU's remains a factor of daily business. Thousands of products are listed daily and a fraction delisted periodically. RETRAK members maintain that delisting exercises have been undertaken as part of stock rationalization programmes. Such delisting's or culling processes are based on individual product/ SKU performance and are geared at ensuring optimum stock holding.</p>
<p><b>3. Unjust return of goods</b></p> <ul style="list-style-type: none"> <li>□ Practice of some Retailers returning goods in all or in part, which the Retailer itself or its franchisees purchased from a Supplier. This practice is abated by unilateral change of contract by Retailers from a purchase contract to a consignment sales contract or replacing the goods with other goods</li> <li>□ Return of unsold goods to Supplier at the Suppliers' expense, including fresh produce that cannot be resold</li> </ul>	<p>Where goods have been returned, sufficient explanation has been provided. Conversion of purchase agreements to consignment models have been undertaken in a few incidents to facilitate settlements. Where goods have not been sold, the basis for payment to a supplier is eroded/unjustified as retailers are not end users.</p>
<p><b>4. Transfer of commercial risk</b></p> <ul style="list-style-type: none"> <li>□ Retailer's unpredictable transfer of costs or risks to Suppliers by imposing a requirement for the Suppliers to fund the cost of a promotion,</li> <li>□ Transferring commercial risks otherwise meant to be on Retailer's part to the Suppliers.</li> </ul>	<p>As per global best practice, respective suppliers carry the burden of promotional activities. Retailers by nature carry many other costs including insurance, shelf space, stock management, electricity among others to facilitate the market placement of a product.</p>

Issues Raised by Suppliers	RETRAK Position
<p><b>5. Forcing Suppliers to lower prices for bargain sales</b></p> <ul style="list-style-type: none"> <li>❑ Retailers setting of delivery prices for particular goods at levels that are excessively lower than the ordinary delivery prices of equivalent goods to the Retailers. This forces Suppliers to deliver the goods at the set prices irrespective of their business dictated margins, thus under mining the Suppliers' cash flow.</li> </ul>	<p><b>Retailers are guided by market research and comparable realistic price advises for specific products. A loaf of bread priced at a high price will rarely outsell comparable products.</b></p>
<p><b>6. Refusal to receive specifically ordered goods</b></p> <ul style="list-style-type: none"> <li>❑ Retailer refuses delivery of all or part of specific goods for reasons not attributable to the Supplier after having entered into a contract in which the large-scale Retailer designated specific standards, designs, types, etc. of the good to be delivered. This actions always results to huge unnecessary losses</li> </ul>	<p><b>Retailers are not bound to receive part or any goods that do not meet their specifications clearly outlined on the LPO's.</b></p>
<p><b>7. Unjust receipt of economic benefits</b></p> <ul style="list-style-type: none"> <li>❑ Retailer coerces a Supplier into providing the Retailer with economic benefits including money and services that the Supplier clearly should not have to offer or</li> <li>❑ that exceeds the limit recognized as reasonable in consideration of the benefits reaped by the Supplier. for example, forced discounts, resale at loss, Unscheduled promotions to clear over ordered stock or to outsell rivals.</li> <li>❑ Deliberately disrupting delivery or reception schedule to obtain unjustified advantage.</li> </ul>	<p><b>Our members would be happy to receive specific instances where such unjustified requests have been placed. The Association where necessary will provide the required mediation as part of the sector self-regulation.</b></p>
<p><b>8. Additional payment requirements</b></p> <ul style="list-style-type: none"> <li>❑ Retail imposing listing fees that are disproportionate to the risk incurred in stocking a new product together with other unjustified fees e.g. slotting fee to gain access to shelf space, joint marketing contributions. are unfair dealings to the Suppliers</li> <li>❑ Demanding retrospective payments, extra discounts, and after-sale rebates. 'managing (Retailer's) profitability is also unfair trading practice by Retailers</li> </ul>	<p><b>As above</b></p>

Issues Raised by Suppliers	RETRAK Position
<p><b>9. Misuse of private labels</b></p> <ul style="list-style-type: none"> <li>❑ Private labels bring about unjustified competition by allowing two same products from same Supplier to compete- one cheaper under private label and the other under Supplier own brand</li> <li>❑ Retailers have become direct competitors through private labels products. By Promoting Retailers' own brands (private labels)</li> <li>❑ Private labels are Squeezing out national brands from the market. By shrinking shelf space</li> <li>❑ Retailers exploit advance information on products and plans that they have access to in their capacity as purchaser of national brands products. Thus causing unfair competition to the national brands.</li> <li>❑ Retailers selling their own branded products at relatively lower prices than national brands are causing serious undercutting that national brands find it hard to cope with</li> </ul>	<p>The concept of private brands is a fast growing market intervention globally. Private brands are designed to provide specific consumer values including price and quality. Such values arise from lower provision costs due to logistical and reduced brand management costs. At all times, private labels are accorded equal treatment on the shelves and beyond. Naturally customers in any retail environment vote with their wallets and are unlikely to pick a product that doesn't meet their value needs. It is also instructive to note that none of the retailers operate any manufacturing concerns. All private labels available at retail outlets are manufactured by local or international industrialists; helping advance industrialization goals.</p>
<ul style="list-style-type: none"> <li>❑ Unfavorable treatment- Manipulation of Suppliers through unfavorable treatment, which include: -</li> <li>❑ Some Retailers by demanding lower buying prices than all other Retailers;</li> <li>❑ Demanding limitations on supplies to other Retailers thus limiting the availability of the subject products</li> <li>❑ Demand among some Retailers for high price margins that threaten Suppliers' profit margin. Where Suppliers resist raising the margin in order to safeguard their profit margin, the only option that they give is for Retailers to raise shelf price to earn the margin they are targeting for the product. The Retailers agree to do this on condition that the Suppliers raise prices of the goods in other retails store to the Retailer margin loaded prices. This is given as a condition for the goods to be listed in the retail store that is seeking higher margin. Painfully the Suppliers abide in order to remain in business. The practice is quite recent traced to the last 18 months when the Retailers margin short from 18% to 30%.</li> </ul>	<p>The issues raised here do not amount to unfavourable treatment. All retailers operate in a competitive environment and will strive to negotiate for the best terms possible. Such negotiations are mutually agreed and should be considered as such.</p>
<p><b>10. Agreements – written / unwritten-</b> Some Retailers refusal or avoiding to put essential terms in writing. This makes it more difficult to establish the intent of the parties and to identify their rights and obligations under the contract</p>	<p>The Association will strive to moderate this aspect to ensure that all terms are duly recorded.</p>



Issues Raised by Suppliers	RETRAK Position
<b>11. Information</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Retailers withholding essential information relevant to the other party in contractual negotiations and which the other party could legitimately expect to receive is becoming a serious issue.</li> <li><input type="checkbox"/> Retailers using or sharing with a third party, sensitive information provided confidentially by the Suppliers, without the latter's authorization, in their business dealing with a competitor Supplier to obtain better margins in return of them granting competitor Suppliers better terms, including shelf positions within the stores. This is grossly unfair trade practice that have seen some Suppliers loose business and their profitability.</li> <li><input type="checkbox"/> Exploiting advance information on products and plans that the retail stores have access to in their capacity as purchaser of these products, and using such information to develop their own private labels</li> </ul>	<p><b>In an information economy, either party remains free to exploit and harness information within their reach responsibly. No instances of exploitation have been recorded.</b></p>

### 2.3.2 Recommendations for prompt payment system

#### a) Standards of prompt payment

**The Retailers proposed the following standards for consideration in the development of the prompt payment system**

- a) All supplies must be done under a supply agreement of a Joint Business Plan Agreement
- ii) Period of payment - within 30 days from the date of the statement

#### b) Regulation on prompt payment

The Retailers were opposed to the idea of introduction of a regulation for the retail sector and instead recommended that existing legislation be applied instead. The legislation quoted include the Bankruptcy Act, the Receivership Liquidation Act, and the Cheques Act, which give Suppliers an avenue to pursue any errant Retailers.

This view is however contradicted by the Retailers call for a regulation to address they have faced from shoplifters. The Retailers therefore have advocated for regulations that: -

- ☐ Ensure effective justice for shoplifters and their networks
- ☐ Allow Retailers publish the names and pictures of those caught shoplifting

A review of the international best practice cases, specifically the UK, revealed that even though there exists the Bankruptcy Act and the Receivership Liquidation Act, a retail sector specific regulation to address the case of late payment was introduced. The spirit of the regulation is not to burden the sector but to set up benchmark marks that prompt fair trade practice.

#### c) Code of Practice

The Retailers recommend a Joint Code of Practice through a memorandum prepared for the Joint Retailers and Suppliers Task Force on Prompt Payment. This code is attached to this report as Annex 2. The Code is further discussed through a comparative analysis of the Suppliers and manufacturers position and Retailers' position on the Code of Practice in the context of international best practice in section 4.2.

### 3.0 CASE STUDIES

#### 3.1 Case studies of SMEs affiliated to Association of Kenya Suppliers

##### a) Tharaka Honey Bee Products Ltd

Tharaka Honey, is an SME company established in September 2009 as a family business which by the time of its stopping production in March 2017 had a capital outlay of KES50m, a honey processing facility established on own land in Ruai Nairobi with a capacity to produce 1ton of honey per 8hours, and potential to produce 2tons of honey operating on 24 hours and employing 20 people. Besides honey, according to the CEO, Miriam Chabaari whom we met on 10<sup>th</sup> May 2017, the company also produced other brands such as ready to drink Honecta made from Hibiscus, green tea and hibiscus tea sourced from Tharaka and Meru Counties. The honey is also sourced from Baringo, Kapenguria and Tanzania. Therefore, closure of the company had negative downstream impact among honey farmers whom Tharaka Honey had trained and mentored to produce quality honey to support their brand.

The CEO gave late payment by retailers as the primary reason for closure of business in March 2017. The genesis of this sad episode was a loan of KES5m that the company borrowed in September 2015 with a monthly repayment instalment of KES260,000 per month for 24 months and with a 60% security cover. The company borrowed to produce more stock awaiting payment of overdue supplies. The dream to remain afloat as a result of continued production was cut short by continued delayed payment by retailers, meaning that the KES5m went into a sinking hole with no guarantee of when to expect the payment. The CEO quoted case of supplies done to Uchumi in January 2016 and in December 2016 to Tusky's which had not been paid by 10<sup>th</sup> May 2016. Besides, the company also saw its profitability being squeezed out by retailers who were asking for a margin of 25% on their asking price.

The company struggled to remain afloat through cash sale to other outlets and also scaling down production. In March 2017, decision to close the company was arrived after the directors realized that they were being forced to borrow to pay for workers' salaries. They opted to stop production and instead to exhaust the remaining stock while awaiting their payments from retailers without having to incur recurrent costs of running the company.

Asked what other challenges that the company faced which could explain the closure the CEO indicated lack of sufficient quantity and quality of honey due to the fact that honey is seasonal. This means need to have sufficient capital to buy raw honey in bulk during the season of honey harvesting May to July of every year and January of every year. The CEO noted that if delivery of processed honey was paid in time, then capital to buy raw honey during harvest season would not be a challenge.

The CEO lamented death of a dream in the face of huge untapped potential for honey in Kenya and regional market and recommended that a solution to late payment be sought building on other country's experiences. This will go along away in promoting employment creation.



#### b) Natural Salt Manufacturer and Distributor

On Thursday 11<sup>th</sup> May 2017, we responded to our scheduled interview with the Chief Executive of the pioneer brand of natural salt manufactured using Himalayan raw salt for both human and livestock.

The company had just relocated from a prime address to a new upcoming residential area off Thika Road as a strategy of coping with cash flow challenges associated with late payment. When challenged to proof this they gave copies of Nakumat bounced cheques with no promise of when to expect the payment.

In the narration of their story they indicated that business was good until about one year ago when two of the main supermarkets that were their prime clients started delaying payments beyond agreed periods. By the time we were having the interviews they had some bills dating back to November 2016 (4 months) amounting to KES800,000 whose cheques had bounced. As a result, this delayed their order of raw salt from Himalaya, Pakistan. Eventually when it arrived on 23<sup>rd</sup> April 2017, after the directors made some temporary cash flow arrangement for purchase and shipment of the raw salt, they could not clear it at the port. This exposed the company to demurrage charges which were still accruing even as we have having the interview. The company had no idea when this agony would end because there was no commitment from the retailer.

As a result the company had to lay off its workers pending resumption of the production. In the meantime, the company was dealt a big blow by competing brand by the same supermarket, which took advantage of lack of capacity to supply to take up the company's market share. We therefore met a distraught entrepreneur stuck with a dream and staring a market that he had built over the years just disappearing. The company relies on livestock (rock) salt which is paid on cash, to have its doors still open.

As we were leaving the compound, he only had one plea, the Government need to act and act very fast in order to ensure that once a supplier delivers goods, they are paid by the agreed date. This is the only saviour to these dreams and jobs created by this company.

### 3.1 Case studies of SMEs affiliated to Kenya Association of Manufacturers

#### a) Plenser Ltd

Plenser Limited is a specialized engineering services provider with key services spreading across the East African region. It was incorporated in 2001 in Nairobi, Kenya and offers a range of products and services as listed below: -

- ☐ Incinerators
- ☐ Office space creation (building & partition works)
- ☐ Air Pollution Control Systems
- ☐ Waste Heat Recovery
- ☐ High End Hot and Steam Boilers
- ☐ Solar Heating Systems



Plenser is one of the many KAM member SME companies who eagerly wanted to participate in the survey to tell their experience with late payment culture. Their experience stems from their supplies to Nairobi County Government, Moi Teaching & Referral Hospital, Beverly School of Kenya (Private School). Supplies to these institutions valued at KES68million in total were outstanding for more than 60 days contrary to the terms of sales. As an example supplies to Nairobi County for an incinerator at Mbagathi hospital has not been paid for since 2015. According to information obtained from the company, Beverly school of Kenya outstanding debts date back to 2011. In total the outstanding debt accounted for 90% of the company's total receivables. The effects of these late payments, according to the information availed by the company during the field survey include the following: -

- a) *Delayed projects due to cash flow crisis*
- b) *Delayed salaries hence low staff morale*
- c) *Deteriorating suppliers goodwill due to delayed payments, lack of credit facilities from the suppliers*
- d) *High finance costs especially from borrowing*

- e) *Inability to network for new jobs, hence low sales*
- f) *Low credit rating due to late loan repayments*
- g) *Penalties on non-compliance to statutory obligations*
- h) *Ineffective and untimely delivery of projects hence customer dissatisfaction*
- i) *Disincentive for innovation and invention*

To cope with effects of late payment, the company has resorted to borrowing to bridge the cash flow gap. The company has also resorted to negotiating advance payments with some of the clients as a strategy to mitigate the effects of late payment.

The company advocates for a regulation on late payment with stiff penalties for defaulters in order to encourage business that is backed by capacity to pay on delivery or in accordance to the agreed terms. The company also advocates backlisting of defaulters and listing of the concerned parties with the Credit Reference Bureau.

#### **b) Metlex Limited**

Metlex International Ltd is one of the KAM SME category of firms that was surveyed during the study. The company is located in Nairobi and deals in air & gas compressors, petrol pumps & hoses, oil & petroleum company equipment, pumps, air systems, projects, installations service & parts, piston, rotary screw, pet bottling, oil free and variable speed solutions.

Its experience with late payment relates to supplies made to sugar companies where outstanding payments of more than 60 days was given as KES6m, accounting for 46% of the companies receivables by 30<sup>th</sup> April 2017. On the other hand, an outstanding payment that was less than 60 days was given as KES12m.

The negative impact which the company attributed to late payment includes borrowing at high cost to mitigate the cash flow challenges. The company has also cut stock levels through reduction in production and curtailed innovations. While the company has not laid-off the workers, it is not recruiting new staff. The company recommends cash sales to avoid disappointments with delayed payments, quoting experience in Uganda.

## 4.0 CAUSAL FACTORS TO DELAYED PAYMENTS IN KENYA RETAIL SECTOR

The late payment culture in the retail sector is attributed to fundamentals that point to weakness in business relationship between the supplier and retailers. According to the analysis of the findings from the submissions by manufacturers, suppliers and retailers point to the following as fundamentals that explain the late payment culture in Kenya.

### 1. Lack of supplier agreements

Analysis of the complaints by both the suppliers and manufacturers point to glaring weakness in contractual relationship between the suppliers and retailers. The sale agreement stipulating terms of supplies and obligations of both the supplier and retailers, including provision for stop loss through supplier stop of supplying retailers if no payments are forthcoming and pursuing legal recourse provided in the agreement.

This fact was attested of by responses from KAM who, while responding to the question: *‘Please give any practice by manufacturers that could have encouraged the evolvment and sustained late payment culture’* noted the cause factor to late payment to include the following: -

- a) *Lack of payment agreements between suppliers and retailers that clearly outlines the terms of payment.*
- b) *Continuing to supply to retailers even when they have not payed suppliers in accordance to the agreed payment periods.*

### 2. Negative competition among suppliers leading to supplies geared towards protecting market share irrespective of the rate at which goods are selling

Retailers, suppliers and manufacturers noted negative competition among suppliers as a factor that has contributed to the later payment culture. A supplier, fearing loss of market share will continue supplying goods to a retailer irrespective of whether there are payments that are outstanding, in fear of loose of market share to a competitor supplier who may quickly enter in to replace the goods who supply may have been stopped. This crystalizes to late payment once the retailer ends having so much stock that is not correlated with rate at which the goods are being sold. The retailers were quick to point out that supply is not equivalent to sale. Hence there cases of so much stock from some suppliers that will take long to sell, ending in a scenario where the supplier reports such under the category of late payment.

### 3. Delays in processing invoices for frequently supplied and high volume supplies

Late payment for high frequency and high volume supplies such as milk deliveries to so many branches of a retailer is attributed to delays in processing of invoices if the suppliers billing system is not automated.

### 4. Delays in dealing with returned and damaged goods

The suppliers delay in responding to cases of returned or damaged goods leads to late payment as a result of the underlying dispute. This is worsened by weak follow up on the part of Suppliers where such cases are raised against them. As a result Retailers resort to holding payments pending resolution of these cases.

### 5. Retailers weak capitalization

As observed in the section on methodology, one key limitation in assessing the extent of late payment was retailers unwillingness to share information on debt owed to suppliers. The data available by the

suppliers and manufacturers as well as the government indicated amount owed to be well over KES40bn.

Evidence from the two top retailers - Uchumi and Nakummat now point inadequate capital as a key factor to late payment. Uchumi had to seek Government bail out twice in order to remain afloat. Nakummat, according to press information has been out looking for investors to inject capital in order to enable it pay the retailers whom it owes. According to the information from Principal Secretary, State Department of Trade, Nakumat owes suppliers about KES15bn, Money Market KES15b (Commercial Papers - 7bn and Banks 8bn).

Since retailers sell all goods on cash basis, weak capital implies diversion of cash generated from daily sales to other uses instead of paying the supplies promptly once goods are sold. Such a problem should not have arisen, if the concerned retailers, as was observed by Carrefour Ltd during the study exercised prudential management by honoring their suppliers obligations on time. The Directors and shareholders of the companies failed to safeguard against this challenge by shielding suppliers dues from being applied in company related business.

Without a legal framework that puts checks and balances on application of suppliers dues to retail company's businesses the challenge has the potential of turning the retail sector to the banking crises that Kenya faced in the mid-1980s when weak capitalized banks took depositors money to invest in real estate turning away depositors when they came for their money, because of liquidity crises.

The experience of Uchumi is a live example of what could happen and hence need for an industry driven solution to this potential challenge that emanates from abuse of suppliers trust that once goods are delivered they will be paid for in time.



## 5.0 INTERNATIONAL BEST PRACTISE PAYMENT SYSTEMS

The culture of late payment is not unique to Kenya. What is however unique to Kenya is lack of a legal framework to combat the late payment culture. The experience in the EU, UK and USA reveal a two pronged approach that has been used to tame the culture of late payment. This include legislation setting out the standards of payment and code of practice that promotes fair trade practice between Retailers and Suppliers.

In the EU, the legislation to address the culture of late payment was first introduced in 2000, followed by further legislation to reinforce the culture of prompt payment in 2004, 2006, 2007 and 2011. The legislation to curb late payment in the EU was based on the following justification as quoted from **Directive 2011/7/ EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions**: *“Many payments in commercial transactions between economic operators or between economic operators and public authorities are made later than agreed in the contract or laid down in the general commercial conditions. Although the goods are delivered or the services performed, many corresponding invoices are paid well after the deadline. Such late payment negatively affects liquidity and complicates the financial management of undertakings. It also affects their competitiveness and profitability when the creditor needs to obtain external financing because of late payment. The risk of such negative effects strongly increases in periods of economic downturn when access to financing is more difficult.”*

In the section below we provide the prompt payment standards and prompt payment code of conduct based on the practice in the EU, USA and the UK.

### 5.1 International Best Practice on Prompt Payment Standards

The following standards have been legislated to guide commercial transactions in order to avoid late payments: -

#### 1) Payment Period

##### a) In the EU

The law stipulates that Business-to- Business contractual payment periods be limited, as a general rule, to 60 calendar **days**. The law, however provides flexibility for longer period than sixty days to accommodate any financial arrangement between the Supplier and Retailer, for instance, circumstances where a Supplier agrees to extend trade credit to the Retailer. Under such circumstances the law allows the contracting parties to expressly agree on payment periods longer than 60 calendar days, on condition that such extension is agreed upon in writing, not grossly unfair to the Supplier or creditor and payment is honoured when it falls due in accordance to the agreed terms.

##### b) Other jurisdictions

US Prompt Payment Standards (31 U.S. Code § 3903 - Regulations)

#### i) The US Law on prompt payment stipulates payment date as: -

- ☐ **The date which the contract or the Supplier’s agreement indicates the payment to be due;** or
- ☐ **30 days after a proper invoice** for the amount due is received if a specific payment date is not established by contract.

#### ii) **For supplies of meat or a meat food product<sup>3</sup>**, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, or

<sup>3</sup> As defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3))



of fresh or frozen fish<sup>4</sup>, the law requires that **payment date be not later than 7 days** after the meat, meat food product, or fish is delivered

- iii) For the supplies of **perishable agricultural commodity**<sup>5</sup>, provide a required **payment date consistent with *Perishable Agricultural Commodities Act***
- iv) **For supplies of dairy products**<sup>6</sup>, the acquisition of edible fats or oils, and the acquisition of food products prepared from edible fats or oils, the law gives a required **payment date of not later than 10 days** after the date on which a proper invoice for the amount due has been received by the agency acquiring such dairy products, fats, oils, or food products;

## 2) Invoices

Invoices are recognized as the legal means by which request for payment is made and the basis for determining timelines for payment and payment default. The EU Directive therefore encourages Member States to *“promote systems that give legal certainty as regards the exact date of receipt of invoices by the debtors, including in the field of e-invoicing where the receipt of invoices could generate electronic evidence”*. The date of invoice or procedure for invoice delivery is entirely a Supplier issue. It is up to the Supplier to avail the invoice to the designated office at the date stipulated in the Supplier agreement.

## 3) Statutory interest for late payment

To discourage late payment, the EU Directive 2011/7/EU provides for statutory interest as a redress procedure for the aggrieved party in the Supplier agreement. According to this law, a Supplier is entitled to interest for late payment: -

- a) From the day following the date or the end of the period for payment fixed in the contract.
- b) If the date of the period of payment is not fixed in the contract, upon the expiry of any of the following time limits
  - i) 30 calendar days following the date of receipt by the debtor of the invoice or an equivalent request for payment;
  - ii) where the date of the receipt of the invoice or the equivalent request for payment is uncertain, 30 calendar days after the date of receipt of the goods or services;
  - iii) where the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 calendar days after the date of the receipt of the goods or services;

## 4) Payment schedules

The EU Directive accommodates possibility of payment schedule. It however sets the following standard to safeguard creditors: Where any of the instalments is not paid by the agreed date, interest will be accrued for the overdue instalment”.

## 5.2 International Best Practice - Prompt Payment Code of Practice

A review of Prompt Payment Code of Practices in the USA (Texas) and the UK Prompt Payment Code and UK Groceries Code of Practice (2009) in the context of the Kenyan situation revealed Groceries Code of Practice to be most appropriate. The section below brings out key features of the UK Groceries Code of Practice and their relevance to the Kenyan scenario.

### 5.2.1 Situation of the Code of Practice Judicial system

The Groceries Supply Code of Practice (the Code) is contained within schedule 1 of the groceries (supply

<sup>4</sup> As defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3))

<sup>5</sup> As defined in section 1(4) [1] of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4))

<sup>6</sup> As defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e))

chain practices) market investigation order 2009 that was conducted by the Competition Commission. The Code provides details on how designated Retailers should manage their relationship with Suppliers, to ensure compliance with both the Order and the Code. Designated Retailer means a Retailer listed in Article 4(1)(a) of the Order. It applies to all Retailers with grocery sales of over £1 billion and requires them to submit an annual report to the Office of Fair Trading and the Groceries Code Adjudicator (GCA).

### 5.2.2 The features of the Code of Practice

The UK Groceries Supply Code of Practice contains comprehensive features which after thorough analysis in the context of the late payment challenges of the Kenya retail sector are considered as most appropriate for use in search for working solution in Kenya. The fact that the Code is anchored in legislation has also been considered in choosing the specifications of the Code for use in the Kenyan situation.

#### 5.2.2.1 Designated Retailers and their obligations

##### a) Designated Retailer

Retailers with grocery turnover of £1 billion (applicable turnover of the preceding year)

##### b) Obligations of designated Retailers

###### i) Duty to incorporate Code in Supply Agreements

- ☐ Retailers are prohibited from entering into any supply agreement unless the agreement incorporates the provisions of the Code and does not contain any provision that is inconsistent with the code.
- ☐ Retailers are required to include in the supply agreement provision for events of force majeure in terms which are not materially different initial terms agreed or more burdensome to the Supplier

##### c) Duty to provide information to Suppliers

- i) Designated Retailer is obliged to ensure that all terms of any agreement with a Supplier are recorded in writing
- ii) Designated Retailer is prohibited from entering into a supply agreement unless the Supplier has a copy of the same agreement with all agreed terms of supply.
- iii) Retailer is required to hold the sale agreement for a period of 12 months after the expiry date of the sale agreement
- iv) Retailers are required to make available to a Supplier on request, any agreement held after the expiry date of the agreement
- v) Retailers are prohibited from entering into any agreement with the Supplier unless they have given the Supplier notice that sets out: -
  - ☐ The obligation on the Designated Retailer not directly or indirectly to Require actions by the Supplier in relation to marketing costs, wastage, payments, promotions, changes to supply chain procedures, and tying
  - ☐ The identity and contact details of focal persons for purposes of supply or filing dispute within the organization
  - ☐ The identity and contact details of the Designated Retailer's Code Compliance Officer

##### d) Supply of information to the Office of Fair Trade (OFT)

Designated Retailer is required to provide to the OFT any information and documents that may facilitate OFT

to monitor and review the operation of the Retailer in accordance to the order setting out the code of practice.

#### **5.2.2.2 Principles of fair trade practice**

The principles of fair trade practice require that the trade relationship between the Retailers and Suppliers be on the basis of fair and lawful dealing, where both parties are expected to conduct trade relationships in good faith and without duress. Due recognition of the Suppliers' and Retailers' need for certainty in relation to the risks and costs of trading, especially in relation to production, delivery and payment issues must be taken into account.

#### **5.2.2.3 Variation**

Provisions of a Supply Agreement and its terms of supply are central to the Suppliers and Retailers conclusion of their business deal, especially in their projection of their cash flow and business planning. The Agreement therefore needs to be shielded from arbitrary variation. This shield is assured through inclusion in the Code of Practice the following specifications:

##### **a) Variation of supply agreement and terms of supply should not be varied retrospectively**

The Retailer is not allowed to vary any Supply Agreement retrospectively or request or require Supplier's consent for retrospective variations of any Supply Agreement.

The only exception under which a Retailer is allowed to make variation to the supply agreement only where the Supply Agreement: -

- i) Clearly stipulates specific change of circumstances (where the circumstances are beyond the control of a Retailer) that should warrant the variation
- ii) Has set out rules that would be used as the basis for the variation of the supply agreement

The other exception where Retailers can vary a supply agreement is where they have the unilateral right to make such a variation. In such a case, a Retailer is obliged to give the Supplier reasonable notice of any such variation.

The aim of these conditions is to shield the integrity of the supply agreement as the binding document that guarantees the period when payment is expected among other pertinent aspects of the agreement. The certainty of supply agreement backed payment period translates into an asset for Suppliers who may wish to seek bridging finance as they await the payment. Banks are encouraged to partner with Suppliers and Retailers on account of assured payments.

The supply agreement that is shielded by the above conditions also becomes a cash flow planning tool for Retailers because of the locked in payment period for all goods delivered.

##### **b) Changes to supply chain procedures for a concluded Supply Agreement are not allowed**

The Retailer is barred from requiring a Supplier to make any changes to underlying supply chain procedures. This limitation notwithstanding, however, a Retailer is allowed to request for changes in supply chain procedures, provided the Retailer:

- i) Gives a Notice of the proposed change the Supplier in writing; or
- ii) Fully compensates the Supplier for net costs associated with the change, if no reasonable Notice will have been given.

#### 5.2.2.4 *Prices and payments*

Guaranteed prices and payments are a critical feature to the Prompt Payment system. The following features provide the framework for prices and payments in the international best practice Prompt Payment Code of Practice.

a) **Payment for deliveries should not be delayed**

The Retailers are obliged to pay the Suppliers on time in accordance to the terms agreed in the Suppliers Agreement. This should be within a reasonable time after the date of the Supplier's invoice.

b) **Suppliers should not be compelled to contribute to marketing costs**

The Retailers are barred from requiring or putting conditions for Suppliers to contribute towards marketing costs of the goods supplied. This includes cost of:

- ☐ Visiting new or prospective Suppliers
- ☐ Preparation of packaging design and associated artwork
- ☐ Undertaking consumer or market research of the products supplied
- ☐ Opening a new branch or refurbishing an existing branch
- ☐ Retailer staff hospitality

The only circumstance under which a Supplier would be required to contribute to market costs is only if such contribution was provided for in the Supplier Agreement.

c) **The Suppliers are not required to make any payment to mitigate shrinkages costs**

The Supplier should not be required, under any circumstance to pay a Retailer for compensation of Shrinkage of the supplied goods.

d) **The Suppliers are not required to make any payment to cover any wastage related costs**

Suppliers are not obliged and should not be required to make any payment to cover wastage of the delivered supplies which occurs at the Retailers store.

However, the only permissible conditions under which a Supplier can be required to make such payments are as follows: -

- ☐ The wastage is as a result of the negligence or default of that Supplier in accordance with the Supply Agreement definition of what constitutes the Supplier's negligence or default; or
- ☐ If the Supply Agreement clear sets out the basis for the supplier to be required to pay for wastages.

e) **The Supplier should not be required to make payment for purposes of being listed as a Supplier or be allowed to stock**

A Retailer is barred from requiring Suppliers to make payments in order to be allowed to stock their products or have the products listed. The only circumstances under which a Supplier would be required make payments for purposes of stocking or listing of products is if the payment is made: -

- ☐ In relation to a Promotion; or
- ☐ In respect of products which have not been stocked, displayed or listed by that Retailer during the preceding 365 days in 25 per cent or more of its stores, and reflects a reasonable estimate by that Retailer of the risk run by that Retailer in stocking, displaying or listing such new products.

f) **Suppliers must be fully compensated for forecasting errors**

The Retailers are obliged to compensate Suppliers fully for any costs associated with the Retailers forecasting errors in relation to specific products that the Supplier supplies on the basis of the Retailers forecast.

The only circumstances under which a Retailer may not be obliged to compensate the Supplier for forecasting errors are as follows: -

- i) Instances where the Retailer prepared the forecasts in good faith, exercising due care and following consultations with the Supplier,
- ii) If the Supply Agreement clearly stipulates that full compensation of a Supplier for forecasting errors is not allowed.

#### 5.2.2.5 *Promotions*

The costs of promotion of a product can be quite high and unless planned can wipe out Suppliers margins. It is therefore important that this threat is safeguarded through good trade practice. The following provisions provide this shield: -

a) **Payment for better positioning of goods or increase in shelf space only allowed if done for purposes of promotion**

The Suppliers should not be required by Retailers to pay for better positioning of their goods on a store or increase in the shelf space unless this is being done for promotion purposes. Unless such cases are clearly spelt out in the Supply Agreement, they should be documented under a sales promotion to avoid disputes.

b) **A Supplier is not required to fund costs of promotion**

Retailers are barred from requiring suppliers to fund costs of promotion. The circumstances under which Suppliers can be required to fund such costs should be documented in a mutually concluded Sales Promotion Agreement where a Supplier commits out of will.

c) **Use of a Supplier's product for promotion allowed on condition that reasonable Notice was given**

A Retailer is barred from using a Supplier's product for any promotion unless the Supplier had been given reasonable Notice in writing of the intent of the Retailer to use the product for promotion purposes.

d) **Suppliers participation in a promotion should not trigger retrospective variation of the Supply Agreement**

A Retailer is barred from requiring a Supplier from participating in a promotion if such a participation would trigger variation of the Supply Agreement.

e) **Retailers due care on orders for promotions**

Since goods for promotion purposes are given by Suppliers at wholesale price, the Retailers are required to ensure that they only what they require for promotions. In event of any goods are not sold out during promotions the following remedial measures are proposed: -

- i) A Retailer to compensate the Supplier for products that are over order and which the Retailer sells at higher non-promotion retail prices.
- ii) The compensation price for the over ordered products will be the difference between the promotional wholesale price paid by the Retailer and the Supplier's non-promotional wholesale

### 5.2.2.6 *Other provisions that are pertinent to prompt payment*

#### 1. **Duties pertaining to consumer complaints**

Clear provision of the duties of a Retailer and Supplier in compensating consumers for genuine complaint will ensure against disputes between a Retailer and Supplier, which may end up contributing to delayed payments for the subject product. The following provisions help to provide such clarity: -

##### a) **Consumer complaints that are resolved by the Retailer at the store through refund of the retail price or replacement of the product**

For all cases of consumer complaints that a Retailer resolves at the store through refund of retail price of the product, the Suppliers are not required to make any payment towards the same course. However, the only grounds under which a Retailer can require a Supplier to make payments for resolved consumer complaint cases are as follows: -

- i) If requested payment does not exceed the retail price of the product that the Retailer charged the consumer; and
- ii) If the consumer complaint is justifiable and attributable to negligence or default of breach of a Supply Agreement by a Supplier

##### b) **Consumer complaints that are not resolved by the Retailer on spot**

A Retailer is barred from requiring a Supplier to make payment for consumer complaints not resolve by Retailers on at the store on spot. The only circumstances under which a Supplier is allowed to make such payments are as follows: -

- i) The subject payment is related to that Retailer's costs arising from that complaint and it is reasonable,
- ii) The Retailer is able to attribute the complaint, through provision of evidence, to a Supplier's negligence or default or breach in the Supply Agreement,
- iii) The Retail provides a report about the complaint, including the basis of the attribution to the Supplier.
- iv) The Retailer avails the Supplier the evidence that the consumer complaint is justifiable and attributable to the Supplier in the manner described above.

#### 2. **Duties in relation to De-listing**

##### a) **De-listing only allowed on the basis of genuine commercial reasons**

De-listing of a Supplier is only allowed for genuine commercial reasons. Therefore, de-listing of a Suppliers cannot be based on differences that occur between a retailer and a Supplier as a result of a Supplier pursuing his or her rights under the Supply Agreement or the Code of Practice.

##### b) **Prior conditions to be observed prior to de-listing**

Before De-listing a supplier, a Retailer is required to give the Supplier reasonable Notice in writing, stipulating reasons for delisting. The Notice should provide for sufficient time to allow for its review according to the procedures agreed in the Supply Agreement for review of the Notice for delisting - i.e. Supplier's rights to have the decision reviewed by a Senior Buyer as defined in the Code of Practice; and Suppliers right to attend an interview with the Retailers Code of Practice Compliance Officer to discuss the De-listing decision.

## 6.0 PROPOSED STANDARDS AND FRAMEWORK FOR KENYA'S PROMPT PAYMENT SYSTEM

The proposed prompt payment system that need to be adopted in Kenya has two broad features, which are based on recommendations received during the study and international best practice experience. These features are: -

- **Retail Trade Sector Prompt Payment Regulation**
- **Retail Trade Sector Code of Practice**

### 6.1 Retail Sector Prompt Payment Regulation

#### 6.1.1 Objective and proposed content of the Regulation

The aim of the regulation is to promote fair trade practice in the retail sector and to ensure prompt payment for delivered supplies in accordance to terms set out in the Supplier agreements. The table below lists the recommended provision for inclusion in the Regulation whose details will be negotiated by suppliers during the phase of preparing content for the Regulation. It also gives the rationale and benefits for both the Suppliers and Retailers that accrued from these provisions.

**Table 7: Proposed provisions for inclusion in the Regulation on Prompt Payment in Retail Sector**

Provision	Rationale	Benefits
<b>Supplier agreement/Joint Business Plans</b>		
A Supply agreements/Joint Business plans shall be mandatory in the supplier retailer relationship under this code	Need to formalize business relationship and provide documentary evidence that could be used in determining whether	Creates order and provides a platform of reference in event of dispute
<b>Payment Benchmark</b>		
<input type="checkbox"/> Payment terms of fresh produce delivered by micro and small enterprises and farmers not exceeding 15 days from the date of the weekly statement.  <input type="checkbox"/> Payment terms of fresh produce delivered by other category of enterprises not exceeding 15 days from the date of the monthly statement. <i>Other possible options to consider when developing the Regulation on Prompt payment include the following, based on international best practice and stakeholder proposals as detailed above:</i> <i>Payment terms of fresh produce not exceeding 7 days.</i>	<input type="checkbox"/> International best practice on payment of fresh produce and perishables <input type="checkbox"/> Suppliers and manufacturers proposal  <input type="checkbox"/> The Code of Practice drawn by Suppliers and Manufacturers and that drawn by Retailers advocate 30 days	Guaranteed period of payment helps both Suppliers and Retailers to do cash flow planning which in turn contribute towards promoting competitiveness by avoiding idle production resources. It converts the supply agreement that stipulates the legal backed payment period to an asset that the Suppliers can use in obtaining trade credit from financial institutions
<input type="checkbox"/> Other goods <b>Option 1<sup>2</sup></b> 30 days from the date of monthly statement <i>Other possible options to consider when developing the Regulation on Prompt payment include the following, based on international best practice and stakeholder proposals as detailed above:</i> <ul style="list-style-type: none"> <li>➤ <i>Payment to be made between 30 and 45 days</i></li> <li>➤ <i>For Fast Moving Consumer Goods (FMCG) - payment terms not exceeding 30 days from the date of monthly statement</i></li> <li>➤ <i>Other goods - payment terms not exceeding 45 days from the date of monthly statement</i></li> </ul> <b>Option 2</b> 15 days from the date of monthly statement <i>Other possible options to consider when developing the Regulation on Prompt payment include the following, based on international best practice and stakeholder proposals as detailed above:</i> <ul style="list-style-type: none"> <li>➤ <i>Payment to be made between 30 and 45 days</i></li> <li>➤ <i>For Fast Moving Consumer Goods (FMCG) - payment terms not exceeding 30 days from the date of monthly statement</i></li> <li>➤ <i>Other goods - payment terms not exceeding 45 days from the date of monthly statement</i></li> </ul>		
<b>Payment date</b>		



Provision	Rationale	Benefits
<p><b>The Regulation should provide the payment due date to be:</b></p> <p><input type="checkbox"/> The date payment is due under the contract for the item of property or service provided; or</p> <p><b>Option 1<sup>3</sup></b></p> <p><input type="checkbox"/> 30 days after monthly statement for the amount due is received <b>if a specific payment date is not established by contract</b></p> <p><b>Option 2</b></p> <p>15 days after monthly statement for the amount due is received <b>if a specific payment date is not established by contract</b></p>	<p><input type="checkbox"/> International best practice on payment of fresh produce and perishables. This provision also accommodates Business to Business relationship between Retailers and Suppliers where the date agreed in the contract will have taken into account the underlying business deal. Specification of the date protects the interest of the Suppliers and Retailers in case of any dispute.</p> <p><input type="checkbox"/> This provision accommodates cases where the Suppliers may supply goods to the Retailers without a Supply Agreement. While supply without sale agreement is discouraged, the provision recognizes possibilities for one of supply and provides protection to both the Retailers and Suppliers in case of any disputes arising from such business deal.</p>	<p>The legal backed certainty of the date of payment confers value to the paper held by the Supplier as they await payment. The paper can be used to negotiate trade credit because of the certainty in the envisaged date of payment</p>
Statement as the basis of triggering payment		

Provision	Rationale	Benefits
<p>The Regulation should:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Give statement as the basis for triggering process of payment</li> <li><input type="checkbox"/> Spell out effective date of payment as the date of a statement</li> <li><input type="checkbox"/> Provide for an acceptable period of the review of the statement and limit this within 7 days</li> <li><input type="checkbox"/> Oblige a Retailer to seek any clarification on the statement within a maximum of 7 days</li> <li><input type="checkbox"/> Indicate that for all cases of statement that are subjected to clarification, effective date of payment becomes the date that the Supplier provides the sought clarification</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> International best practice, the case of the US and UK where invoice is used as the basis for triggering payment</li> <li><input type="checkbox"/> Gives the Suppliers an upper hand to determine when they should be paid after invoicing for the supplied goods</li> </ul>	<p>Provides undisputable benchmark for determining the effective date of payment for purposes of determining cases of late payment.</p>
<p><b>Interest on late payment</b></p> <p>The Regulation should provide for interest payment at the market rate for all overdue payments without reasonable justifications.</p> <p>For purposes of interest accrual, the Regulation should spell this out to mean the amount not paid after the due date as determined by the date of statement or suppliers agreement.</p> <p>To deter prolonged non-payment of overdue payment, the Regulation should provide for a 3 month cap after which interest and penalties will accrue for a further 6 months.</p> <p>All cases of non-payment after six months to be treated as court cases that the suppliers through this Regulation will be encouraged to get compensation for through court award</p>	<p>International best practice in the UK, EU and the USA, where interest on late payment is provided for in the Regulations in order to dissuade Retailers from defaulting</p>	<p>Legal backed interest provision introduces a cost element to all cases of delayed payments. This will eventually work as a catalyst to encourage Retailers to embrace prudent cash flow management practices.</p> <p>It has the effect of shifting cost of delayed payment from the Suppliers to the Retailers. At the moment, Suppliers are shouldering such costs.</p>
<p><b>Capital disclosure and branch network expansion requirements</b></p> <p>The Regulation to require the Retailers to disclose their capital base and shareholders to afford Suppliers a basis for undertaking due diligence as a way of assessing risk and determining the volume of supplies to entrust with the retailer.</p>	<p>To induce Retailers to capitalize their business in order to avoid exposing the Suppliers to financial risks associated with inadequate capital and ensuing liquidity crisis.</p> <p>To provide a risk based measure that Suppliers can use to shield Retailers from over supplies that cannot be supported by the Retailers Capital Outlay</p>	<p>This requirement will ensure that suppliers are not faced with surprises of capital based non or late payment because they will have an opportunity to avoid risky retailers in good time.</p>

Provision	Rationale	Benefits
<b>Shoplifting and fraudsters</b> The Regulation should: - <ul style="list-style-type: none"> <li><input type="checkbox"/> Discourage shoplifting by providing fast tracked avenue of justice for Retailers and propose punitive penalties that deter such practices</li> <li><input type="checkbox"/> Allow Retailers to publish all convicted shoplifters as a strategy for dismantling the cartels.</li> </ul>	Complaint by Retailers, which attributed shoplifting as one of the causes of shrinkage.	This will stop shrinkage of supplies associated with shoplifting and therefore save Retailers some cash that could be applied to pay suppliers.
<b>Office of Fair Trade</b>		
Establish a Fair Trade Office to monitor and coordinate efforts towards promoting fair trade practice in the retail sector  Require the Office of Fair Trade to provide guidelines on type of returns and data to be submitted by Retailers for purposes of monitoring the performance of the retail sector.	International best practice - the case of the UK.	The office will promote Fair Trade Practice in the retail sector through monitoring the sector's adherence to Fair Trade Practice and mediate between the Retailers and Suppliers on matters that the two Parties cannot resolve within the framework of Code of Practice
<b>Code of Practice Implementation Board</b>		
Provide for establishment of the Code of Practice Implementation Board to provide oversight of the implementation of the code, including consideration of the cases of non-performance of obligations as stipulated in the code. The members of the Board shall be 5 comprising of the CEOs of Retailers Umbrella Association (RETRAK), Kenya Association of Manufacturers (KAM) and umbrella association of suppliers (AKS), a representative from the Office of Fair Trade and chaired by the State Department of Trade .	To ensure prompt action is taken for non-implementation of the provisions of the Code of Practice	Promotes fair trade and ensures all players receive attention in time through corrective measures that the Board pursues to deter noncompliance with the provisions of the code.
<b>Tribunal for Retail Sector Dispute Settlement</b>		
Provide for the establishment of a Tribunal for dispute settlement of cases of late payment and fair trade practice among the Suppliers and Retailers  Provide for the membership of the Tribunal to include Five persons, two nominated by the RETRAK - retailer's umbrella body and two nominated by KAM and Association of Kenya Supplier's and fifth Ministry of Trade appointee. The decision of the tribunal to be by consensus	Necessity of an independent body to adjudicate all disputes between Retailers and Suppliers on matters touching on the Code of Practice and Fair Trade in their Trade Relations.	Timely resolution of payment and fair trade related cases in the retail sector thus saving the affected parties costs associated with delayed justice.
<b>Code of Practice</b>		

Provision	Rationale	Benefits
<p>The Regulation should</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide for the development of an industry driven Code of Practice aimed at promoting fair trade practice between the Suppliers and Retailers</li> <li><input type="checkbox"/> Require that all Retailers sign up to the Code of Practice</li> <li><input type="checkbox"/> Assign the responsibility of designating a Retailer as 'Designated Retailer' for purposes of the Code of Practice to the Office of Fair Trade.</li> </ul>	<p>International best practice, the case of UK and the USA where Code of Practice are imbedded in the law but run by the Retailers and the Suppliers for the benefit of a vibrant retail sector</p>	
<p><b>Capacity Building for Retailers and Suppliers</b></p> <p>The Regulation to encourage Public/Private Sector Partnership for capacity building non-designated Retailers geared towards ensuring that they embraced Fair Trade Practice</p>	<p>To ensure that these category of Retailers are equipped in order to comply with the prompt payment Regulation.</p>	<p>Good payment practice is introduced to the lower segment of the retail sector in line with the national efforts of promoting this practice among the designated Retailers</p>

### 6.1.2 Process of developing the Prompt Payment Regulation

Analysis of the process followed in the UK to develop the Regulatory framework and the Code of Practice reveal the role of the Competition Commission as having been instrumental in the development of the UK Groceries Regulation. The inquiry conducted by the CC established the Regulation and the Code of Practice through an Order issued under the Competition Commission Act.

This same approach is recommended for Kenya because the Competition Authority in Kenya has Fair Trade as one of its focal areas. Already the Authority has initiated process of instituting an inquiry on Fair Trade Practice in Retail Sector. There is merit in riding on this momentum to ensure timely introduction legally backed prompt payment.

## 6.2 Code of Practice

### 6.2.1 Comparative analysis of the Code of Practice positions of the Retailers and the Suppliers/manufacturers

The Suppliers and manufacturers on the one hand and the Retailers, on the other hand have consensus on need for a Code of Practice to prompt fair trade practice and prompt payment. The two Code of Practice are attached to this report as Annex 1 and 2. Analysis of the two codes is presented in the table below, showing areas of converge and divergence is detailed in the table below. Juxtaposed to the proposed positions of RETRAK and Suppliers/Manufacturers proposed Code of Practice is the International Best Practice. A review of the three Codes shows RETRAK and Suppliers/Manufacturers code to be aligned to the International Best Practice, with exception of provision for:

- ☐ Designated Retailers and the Duties
- ☐ Office of Fair Trade Practice

These two provisions have already been recommended for introduction in the Regulation and so there will be need for RETRAK and the Suppliers/Manufacturers proposed Code of Practice to include them.

The RETRAK and Suppliers/Manufacturers proposed Code of Practice are aligned in all areas with exception of the following areas where RETRAK position differs from the Suppliers/Manufacturers:

- ☐ Payments for shrinkage
- ☐ Payment for promotions.

An analysis of the two positions show the Suppliers/Manufacturers position to be aligned to the international best practice while RETRAK's is a departure. Since we are bench marking Kenya's Code of Practice to the International Best Practice, it is recommended that RETRAK aligns its position to the Suppliers/Manufacturers position in respect of the two areas.

**Table 8: Comparative analysis of International Best Practice Code of Practice and RETRAK and Suppliers/Manufacturers Proposed Code of Practice**

Content of the Suppliers and manufacturers proposed Code of Practice	Content of the Retailers proposed Code of Practice	Content of Code of Practice based on International Best Practice - the case of UK
1. Interpretation of terms	1. <b>Interpretation of terms</b>	1. <b>Interpretation of terms</b>
2. Fair dealing practice	2. <b>Fair dealing practice</b>	2. <b>Fair dealing practice</b>
3. Variation a) <i>Of Supply Agreements/ Joint Business Plans and terms of supply</i> b) <i>Changes to supply chain procedures</i>	1. <b>Variation</b> a) <i>Of Supply Agreements/ Joint Business Plans and terms of supply</i> b) <i>Changes to supply chain procedures</i>	3. <b>Variation</b> a) <i>Of Supply Agreements/ Joint Business Plans and terms of supply</i> b) <i>Changes to supply chain procedures</i>
4. Prices and payments a) <i>No delayed payments</i> b) <i>No obligation to contribute to marketing costs</i> c) <i>Payments for shrinkage</i> d) <i>Payments for Damage</i> e) <i>Limited circumstances for payment as a condition of being a supplier</i> f) <i>Compensation of forecasting errors</i>	4. <b>Prices and payments</b> a) <i>No delayed payments</i> b) <i>No obligation to contribute to marketing costs</i> c) <i>Payments for shrinkage*</i> d) <i>Payments for Damage</i> e) <i>Limited circumstances for payment as a condition of being a supplier</i> f) <i>Compensation of forecasting errors</i>	4. <b>Prices and payments</b> a) <i>No delayed payments</i> b) <i>No obligation to contribute to marketing costs</i> c) <i>Payments for shrinkage</i> d) <i>Payments for Waste</i> e) <i>Limited circumstances for payment as a condition of being a supplier</i> f) <i>Compensation of forecasting errors</i> g) <i>No tying of third party goods and services for payment</i>
5. Promotions a) <i>Payment for better positioning</i> b) <i>Promotions</i> c) <i>Due care when ordering for promotions</i>	5. <b>Promotions</b> a) <i>Payment for better positioning*</i> b) <i>Promotions*</i> c) <i>Due care when ordering for promotions</i>	5. <b>Promotions</b> a) <i>Payment for better positioning</i> b) <i>Promotions</i> c) <i>Due care when ordering for promotions</i>
6. Other Duties a) <i>No unjustified payment for consumer complaints</i> b) <i>Duties in relation to De-listing</i> c) <i>Senior Category Buyer</i>	6. <b>Other Duties</b> a) <i>No unjustified payment for consumer complaints</i> b) <i>Duties in relation to De-listing</i> c) <i>Senior Category Buyer</i>	6. <b>Other Duties</b> a) <i>No unjustified payment for consumer complaints</i> b) <i>Duties in relation to De-listing</i> c) <i>Senior Buyer</i>
7. No specification of scope of coverage	7. <b>No specification of the scope of coverage</b>	7. <b>Designated Retailers and their Duties</b>
8. Tribunal for dispute settlement	8. <b>Tribunal for dispute settlement</b>	8. <b>Office of Fair Trade</b>

## 7.0 RECOMMENDED WAY FORWARD

### 7.1 Regulation on Prompt Payment

The retailers, suppliers and manufacturers recommended an industry driven regulation geared towards stimulating development of the retail sector. The following tasks are proposed leading to the development of the Regulation: -

1. The State Department of Trade need to initiate process of formulating the Regulation by exploring the legislative framework on which to anchor the Regulation.
2. The Suppliers, Manufacturers and Retailers to need to be facilitated to develop content for the regulation this will take on board the benchmarks for prompt payment, as proposed in this study and retailers and suppliers input based on realities on the ground for each of the proposed component of the content for prompt payment regulation
3. The Suppliers, Manufacturers and Retailers to through chairmanship of State Department of Trade to steer the drafting of the Prompt Payment Bill, using the 'Prompt Payment Regulation content' and provisions of the Prompt Payment Code of Practice.
4. The State Department of Trade take the draft Retail Sector Prompt Payment Bill for legislation by the next Parliament.

### 7.2 Code of Practice

The code of practice to be anchored in the Regulation need be developed, using the International Best Practice as the basis, but domesticated to suit Kenya's situation. The following actions are recommended: -

1. Retailers, Suppliers and Manufacturers to jointly develop the Code of Practice that will be anchored in the Regulation.
2. The recommended starting point is the draft RETRAK and the Suppliers/Manufacturers Code of Practice, which converge in most areas with exception of a few areas as already pointed out in this report.
3. The joint Retailers, Suppliers and Manufacturers harmonized Code Practice to be submitted to the State Department of Trade for purposes of being anchored in the proposed Regulation on Retail Sector Prompt Payment

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
COFFEEMART TEA LIMITED	909,607.29		803,763.55	764,874.12	167,608.72	2,645,853.68
EASTLEIGH MATTRESS LIMITED	304,622.35		131,591.59	-	535,634.98	971,848.92
NAIVAS SUPERMARKET	50,130,477.00	11,030,159.00	14,136,525.00	6,866,309.00	4,270,762.00	86,434,232.00
NAKUMATT HOLDINGS LIMITED	17,432,220.00		21,846,605.00	23,534,245.00		278,962,740.00
TUSKYS LTD	101,569,249.00	43,032,115.00	14,383,401.00	5,349,763.00		174,864,572.00
UCHUMI SUPER MARKETS LIMITED	9,369,436.00	6,943,199.00	4,559,409.00	21,218,550.00		123,071,223.00
ACACIA SUPERMARKET LIMITED			69,915.00	49,910.00	165,656.00	285,481.00
CHANDARANA SUPERMARKET LTD	15,723,388.00	9,051,856.00	7,672,110.00	1,946,027.00	789,264.00	35,182,645.00
FAIRLANE SUPERMARKET LTD	-	38,010.00	-	18,587.14	22,661.91	79,259.05
KAREN PROVISION STORES	-		948.22	-	3,299.11	4,247.33
KARRYMART LIMITED	-		-	-	1,085,760.00	1,085,760.00



Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
MAJID ALFUTTAIM HYPERMARKETS LTD	3,264,522.00	2,408,770.00	986,562.00	290,359.00	643,686.00	7,593,899.00
MESORA SUPERMARKET LIMITED	-		10,147.23	-	19,943.00	30,090.23
PANINIS CORNER	5,971.04		5,949.99	0.20	(3.96)	11,917.27
UK WALA SUPERMARKET LTD	3,546,650.00	555,490.00	172,954.00	662,702.00	460,892.00	5,398,688.00
PETER MULEI SUPERMARKET	5,535,319.00	517,336.00	423,707.00	153,394.00	569,589.00	7,199,345.00
TUMAINI SUPERMARKETS	928,314.00	63,840.00	44,791.00	202,092.00	358,508.00	1,597,545.00
INTEGRITY ONE SUPERMARKET	-		-	-	15,856.08	15,856.08
KASKAZI RETAIL LTD			39,583.00	13,616.00	291,068.00	344,267.00
KASSMATT SUPERMARKET LTD	-	97,759.00	34,120.00	135,849.00	699,174.00	966,902.00
OTOMATT SUPERMARKET	-		11,533.17	11,826.22	-	23,359.39
QUICK MART LTD	1,536,293.00	562,001.00	281,340.00	87,485.00	273,903.00	2,741,022.00
CHIENI PLAINS Co	65,405.19		-	-	3.32	65,408.51

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
COUNTY SUPERMARKETS CO.LTD	42,403.30		1.29	-	16,354.87	58,759.46
JATOMY ENTERPRISES LTD	170,003.80		170,003.80	5,073.19	712.57	345,793.36
KASTURI SUPERMARKET LTD		76,082.00	2,742.00	41,130.00	22,039.00	141,993.00
MAGUNAS SUPER STORES (K) LTD	859,937.00	218,493.00	174,695.00	358,257.00	460,923.00	2,072,305.00
MATHAI SUPERMARKETS LTD	-	417,811.00	470,143.00	65,916.00	95,748.00	1,049,618.00
PRICE WORTHY SUPERMARKET	52,873.59		-	-	4.20	52,877.79
SAMRAT SUPERMARKET	173,590.00	833.00	53,869.00	76,630.00	26,981.00	331,903.00
SAMUEL KAMOCHE KAGUONGO	-		46,813.27	11,088.73	(11,088.73)	46,813.27
SOCIETY STORES	474,193.00	116,856.00	160,607.00	30,895.00	126,586.00	909,137.00
WAMAINA STORES	-		48,450.76	-	4,506.34	52,957.10
A ONE SUPERMARKET	0.02		-	2,742.01	2,247.95	4,989.98
BAFAGHI SUPERMARKET	-		24,471.79	11,436.62	(0.42)	35,907.99

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
BUDGET STORES - SUPERMARKET	47,202.23		-	0.14	79,424.48	126,626.85
SAMRAT SUPERMARKET	9,957.37		(833.00)	(625.00)	3,773.70	12,273.07
CHOPPIES ENTERPRISES (K) LTD	27,995,514.00	4,705,363.00	2,229,849.00	147,136.00	9,635.00	35,087,497.00
KHETIA DRAPERS LTD	1,929,857.00	2,021,342.00	197,272.00	9,383.00	783,977.00	4,941,831.00
KIBUYE MATT WHOLESALERS	(16,703.00)		322,923.60	-	5,574.97	311,795.57
MAISHA MART LTD	-		36,230.25	-	0.95	36,231.20
MAMA WATOTO SUPERMARKET	-		-	-	(3,530.84)	(3,530.84)
RONAK SUPERMARKET LTD	-		-	-	749.94	749.94
SUBIRI SUPERMARKET	-		-	-	159,909.05	159,909.05
TESIA SUPERMARKET LTD	-		-	-	30,796.92	30,796.92
TRANSMATTRESSES	(1,756.00)		32,283.22	-	93,364.00	123,891.22
TULIN SUPERMARKET	-		-	-	60,622.00	60,622.00
GILANIS SUPERMARKET LTD	237,121.49		312,244.41	214.22	202.02	549,782.14

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
MUGO SUPERMARKET & WHOLESALERS	-		-	-	141,652.44	141,652.44
SPEAR SUPERMARKETS LTD	-		192,196.73	-	153,972.23	346,168.96
STAGE MATTRESSES LTD	-		(1,156.00)	33,585.42	3,748.62	36,178.04
GEORGE NYORO NDUNGU	12,151.93		44,953.55	-	129,199.91	186,305.39
JAMAA & SONS SUPERMARKET LIMITED	50,614.58		71,814.78	-	(196.08)	122,233.28
OL-KALOU TRADERS	-		-	-	41,737.12	41,737.12
SHIVLING SUPERMARKET LTD	573,642.00	20,891.00	481,606.00	531,471.00	24,957.00	1,632,567.00
Eastmatt Stores Ltd					121,431.00	121,431.00
Eldomatt Supermarket Ltd					47,477.00	47,477.00
Eldoret Mattresses					4,020.00	4,020.00
Fun ‘An’ Shop Ltd					51,068.00	51,068.00
Happy Valley Supermarket					4,264.00	4,264.00

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
Homematt Supermarket Ltd					5,250.00	5,250.00
Jamaa & Sons Supermarket					25,002.00	25,002.00
Kamindi Supermarket					11,643.00	11,643.00
Leens Supermarket Ltd					134,118.00	134,118.00
Smart Price Stores Ltd					778,513.00	778,513.00
NAKURU/Eldoret Highway Supermarket					6,165.00	6,165.00
Ninimart Supermarket Ltd					55,505.00	55,505.00
Oyugis Supermarket					21,975.00	21,975.00
Raiya Supermarket					7,216.00	7,216.00
Rivanas Holding Ltd					36,480.00	36,480.00
Saltes Ltd		113,396.00	96,599.00	81,400.00	133,264.00	424,659.00
Smart Price Stores Ltd					778,513.00	778,513.00
Stage Matt Ltd					8,558.00	8,558.00

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
Thikamart Supermarket Ltd					42,838.00	42,838.00
Transmattresses Ltd					18,448.00	18,448.00
Valleymart Supermarket					31,971.00	31,971.00
Woolmart Ltd					8,018.00	8,018.00
Muthaiga supermarket	139,561.00	208,591.00	175,195.00			523,347.00
cleanshelf supermarket	1,909,156.00	1,523,976.00	485,395.00	123,879.00	56,019.00	4,098,425.00
Zuchine ltd	119,059.00	142,155.00	148,839.00	8,926.00		418,979.00
Setlight					954,606.00	954,606.00
New Westlands store				31,987.00	18,084.00	50,071.00
Easy Mart					223,719.00	223,719.00
Eastleigh mattress	304,622.00	270,256.00	118,310.00	239,169.00	547,775.00	1,480,132.00
Sweetworld ltd	476,629.00	420,945.00	108,508.00	39,580.00		1,045,662.00
Game Disc	78,069.00					78,069.00

Annex 1: Amount owed to 22 Suppliers as at 31st December 2016						
RETAILERS NAME	less than 30	30 days	60 days	90 days	Above 90	Total
Mulleys supermarket		56,430.00	136,742.00			193,172.00
G mart			9,640.00		114,845.00	124,485.00
Power star	482,013.00	337,808.00	67,761.00	177,484.00	84,156.00	1,149,222.00
Jei supermarket	11,125.00				35,305.00	46,430.00
Longterm view					35,305.00	35,305.00
Enu ltd			42,065.00			42,065.00
Home Art					30,895.00	30,895.00
Lakhani G supplies		389,189.00	103,687.00		51,748.00	544,624.00
Defence forces canteen			40,748.00		9,249.00	49,997.00
						-
Total	246,452,310.18	210,421,447.00	72,219,626.20	63,332,347.01		792,336,870.76

**ANNEX 2: KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016**

<b>Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)</b>					
<b>Company</b>	<b>Amount Owed</b>	<b>Period Owed</b>	<b>Estimated months owed</b>	<b>Agreed Payment Period</b>	<b>Supermarket</b>
KAM 1	185,023,969	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAKUMATT HOLDINGS
KAM 2	175,409,797	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	30	TUSKER MATTRESSES
KAM 3	93,972,373	June 2016 To Date	8	60	Nakumatt Holdings Limited
KAM 2	86,512,232	Oct 2016 – Dec 2016	3	30	Tuskys
KAM 4	86,512,232	Oct 2016 – Dec 2016	3	60	Tuskys
KAM 5	77,597,519	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	60	UCHUMI SUPERMARKET L
KAM 6	69,079,041	Oct 2014 – Dec 2016	27	30	Nakumatt
KAM 1	55,510,895	Sep 2008 – Nov 2016	98	30	Nakumatt
KAM 7	41,854,168	Sep 2016 To Date	5	30	Naivas Limited
KAM 8	39,061,148	Oct 2016 To Date	4	30	Tuskys Limited
KAM 9	38,421,281	>90 Days	3	60	Nakumatt Holdings
KAM 10	35,828,965	2015-Nov 2016	11	60	Nakumatt
KAM 4	35,550,889	Sep 2008 – Nov 2016	3	60	Tuskys



**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 11	<b>33,101,108</b>	Sep 2008 – Aug 2016	95	60	Uchumi
KAM 12	<b>21,420,869</b>	>90 Days	3	90	Tusker Matressese Ltd
KAM 13	<b>21,134,627</b>	>90 Days	3	60	Naivas Ltd
KAM 13	<b>20,551,770</b>	Nov 2010 – Nov 2016	84	30	Naivas
KAM 14	<b>19,745,256</b>	MAY 2014 - DECEMBER 2016	32	90	NAKUMATT HOLDINGS LTD
KAM 1	<b>17,479,307</b>	July 2016 – Nov 2016	5	30	Shivling Supermarket ( Homabay)
KAM 8	<b>15,878,111</b>	Oct 2015 – Nov 2016	14	60	Uchumi
KAM 15	<b>15,878,111</b>	Oct 2015 – Nov 2016	12	15	Uchumi
KAM 16	<b>12,483,246</b>	July To November 2016	5	90	Tuskys
KAM 2	<b>10,955,574</b>	2010-Nov 2016	70	30	Tuskys
KAM 3	<b>10,654,912</b>	Aug-Nov 2016	4	30	Tuskys
KAM 4	<b>10,330,578</b>	AUGUST 2016 - DECEMBER 2016	5	90	NAIVAS
KAM 6	<b>9,369,663</b>	Jan -Dec 2014	12	60	Nakumatt Holdings LTD
KAM 32	<b>9,348,786</b>	2011-Oct 2015	36	30	Uchumi
KAM 17	<b>8,980,947</b>	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - GATEWAY
KAM 18	<b>8,773,081</b>	Nov – Dec 2016	2	15	Chandarana
KAM 19	<b>8,438,612</b>	2015 & Prior	2	30	Uchumi Supermarkets Limited

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 20	<b>8,438,612</b>	2015 & Prior	2	45	
KAM 1	<b>8,237,398</b>	Nov 2016, Oct 2016 And >60 Days	2	30	Nakumatt Holdings Limited
KAM 18	<b>8,182,966</b>	Nov 2016 – Dec 2016	2	30	Choppies Enterprises
KAM 8	<b>7,805,529</b>	JULY 2010 - DECEMBER 2016	78	0	TUSKER MATTRESSESS LTD
KAM 21	<b>7,710,587</b>	Oct-Nov 2016	2	30	Nakumatt
KAM 22	<b>7,563,988</b>	>90 Days	3	30	Uchumi Ltd
KAM 17	<b>7,481,356</b>	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - KITENGELA
KAM 23	<b>7,349,045</b>	Aug ,Sept , Oct , Nov And More Than 122 Days	4	90	NAKUMATT HOLDINGS LIMITED
KAM 24	<b>7,145,320</b>	Sep 2016 To Date	5	45	Chandarana Supermarkets Limited
KAM 20	<b>7,097,099</b>	Feb 2013-Mar 2016	36	15	Uchumi
KAM 12	<b>7,029,273</b>	Sep 2016 To Date	5	15	Tumaini Self Service Limited
KAM 18	<b>6,174,186</b>	>90 Days	3	15	Chandarana
KAM 7	<b>6,172,435</b>	SEPTEMBER 2016 TO 30/11/2016	3	30	NAIVAS LIMITED
KAM 10	<b>6,008,770</b>	May To November 2016	7	60	Nakumatt
KAM 12	<b>5,708,352</b>	JUNE 2016 - DECEMBER 2016	7	60	TUMAINI SUPERMARKETS LTD

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 25	5,507,306	Oct 2016 To Date	4	30	EastleighMatresses Limited
KAM 17	5,093,674	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - WESTLANDS
KAM 25	5,048,875	Sep 2016 – Nov 2016	3	30	Little Lucky Supermarket
KAM 25	4,927,677	Oct 2016 To Date	4	30	Mathai Supermarkets Limited
KAM 17	4,512,138	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - NYALI (SUPE
KAM 13	4,306,743	Nov 2016, Oct 2016 And >60 Days	2	30	Naivas Limited
KAM 17	4,134,125	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - MOUNTAIN MA
KAM 6	3,869,746	Jan -Dec 2015	12	60	Nakumatt Holdings LTD
KAM 17	3,808,634	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - KISUMU

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 26	3,730,449	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS -NYERI
KAM 27	3,624,523	MARCH 2012 - DECEMBER 2016	57	60	UCHUMI SUPERMARKETS LTD
KAM 17	3,568,117	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - MBAITU(SUPE
KAM 17	3,533,834	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - KASARANI
KAM 17	3,452,052	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - NAROK (NKR)
KAM 17	3,444,125	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - RONALD2

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	3,436,754	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - RUARAKA
KAM 13	3,099,666	October To November 2016	2	40	Naivas
KAM 17	3,093,106	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - EMBU (NYI)
KAM 26	3,085,720	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS -THE POINT-BU
KAM 8	3,048,384	Aug ,Sept , Oct , Nov And More Than 122 Days	4	0	TUSKER MATTRESSES LIMITED
KAM 17	2,994,298	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - REFERRAL
KAM 17	2,959,911	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - EAST GATE

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	2,882,761	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - KOMAROCK
KAM 26	2,853,387	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS- MACHAKOS
KAM 17	2,822,675	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - SOKONI
KAM 3	2,733,500	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	30	TUSKER MATTRESSES-Bulk
KAM 25	2,581,403	>90 Days	3	15	Cleanshelf
KAM 25	2,516,022	>90 Days	3	30	Khetia
KAM 7	2,446,388	Aug 2016 & Prior	2	30	Naivas Limited
KAM 17	2,427,975	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - BUNGOMA

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 26	2,411,298	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS- RONALD NGALA
KAM 33	2,375,421	SEPTEMBER 2012-NOVEMBER 2016	49	30	UCHUMI SUPERKETS LTD
KAM 17	2,373,730	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS HAZINA
KAM 25	2,372,104	Nov 2016 To Date	3	30	Gilanis Supermarket Limited
KAM 17	2,326,017	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - NDOGO BRA
KAM 24	2,285,346	Jan 2016 - 21/ Dec/16	12	90	Chandarana
KAM 8	2,256,865	More Than 120 Days	4	90	UCHUMI SUPERMARKETS LTD
KAM 17	2,256,417	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - UMOJA

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	2,206,100	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - HOMEGROUND
KAM 28	2,204,961	Nov 2016 – Jan 2017	3	60	Nakumatt Holdings Ltd
KAM 32	2,200,000	2014 - 2015	24	40	Uchumi
KAM 17	2,181,581	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - KITUI
KAM 20	2,157,985	Sep 2016 To Date	5	30	Ukwala Supermarket Limited
KAM 17	2,006,814	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - KAPSABET
KAM 14	2,006,367	June 2016 - 21/ Dec/16	7	90	Nakumatt Holdings Limited
KAM 17	1,990,571	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - NAKURU
KAM 24	1,946,248	Nov 2016 To Date	3.5	30	Carrefour Limited



**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 1	<b>1,920,045</b>	OCTOBER 2016 - DECEMBER 2016	3	60	PETER MULEI & SONS SUPERMARKETS LTD
KAM 25	<b>1,919,555</b>	Aug 2016 – Dec 2016	5	15	Majid Al-Futtaim
KAM 29	<b>1,855,729</b>	14th October 2015 – Date	16	30	Uchumi Supermarkets
KAM 25	<b>1,727,851</b>	Oct-Nov 2016	2	30	Cleanshelf
KAM 3	<b>1,725,350</b>	May 2016 & Prior	2	60	Nakumatt Holdings Limited
KAM 20	<b>1,688,789</b>	Sep 2016 & Prior	2		
KAM 25	<b>1,681,382</b>	Nov 2015 – Nov 2016	13	30	Khetia Diapers Ltd
KAM 6	<b>1,657,306</b>	March- Dec 2013	10	60	Nakumatt Holdings LTD
KAM 26	<b>1,550,120</b>	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS -UKUNDA
KAM 12	<b>1,545,491</b>	Dec 2014 - Sept 2016	22	90	Tusky
KAM 13	<b>1,540,245</b>	Aug ,Sept , Oct , Nov And More Than 122 Days	4	60	NAIVAS LTD
KAM 17	<b>1,523,719</b>	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - KUBWA(NKR)

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	1,486,964	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - NGONG TOWN
KAM 8	1,471,786	2013 -2015	36	60	UCHUMI
KAM 22	1,471,786	2013 -2015	36	30	UCHUMI
KAM 12	1,384,764	Oct-Nov 2016	2	90	Tumaini
KAM 25	1,382,314	JUNE 2016 TO 30/11/2016	6	30	Majid Al Futtaim Hypermarkets Ltd
KAM 26	1,354,094	1-30 Days , 31 – 60 Days	5	0	NAIVAS LIMITED
KAM 17	1,341,914	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS -GITHURAI
KAM 1	1,315,422	>90 Days	3	30	ShivlingSuoermarket Ltd
KAM 6	1,297,544	More Than 122 Days	3	60	NAKUMATT RWANDA LTD
KAM 20	1,286,825	Nov 2016 , Oct 2016 And > 60 Dyas	2	45	Ukwala Supermarket Ltd
KAM 1	1,269,018	Nov 2016 , Oct 2016 And > 60 Days	2	30	Quick Mart Limited
KAM 25	1,232,362	Oct-Nov 2016	2	30	Khetias
KAM 24	1,206,622	Jun 2016 –Nov 2016	5	30	Chandarana

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	1,192,724	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - GREEN HSE
KAM 10	1,156,179	APR - OCT 2016	7	60	NAKUMATT
KAM 10	1,156,179	APR - OCT 2016	7	60	NAKUMATT
KAM 24	1,144,489	AUGUST 2016 TO 30/11/16	3	30	Chandarana Supermarkets Ltd
KAM 15	1,068,913	June To July 2016	2	30	Uchumi Supermarket
KAM 25	1,054,038	Nov And Oct 2016 , >60 Days	2	30	Mathai Supermarket Ltd
KAM 20	1,048,569	More Than 122 Days	4	0	UCHUMI SUPERMARKETS LTD
KAM 20	1,046,405	>90 Days	3	30	Ukwala
KAM 1	994,171	>90 Days	3	30	Peter Mulei
KAM 12	983,674	Nov 2016 And Oct 2016	2	14	Sweet World Supermarket
KAM 4	973,114	Jan 2013 – Sept 2015	33	60	Tusker Mattresses Ltd
KAM 12	966,598	1-30 Days , 31 -60 Days , More Than 120 Days	4	90	TUSKER MATTRESSES LIMITED
KAM 1	964,714	Oct-Nov 2016	2	30	Quickmart
KAM 25	958,903	JULY 2016 TO 30/11/2016	5	30	Choppies Enterprises Limited

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	912,641	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS -KISII BRANCH
KAM 24	881,136	Oct-Nov 2016	2	30	Chandarana
KAM 25	880,109	Jan 2013 – Nov 2016	35	30	Khetiadrappers Ltd
KAM 12	876,559	>90 Days	3	30	Tumaini Self
KAM 19	873,132	OVER DUE 342 - 405 DAYS	13	30	Uchumi Supermarkets
KAM 8	861,310	PARTLY 2013/2014/2015	30	0	TUSKER MATTRESSES LTD
KAM 12	851,587	>90 Days	3	30	Sweet World
KAM 22	842,366	May 2015 To November 2016	19	30	Uchumi
KAM 25	799,540	>90 Days	3	15	Maguna Super Store
KAM 12	743,312	Nov 2016 And Oct 2016	2	30	Tumaini Self Service Ltd.
KAM 1	729,496	More Than 120 Days	4	0	NAKUMATT HOLDINGS LTD.
KAM 17	661,508	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - MAKONGENI
KAM 17	646,924	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS -BAMBURI

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 1	638,343	>90 Days	3	15	Quickmart Ltd
KAM 4	623,436	>60days	2	60	Uchumi Supermarket Ltd.
KAM 24	564,790	Aug ,Sept , Oct , Nov And More Than 122 Days	4	60	CHANDARANA SUPERMARKET LTD
KAM 1	546,234	>90 Days	3	14	Powerstar
KAM 25	485,289	>90 Days	3	15	Choppies
KAM 25	479,834	SEPTEMBER 2016 - DECEMBER 2016	4	60	MAJID AL FUTTAM HYPERMARKETS LTD (CARREFOUR)
KAM 24	469,424	May 2016 - 21/ Dec/16	7	30	Carrefour
KAM 30	466,130	May-June 2015	2	30	Uchumi Supermarket
KAM 1	463,494	Nov 2016 And Oct 2016	2	30	Society Stores.
KAM 20	455,277	2011 & Jul-15	4	0	Uchumi Supermarket Ltd
KAM 25	448,291	Nov 2016 And Oct 2016	2	30	Kassmatt S/M - Thika
KAM 20	425,504	Feb 2013 – Dec 2014	23	0	Uchumi Supermarkets Ltd
KAM 17	407,077	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS DOWNTOWN-Naku
KAM 25	404,835	Nov 2016 =And Oct 2016	2	30	Mathai Supermarket-Ronald Ngala

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 25	<b>403,181</b>	Nov 2016 And Oct 2016	2	30	Kassmatt S/M - Jumbo
KAM 1	<b>399,204</b>	>90 Days	3	30	Society Stores
KAM 20	<b>396,712</b>	Oct-Nov 2016	2	60	Woolmatt
KAM 4	<b>393,820</b>	2013 - MAY2016	41	60	TUSKYS
KAM 20	<b>359,110</b>	Sep 2012 – Feb 2016	31	30	Ukwala Supermarkets (Kisumu)
KAM 25	<b>352,733</b>	Nov 2016 And Oct 2016	2	30	Gilani's Supermarket Ltd
KAM 20	<b>338,589</b>	July To November 2016	5	30	Ukwala Nairobi
KAM 7	<b>304,562</b>	Jan 2013 – Dec 2014	24	30	Naivas Ltd
KAM 1	<b>299,629</b>	>60 Dyas	2	30	Smartprice Stores Ltd
KAM 17	<b>274,018</b>	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS LIMURU
KAM 13	<b>269,539</b>	2014 - OCT 2016	34	60	NAIVAS
KAM 3	<b>260,341</b>	Feb 2014 – Jun 2015	28	30	Tusker Mattresses Ltd
KAM 25	<b>244,412</b>	Nov-Dec	2	30	Gilanis
KAM 20	<b>243,610</b>	Aug ,Sept , Oct , Nov And More Than 122 Days	4	60	UKWALA SUPER MARKET(NRB) LTD

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	239,546	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS -GARISSA
KAM 1	238,360	Oct 2016 – Nov 2016	2	30	Stage Mattresses ( Nakuru)
KAM 18	234,647	Aug ,Sept , Oct , Nov And More Than 122 Days	4	30	Choppies Enterprise Kenya Ltd
KAM 10	224,000	2014-2015	24	60	Nakumatt
KAM 11	222,899	July 2015 – Nov 2016	17	60	Uchumi
KAM 20	219,854	Nov 2016 And Oct 2016	2	30	Woolmatt Limited
KAM 13	215,000	2014-2015	2	30	Naivas
KAM 20	188,439	Aug 2016 & Prior	2	30	
KAM 25	188,250	DEC 2015 -SEP 2016	10	60	EASTLEIGH MATRESSES
KAM 4	183,105	June 2016 - 21/ Dec/16	7	60	Tuskys
KAM 20	183,097	Mar 2014 – Nov 2016	20	30	Yatin Ltd
KAM 1	182,546	JUNE 2015 -OCT2016	17	60	PETER MULLEI & SONS S/M
KAM 25	180,302	Nov 2016 And Oct 2016	2	30	J D'S Kenya Limited.
KAM 25	164,080	Oct , Nov And More Than 122 Days	3	90	MAJIDAL FUTTAIM HYPERMARKETS LIMITED

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 1	<b>161,139</b>	JUNE - OCT 2016	5	30	SPEAR S/M
KAM 1	<b>151,310</b>	MAY - OCT 2016	6	60	QUICKMART S/M
KAM 26	<b>141,796</b>	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST-2016 JULY- -2016- & BEYOND	5	0	NAIVASHA SELF S. STO
KAM 12	<b>138,641</b>	Feb 2013 – Jun 2015	28	60	Trans Mattreses Ltd
KAM 25	<b>136,021</b>	MAY - JUN2016	2	60	KAYMART S/M
KAM 25	<b>136,021</b>	MAY - JUNE 2016	2	60	KAYMART S/M
KAM 1	<b>126,904</b>	Jul 2014 – March 2015	17	30	Shivling Supermarket Ltd
KAM 24	<b>120,000</b>	Sept - Oct 16	2	30	Chandarana
KAM 13	<b>119,501</b>	Oct 2016 - 21/Dec/16	3	60	Naivas
KAM 24	<b>109,225</b>	JAN - OCT 2016	5	60	CHANDARANA S/M
KAM 17	<b>101,081</b>	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS GITHUNGURI
KAM 31	<b>97,787</b>	Mar 2014 – Feb 2015	11	30	Uchumi Supermarkets Ltd
KAM 24	<b>96,295</b>	Nov-Dec	2	30	Chandarana
KAM 25	<b>94,556</b>	JUN - AUG 2016	3	60	EBRAHIM & COMPANY
KAM 20	<b>93,635</b>	Dec 2015 - Aug 2016	9	30	Ukwala
KAM 25	<b>93,174</b>	JUN - JULY 2016	2	60	CIENI S/M



**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 3	<b>88,228</b>	Oct-November 2013	2	30	Tusker Mattresses Ltd
KAM 25	<b>85,392</b>	Oct-Nov	2	30	Gilanis
KAM 18	<b>76,957</b>	March-Sept	6	30	Choppies
KAM 27	<b>75,697</b>	Over 2 Years	24	60	Uchumi Supermarkets
KAM 7	<b>72,287</b>	May 2012 – Feb 2015	34	30	Naivas Ltd
KAM 25	<b>70,047</b>	NOV 2014 - SEP 2016	23	60	CLEANSHELF S/M
KAM 25	<b>70,047</b>	2014-SEPT 2016	21	60	CLEANSHELF S/M
KAM 24	<b>69,703</b>	February To November 2016	10	30	Chandarana
KAM 8	<b>68,380</b>	MARCH - AUG 2016	5	45	TWINSET LTD
KAM 20	<b>67,860</b>	Sep 2012 – April 2016	34	30	Ukwala Supermarket Nakuru Ltd
KAM 4	<b>64,000</b>	2014-2015	24	60	Tuskys
KAM 1	<b>52,139</b>	Nov 2016 And Oct 2016	2	30	Powerstar Supermarket.- Express
KAM 3	<b>51,252</b>	July 2015 – Nov 2016	17	30	Tuskys
KAM 1	<b>47,462</b>	Nov 2016 And Oct 2016	2	30	Powerstar Supermarket -Kasrani.
KAM 12	<b>45,538</b>	JUL - OCT2016	4	30	TUMAINI SUPERMARKET
KAM 25	<b>44,370</b>	May-Nov	7	30	Eldomatt
KAM 25	<b>42,510</b>	Nov 2015 – April 2016	6	30	Mama Watoto Supermarkets

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 25	32,714	Dec 2016 –May 2016	6	30	Kasturi Supermarkets Ltd
KAM 12	31,435	2014-2015	24	30	TESIA S/M
KAM 25	30,226	SEP 2015-JULY2016	11	60	KHETIA DRAPERS
KAM 25	25,866	Jul 2016 – Aug 2016	2	30	Choppies Enterprises (K) Ltd
KAM 26	25,628	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS-THIKA
KAM 17	25,491	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - EXPRESS THI
KAM 25	25,425	Aug 2012 – Jan 2015	30	30	Eldo Supermarkets
KAM 1	24,797	PARTLY 2013/2014/2015	30	30	NAKUMATT HOLDINGS LTD
KAM 25	24,188	MAY 2015 -AUG 2016	16	60	KASTURI S/M
KAM 25	22,607	AUG 2014 - AUG2016	25	60	FRANKMATT S/M
KAM 20	20,660	Oct 2016 And > 60 Days	2	30	Waiyaki Way Supermarket
KAM 25	20,276	>60 Days	2	30	Kai Mart Supermarket

**Annex 2 (a): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for over 60 days (2 months)**

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 17	19,689	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - UTAWALA
KAM 20	19,525	Nov – Dec 2015	2	45	
KAM 17	17,137	NOVEMBER--2016 OCTOBER--2016 SEPTEMBER --2016 AUGUST--2016 JULY- -2016- & BEYOND	5	0	NAIVAS - HOMABAY(SAM
KAM 1	1,934	>60 Days	3		Saltes Limited.
	1,606,829,156				

**Annex 2 (b): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for less than 60 days**

Annex 2 (b): KAM Members Owings by Retailers as at 31 <sup>st</sup> December 2016 - Amount owed for less than 60 days					
Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 12	220,000,000	<October 2016	1	30	Supermarkets
KAM 7	25,712,696	Dec-16	1	14	Naivas
KAM 6	24,091,690	16-Aug	1	60	Nakumatt Holdings LTD
KAM 6	21,570,997	16-Sep	1	60	Nakumatt Holdings LTD
KAM 6	16,232,368	16-Oct	1	60	Nakumatt Holdings LTD
KAM 6	15,565,224	16-Jul	1	60	Nakumatt Holdings LTD
KAM 13	4,599,372	Nov	1	30	Naivas
KAM 1	3,702,898	Dec-16	1	21	Peter Mulei (Mulleys)
KAM 25	3,231,567	Nov-16	1	30	Mulleys Supermarket.
KAM 20	2,959,415	Dec-16	1	30	Ukwala NAIROBI
KAM 6	1,483,187	16-Mar	1	60	Nakumatt Holdings LTD
KAM 13	1,400,857		1	30	Naivas
KAM 25	1,019,973	Nov-16	1	30	Cleanshelf Supermarket Ltd
KAM 8	960,000	Febuary 2016	1	60	Uchumi
KAM 25	938,510	Nov-16	1	30	Magunas Super Stores (K) Ltd.
KAM 6	810,076	16-Jun	1	60	Nakumatt Holdings LTD
KAM 25	800,280	Nov	1	30	Mathai
KAM 20	717,446	Dec-16	1	60	Ukwala ELDORET
KAM 25	686,007	Nov	1	30	Magunas
KAM 25	529,008	Nov	1	30	Eastmatt
KAM 31	402,637	20 April 2015	1	30	Uchumi Supermarkets Ltd
KAM 6	368,828	16-Feb	1	60	Nakumatt Holdings LTD
KAM 6	251,189	16-Jan	1	60	Nakumatt Holdings LTD
KAM 11	230,840	Oct-15	1	60	Uchumi Supermarket
KAM 5	217,880	31.05.2016	1	60	UCHUMI SUPERMARKET
KAM 25	188,725	Nov-16	1	30	Kassmatt S/M - Githurai
KAM 1	178,077	Oct-16	1	60	QUICK BUDGET STORES
KAM 25	140,418	Sep-16	1	60	MOMBASA MERCANTILE LTD
KAM 20	107,696	Oct-16	1	30	Yatin Ltd
KAM 1	105,945	Nov-16	1	30	Powerstar Supermarket - Old
KAM 25	99,689	Nov-16	1	30	Kassmatt S/M - Mwiki
KAM 25	98,146	Nov-16	1	30	Majid Al Futtaim Hypermarket Ltd.
KAM 25	95,729	Nov-16	1	30	Kamindi Selfridges Ltd. (Kiambu)

Annex 2 (b): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for less than 60 days

Company	Amount Owed	Period Owed	Estimated months owed	Agreed Payment Period	Supermarket
KAM 1	94,518	Nov-16	1	30	Powerstar Supermarket - Kitengela.
KAM 25	94,096	Oct-16	1	30	Karry Mart.
KAM 6	90,814	16-May	1	60	Nakumatt Holdings LTD
KAM 21	82,500	16-Oct	1	30	Nakumatt
KAM 25	73,920	Nov-16	1	30	GILANI'S SUPERMARKET LTD
KAM 25	71,458	Dec-16	1	30	Game Discount
KAM 1	64,636	Nov-16	1	30	Powerstar Supermarket - Hyper
KAM 25	54,054	Nov-16	1	30	Leestar Supermarket - Ruiru
KAM 25	53,137	Nov-16	1	30	Fairmatt Supermarket
KAM 1	50,647	Nov-16	1	30	Powerstar Supermarket - Kangari
KAM 1	49,182	Nov-16	1	30	Powerstar Supermarket - Jambo
KAM 28	45,101	15-Sep	1	60	Nakumatt Holdings Ltd
KAM 24	42,090	Nov-16	1	30	Al-Maida Traders Ltd
KAM 20	42,000	16-Aug	1	15	Ukwala
KAM 25	37,781	Sep-16	1	60	JAMJOS ENT
KAM 20	37,236	Jul-16	1	30	WESTERNMART S/M
KAM 25	32,670	Oct-16	1	60	MAJID AL FUTTAIM HYPERMARKET
KAM 6	31,806	16-Apr	1	60	Nakumatt Holdings LTD
KAM 25	20,463	Nov-16	1	30	Leestar Supermarket-Githurai.
KAM 25	18,541	Nov-16	1	30	Kassmatt S/M-Kasarani
KAM 25	17,764	Jul-15	1	60	COUNTY S/M
KAM 1	15,316	Nov-16	1	30	Powerstar Supermarket - Zimmer
KAM 1	6,412	Sep-15	1	30	Nakumatt Holdings Ltd
KAM 20	6,269	Aug-12	1	30	Ukwala Supermarket ( Nakuru ) Ltd
KAM 20	6,080	Jul-09	1	30	Ukwala Supermarket Ltd
KAM 1	5,773	Jan-14	1	30	Smart Home Supermarkets Ltd
KAM 1	4,558	May-16	1	30	Suam Supermarket Ltd
KAM 20	1,419	Mar-16	1	60	Ukwala Supermarket
	<b>350,647,612</b>				

**Annex 2 (c): KAM Members Owings by Retailers as at 31<sup>st</sup> December 2016 - Amount owed for periods unknown**

	Amount Owed	Period Owed		Agreed Payment Period	Supermarket
KAM 32	8,076,132	N/A	N/A	30	Uchumi
KAM 2	2,166,023	N/A	N/A	30	Tusker Mattress
KAM 6	1,561,899	N/A	N/A	30	Nakumatt
KAM 6	1,467,382	N/A	N/A	30	Nakumatt
KAM 8	1,144,459	N/A	N/A	90	Uchumi
KAM 1	203,945	N/A	N/A	60	Spears
KAM 1	91,833	N/A	N/A	30	Quick Mart
KAM 1	31,416	N/A	N/A	30	Nan Matt
KAM 1	21,004	N/A	N/A	30	Quick Mart
KAM 4	18,802	N/A	N/A	60	Tusker Mattress
KAM 1	11,776	N/A	N/A	30	Nan Matt
	14,794,670				

### Annex 3 - Suppliers/manufacturers proposed code of practice

#### SUPPLIERS AND RETAILERS CODE OF PRACTICE

Developed by Kenya Association of Manufacturer and Retailers Association of Kenya

#### Interpretation

(1) In this Code:

“purchase department” means those employees of a Retailer whose role from time to time includes at least one of the following: direct involvement in buying Goods for resale the interpretation and application of the provisions of the Code, the management for any or all of those employees described above provided that it excludes the Code Compliance Officer who shall be nominated from the retailer’s marketing department as non interested party in the procurement process.

“Code Compliance Officer” means the person whom from time to time will intervene or oversee the procurement, payment process and supplies returns.

“De-list” means to cease to purchase Goods for resale from a Supplier.

“Good complete supply chain practice” means any compensation or inducement in any form (monetary or otherwise) and includes mutually agreed contractual terms.

“Head of purchasing” means, in relation to any individual Supplier, the employee or employees within a Retailer’s Buying Team who are responsible for overseeing from time to time for the day-to-day buying functions of the Retailer in respect of that individual Supplier

“Promotion” means any offer for sale through a mutually agreed mechanism, whether or not accompanied by some other benefit to consumers and that is intended to subsist only for a specified period.

“Reasonable Notice” means a period of notice, the reasonableness of which will depend on the circumstances of the individual case, including:

- ☐ the duration of the Supply Agreement/joint business plan to which the notice relates, or the frequency with which orders are placed by the Retailer for relevant Goods
- ☐ the characteristics of the relevant goods including durability, seasonality and external factors affecting their production;
- ☐ the value of any relevant order relative to the turnover of the Supplier in question
- ☐ the overall impact of the information given in the notice on the business of the Supplier, to the extent that this is reasonably foreseeable by the Retailer

“Retailer” means any person carrying on a business in Kenya for actual retail of goods for the retail market.

“tribunal” means the Suppliers and Retailers payment disputes tribunal as established under section 18 of the code

“Category buyer” means in relation to any individual Supplier, an employee (or employees) within a Retailer’s Buying Team, who manages the Primary Category buyer (or Primary Category buyers) for that Supplier (or is otherwise at a higher level than the Primary Category buyer within the management structure of the Retailer)

“Shrinkage” means losses that occur after goods are delivered to a Retailer’s premises and arise due to theft, damage, internal accounting error, internal loss or any other internal aspect of the retailer’s chain.

“Damage” means Goods which become unfit for sale subsequent to them being delivered to Retailers

“Supplier” means any person carrying on (or actively seeking to carry on) a business in the direct supply to any Retailer of goods for resale in the Kenyan market, and includes any such person established anywhere in the world.

“Joint Business Plan” means an agreement defining agreed terms of a certain agreed time for as far as product volumes, rebates, agreed share of shelf positioning and payment movement of goods by both parties for

business growth and development and supply chain efficiency.

Proviso;

Compliance with the Code does not exclude any person from, or restrict the application of, the Competition Act no. 12 of 2010 laws of Kenya.

## 2.1 PART II; FAIR DEALING

### 2. Principle of fair dealing

A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the Suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.

A Retailer may require particular actions on the part of a Supplier if the relevant Supplier does not agree, whether or not in response to a request or suggestion from the Retailer, to undertake an action in response to ordinary commercial pressures. Where those ordinary commercial pressures are partly or wholly attributable to the Retailer, they will only be deemed to be ordinary commercial pressures where they do not constitute or involve duress (including economic duress), are objectively justifiable and transparent and result in similar cases being treated alike. The burden of proof will fall on the Supplier to demonstrate that, on the balance of probabilities, an action was not Required by the Retailer

A supplier must at all times deal with its retailers fairly and lawfully. Fair and lawful dealing will be understood as requiring the supplier to conduct its trading relationships with retailers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the retailers' need for certainty as regards the risks and costs of trading, particularly in relation to stocking levels cash flow and product movement.

## PART III; VARIATION

### Variation of Supply Agreements/Joint Business Plans and terms of supply

3. Subject to paragraph 3(1), a Retailer must not vary any Supply Agreement/Joint Business Plan retrospectively, and must not request or require that a Supplier consent to retrospective variations of any Supply Agreement.

(1) A Retailer may make an adjustment to terms of supply which has retroactive effect where the relevant Supply Agreement sets out clearly and unambiguously:

- (a) any specific change of circumstances (such circumstances being outside the Retailer's control) that will allow for such adjustments to be made; and
- (b) detailed rules that will be used as the basis for calculating the adjustment to the terms of supply.

(2) If a Retailer has the right to vary a Supply Agreement unilaterally, it must give Reasonable Notice of any such variation to the Supplier.

### Changes to supply chain procedures

4. A Retailer must not directly or indirectly require a Supplier to change significantly any aspect of its supply chain procedures during the period of a Supply Agreement or Joint Business Plan unless that Retailer gives Reasonable Notice of such change to that Supplier in writing.



#### 4.1 PART IV; PRICES AND PAYMENTS

##### **No delay in Payments**

5. (a) A Retailer must pay a Supplier for Goods delivered to that Retailer's specification in accordance with the relevant Joint Business Plan. Any anomalies in the documents should be notified to the supplier within 14 days and action for the same should be resolved within the following 7 days by the supplier.

Should the payment be due, the retailer should pay a substantial amount or the undisputed invoices to enable the supplier continue trading.

The disputed invoices should be settled within 30 calendar days from date of statement once amicably agreed by both parties.

(b) Disputes arising as a result of delayed payments or dispute claims shall be handled by the Suppliers and Retailers payment disputes tribunal established under section 18 of this code

##### **No obligation to contribute to marketing costs**

6. Unless provided for in the relevant Supply Agreement or Joint Business Plan or mutually agreed between the Retailer and the Supplier, a Retailer must not, directly or indirectly, require a Supplier to make any Payment towards that Retailer's costs of:

- (a) category buyer visits to new or prospective Suppliers;
- (b) artwork or packaging design;
- (c) consumer or market research;
- (d) the opening or refurbishing of a store or;
- (e) hospitality for that Retailer's staff;
- (f) listing a product

##### **Payments for shrinkage**

7. A Supply Agreement must not include provisions under which a Supplier makes Payments to a Retailer as compensation for Shrinkage unless otherwise proved that the supplier was negligent. Supplier should assist retailer in training in product knowledge to reduce shrinkage.

##### **Payments for Damage**

8. Damages are inevitable as part of retail trade.

A Retailer must not directly or indirectly require a Supplier to make any Payment to cover any Wastage of that Supplier's Goods incurred at that Retailer's stores unless:

- (a) such Wastage is due to the negligence or default of that Supplier, and the relevant Supply Agreement/JBP sets out expressly and unambiguously what will constitute negligence or default on the part of the Supplier; or
- (b) the basis of such Payment is set out in the Supply Agreement/JBP where Swell agreement is applicable, an agreed percentage shall suffice and anything over and above shall be borne by the retailer.

##### **Limited circumstances for Payments as a condition of being a Supplier**

9. A Retailer must not directly or indirectly require a Supplier to make any Payment as a condition of stocking or listing that Supplier's goods unless such Payment:

- (a) is made in relation to a Promotion; or
- (b) is made in respect of goods which have not been stocked, displayed or listed by that Retailer during the preceding 365 days in 25 per cent or more of its stores, and reflects a reasonable estimate

by that Retailer of the risk run by that Retailer in stocking, displaying or listing such new products.

(c) any signatory to this code should not engage in unethical practice during listing.

### **Compensation for forecasting errors**

10(1) A Retailer must fully compensate a Supplier for any cost incurred by that Supplier as a result of any forecasting error in relation to products and attributable to that Retailer unless:

(a) that Retailer has prepared those forecasts in good faith and with due care, and following consultation with the Supplier; or (b) the Supply Agreement/JBP includes an express and unambiguous provision that full compensation is not appropriate.

(2) A Retailer must ensure that the basis on which it prepares any forecast has been communicated to the Supplier.

## **11.1 PART V; PROMOTIONS**

### **Payments for better positioning of goods**

12. A Retailer must not directly or indirectly Require a Supplier to make any Payment in order to secure better positioning or an increase in the allocation of shelf space for any goods of that Supplier within a store unless such Payment is made in relation to a Promotion.

### **Promotions**

13(1) where a Retailer directly or indirectly requires any Payment from a Supplier in support of a Promotion of one of that Supplier's Grocery products, a Retailer must only hold that Promotion after Reasonable Notice has been given to that Supplier in writing. For the avoidance of doubt, a Retailer must not require or request a Supplier to participate in a Promotion where this would entail a retrospective variation to the Supply Agreement.

(2) Where a retailer wishes to do an internal promotion, the retailer shall give reasonable prior notice to the supplier of the promotion allowing the supplier the chance to either decline or accept to participate in the promotion if it has not been taken care of in the Joint Business Plan.

### **Due care to be taken when ordering for Promotions**

14(1) A Retailer must take all due care to ensure that when ordering goods from a Supplier at a promotional wholesale price, not to over-order, and if that Retailer fails to take such steps it must compensate that Supplier for any Goods over ordered and which it subsequently sells at a higher non-promotional retail price.

(2) Any compensation paid in relation to paragraph 14(1) above will be the difference between the promotional wholesale price paid by the Retailer and the Supplier's non-promotional wholesale price.

(3) A Retailer must ensure that the basis on which the quantity of any order for a Promotion is calculated is transparent

## **14.1 PART VI; OTHER DUTIES**

### **No unjustified payment for consumer complaints**

15(1) Subject to paragraph 15(3) below, where any consumer complaint can be resolved in store by a Retailer refunding the retail price or replacing the relevant goods, that retailer must not directly or indirectly require a Supplier to make any Payment for resolving such a complaint unless:

(a) the Payment does not exceed the retail price of the Grocery product charged by that Retailer; and

(b) that Retailer is satisfied on reasonable grounds that the consumer complaint is justifiable and attributable to negligence or default or breach of a consensus between the supplier and the retailer.

(2) Subject to paragraph 15(3) below, where any consumer complaint cannot be resolved in store by a Retailer refunding the retail price or replacing the relevant goods that Retailer must not directly or indirectly require a Supplier to make any Payment for resolving such a complaint unless:

- (a) the Payment is reasonably related to that Retailer's costs arising from that complaint;
- (b) that Retailer has verified that the consumer complaint is justifiable and attributable to negligence or default on the part of that Supplier;
- (c) a full report about the complaint (including the basis of the attribution) has been made by that Retailer to that Supplier; and
- (d) the Retailer has provided the Supplier with adequate evidence of the fact that the consumer complaint is justifiable and attributable to negligence or default or breach of a Supply Agreement on the part of the Supplier.

(3) A Retailer may agree with a Supplier an average figure for Payments for resolving customer complaints as an alternative to accounting for complaints in accordance with paragraphs 15(1) and 15(2) above. This average figure must not exceed the expected costs to the Retailer of resolving such complaints.

## 16. Duties in relation to De-listing

(1) A Retailer may only De-list a Supplier for genuine commercial reasons. For the avoidance of doubt, the exercise by the Supplier of its rights under any Supply Agreement (including this Code) or the failure by a Retailer to fulfil its obligations under the Code or this Order will not be a genuine commercial reason to De-list a Supplier.

(2) Prior to De-listing a Supplier, a Retailer must:

- ☐ provide Reasonable Notice to the Supplier of the Retailer's decision to De-list, including written reasons for the Retailer's decision. In addition to the elements identified in paragraph 1(1) of this Code, for the purposes of this paragraph 'Reasonable Notice' will include providing the Supplier with sufficient time to have the decision to De-list reviewed using the measures set out in paragraphs 16(2)(b) and 16(2)(c) below;
- ☐ inform the Supplier of its right to have the decision reviewed by senior management, as described in paragraph 17 of this Code; and
- ☐ Allow the Supplier to attend an interview with the Retailer's Code Compliance Officer to discuss the decision to De-list the Supplier.
- ☐ where the supplier and retailer agree to move the delisted product to a reasonably agreed product, the retailer shall allow the supplier reasonable time to implement the agreement.

## Senior Category buyer

17(1) A Retailer's Senior management Category buyers will, on receipt of a written request from a Supplier, review any decisions made by the Retailer in relation to the Code or this Order.

(2) A Retailer must ensure that a Supplier is made aware, as soon as reasonably practicable, of any change to the identity and/or contact details of the Senior Category buyer for that Supplier.

(3) A retailer should at any given time provide information of the contact person to the suppliers.

(4) A retailer should at any given time provide information to the suppliers of the relevant contact person.

Suppliers and Retailers payment disputes tribunal

18 (1) there is hereby established the suppliers and retailers payment disputes tribunal which shall act as the dispute resolution body for all disputes arising under this code.

(2) The tribunal shall be constituted of five persons, two nominated by the Retrak - retailer's umbrella body

and two nominated by KAM, the supplier's umbrella body respectively while the fifth shall be a person of outstanding experience in the area procurement appointed through consensus by a panel nominated by the two umbrella bodies.

(3) The tribunal's determination shall be based on a popular vote arrived at by the two of the three members of the tribunal.

(4) the decision of the tribunal shall be binding on all the parties party to the dispute before it.

(5) the tribunal shall be the initial forum for redress for all disputes arising out of this code. It shall however not be a bar to further redress in the judiciary.

#### Annex 4 - Retailers proposed code of practice

### SUPPLIERS AND RETAILERS CODE OF PRACTICE

Developed by Retail Trade Association of Kenya

June 2017

#### Interpretation

(1) In this Code:

"purchase department" means those employees of a Retailer whose role from time to time includes at least one of the following: direct involvement in buying Goods for resale the interpretation and application of the provisions of the Code, the management for any or all of those employees described above provided that it excludes the Code Compliance Officer who shall be nominated from the retailer's marketing department as non interested party in the procurement process.

"Code Compliance Officer" means the person whom from time to time will intervene or oversee the procurement, payment process and supplies returns.

"De-list" means to cease to purchase Goods for resale from a Supplier.

"Good complete supply chain practice" means any compensation or inducement in any form (monetary or otherwise) and includes mutually agreed contractual terms.

"Head of purchasing" means, in relation to any individual Supplier, the employee or employees within a Retailer's Buying Team who are responsible for overseeing from time to time for the day-to-day buying functions of the Retailer in respect of that individual Supplier

"Promotion" means any offer for sale through a mutually agreed mechanism, whether or not accompanied by some other benefit to consumers and that is intended to subsist only for a specified period.

"Reasonable Notice" means a period of notice, the reasonableness of which will depend on the circumstances of the individual case, including:

- ☐ the duration of the Supply Agreement/joint business plan to which the notice relates, or the frequency with which orders are placed by the Retailer for relevant Goods
- ☐ the characteristics of the relevant goods including durability, seasonality and external factors affecting their production;
- ☐ the value of any relevant order relative to the turnover of the Supplier in question
- ☐ the overall impact of the information given in the notice on the business of the Supplier, to the extent that this is reasonably foreseeable by the Retailer

"Retailer" means any person carrying on a business in Kenya for actual retail of goods for the retail market.

"tribunal" means the Suppliers and Retailers payment disputes tribunal as established under section 18 of the

code

“Category buyer” means in relation to any individual Supplier, an employee (or employees) within a Retailer’s Buying Team, who manages the Primary Category buyer (or Primary Category buyers) for that Supplier (or is otherwise at a higher level than the Primary Category buyer within the management structure of the Retailer)

“Shrinkage” means losses that occur after goods are delivered to a Retailer’s premises and arise due to theft, damage, internal accounting error, internal loss or any other internal aspect of the retailer’s chain.

“Damage” means Goods which become unfit for sale subsequent to them being delivered to Retailers

“Supplier” means any person carrying on (or actively seeking to carry on) a business in the direct supply to any Retailer of goods for resale in the Kenyan market, and includes any such person established anywhere in the world.

“Joint Business Plan” means an agreement defining agreed terms of a certain agreed time for as far as product volumes, rebates, agreed share of shelf positioning and payment movement of goods by both parties for business growth and development and supply chain efficiency.

Proviso;

Compliance with the Code does not exclude any person from, or restrict the application of, the Competition Act no. 12 of 2010 laws of Kenya.

## **2.1 PART II; FAIR & ETHICAL DEALING**

### **2. Principle of fair dealing**

A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the Suppliers’ need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.

A Retailer may require particular actions on the part of a Supplier if the relevant Supplier does not agree, whether or not in response to a request or suggestion from the Retailer, to undertake an action in response to ordinary commercial pressures. Where those ordinary commercial pressures are partly or wholly attributable to the Retailer, they will only be deemed to be ordinary commercial pressures where they do not constitute or involve duress (including economic duress), are objectively justifiable and transparent and result in similar cases being treated alike. The burden of proof will fall on the Supplier to demonstrate that, on the balance of probabilities, an action was not Required by the Retailer

A supplier must at all times deal with its retailers fairly and lawfully. Fair and lawful dealing will be understood as requiring the supplier to conduct its trading relationships with retailers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the retailers’ need for certainty as regards the risks and costs of trading, particularly in relation to stocking levels cash flow and product movement. Any signatory to this code should not engage in unethical practice during listing or in the discharge of any of its functions in the code.

Trade confidentialities shared between supplier to a retailer in the normal line of business shall not be disclosed except upon the lapse of a year from the date they were revealed

Trade confidentialities shared between retailer to a supplier in the normal line of business shall not be disclosed except upon the lapse of a year from the date they were revealed

### **PART III; VARIATION**

#### **Variation of Supply Agreements/Joint Business Plans and terms of supply**

3. A Supply agreements/Joint Business plans shall be mandatory in the supplier retailer relationship under this code

(1). Subject to paragraph 3(2), a Retailer must not vary any Supply Agreement/Joint Business Plan retrospectively, and must not request or require that a Supplier consent to retrospective variations of any Supply Agreement.

(2) A Retailer may make an adjustment to terms of supply which has retroactive effect where the relevant Supply Agreement sets out clearly and unambiguously:

(a) any specific change of circumstances (such circumstances being outside the Retailer's control) that will allow for such adjustments to be made; and

(b) detailed rules that will be used as the basis for calculating the adjustment to the terms of supply.

(3) If a Retailer has the right to vary a Supply Agreement unilaterally, it must give Reasonable Notice of any such variation to the Supplier.

(4) Unfulfilled supply casefills as per agreed in the Supply Agreement or Joint Business Plan, shall attract penalties due to loss of business

(5) Discriminatory practices by suppliers will be considered unethical and punishable by the Tribunal

(6) Suppliers should communicate to the public on any anticipated shortages and supply constraints

#### **Changes to supply chain procedures**

4. A Retailer must not directly or indirectly require a Supplier to change significantly any aspect of its supply chain procedures during the period of a Supply Agreement or Joint Business Plan unless that Retailer gives Reasonable Notice of such change to that Supplier in writing.

### **4.1 PART IV; PRICES AND PAYMENTS**

#### **No delay in Payments**

5. (a) A Retailer must pay a Supplier for Goods delivered to that Retailer's specification in accordance with the relevant Joint Business Plan. Any anomalies in the documents should be notified to the supplier within 14 days and action for the same should be resolved within the following 7 days by the supplier. Provided that abnormalities in documents relating to deliveries of perishable goods are notified 24 hours or at the earliest possible opportunity thereafter.

disputed invoices should be settled within 30 calendar days from date of statement once amicably agreed by both parties.

(b) Disputes arising as a result of delayed payments or dispute claims shall be handled by the Suppliers and Retailers payment disputes tribunal established under section 18 of this code

#### **No obligation to contribute to marketing costs**

6. Unless provided for in the relevant Supply Agreement or Joint Business Plan or mutually agreed between the Retailer and the Supplier, a Retailer must not, directly or indirectly, require a Supplier to make any Payment towards that Retailer's costs of:

- a) category buyer visits to new or prospective Suppliers;
- b) the opening or refurbishing of a store or;
- c) hospitality for that Retailer's staff;

**Payments for shrinkage**

7.1 A Supply Agreement must not include provisions under which a Supplier makes Payments to a Retailer as compensation for Shrinkage unless otherwise proved that the supplier was negligent.

7.2 Supplier should assist retailer in training in product knowledge to reduce shrinkage.

7.3 Any wrong and non-conforming barcoding will result in a fine to the Supplier. The fine shall be Kshs.150,000 per barcode error.

7.5 Supplier is accountable for delivering accurate quality and quantities

**Payments for Damage**

8. Damages are inevitable as part of retail trade.

A Retailer must not directly or indirectly require a Supplier to make any Payment to cover any damages of that Supplier's Goods incurred at that Retailer's stores unless:

- (a) such damages are due to the negligence or default of that Supplier, and the relevant Supply Agreement/JBP sets out expressly and unambiguously what will constitute negligence or default on the part of the Supplier; or
- (b) the basis of such Payment is set out in the Supply Agreement/JBP where Swell agreement is applicable, an agreed percentage shall suffice and anything over and above shall be borne by the retailer.

**Payments for price changes**

A supplier shall at all times upon the decrease of a supplier's product's price, issue a debit to the retailer on all benefits accrued by the supplier on the sales of the product's old supplies made in the new decreased price before the products in respect of which the decrease is made are supplied.

**Limited circumstances for Payments as a condition of being a Supplier**

9. A Retailer must not directly or indirectly require a Supplier to make any Payment as a condition of stocking or listing that Supplier's goods unless such Payment:

- (a) is made in relation to a Promotion; or
- (b) is made in respect of goods which have not been stocked, displayed or listed by that Retailer during the preceding 365 days in 25 per cent or more of its stores, and reflects a reasonable estimate by that Retailer of the risk run by that Retailer in stocking, displaying or listing such new products.

**11.1 PART V; PROMOTIONS****Payments for better positioning of goods**

12. A Retailer must not directly or indirectly Require a Supplier to make any Payment in order to secure better positioning or an increase in the allocation of shelf space for any goods of that Supplier within a store unless such Payment is made in relation to a Promotion.

**Promotions**

13(1) where a Retailer directly or indirectly requires any Payment from a Supplier in support of a Promotion of one of that Supplier's Grocery products, a Retailer must only hold that Promotion after Reasonable Notice has been given to that Supplier in writing. For the avoidance of doubt, a Retailer must not require or request a Supplier to participate in a Promotion where this would entail a retrospective variation to the Supply Agreement.

(2) Where a retailer wishes to do an internal promotion, the retailer shall give reasonable prior notice to the

supplier of the promotion allowing the supplier the chance to either decline or accept to participate in the promotion if it has not been taken care of in the Joint Business Plan.

(3) The payments for promotions shall be deducted from Suppliers due payments.

### **Due care to be taken when ordering for Promotions**

14(1) A Retailer must take all due care to ensure that when ordering goods from a Supplier at a promotional wholesale price, not to over-order.

(2) A Retailer must ensure that the basis on which the quantity of any order for a Promotion is calculated is transparent

## **14.1 PART VI; OTHER DUTIES**

### **No unjustified payment for consumer complaints**

15(1) Subject to paragraph 15(3) below, where any consumer complaint can be resolved in store by a Retailer refunding the retail price or replacing the relevant goods, that retailer must not directly or indirectly require a Supplier to make any Payment for resolving such a complaint unless:

- (a) the Payment does not exceed the retail price of the Grocery product charged by that Retailer; and
- (b) that Retailer is satisfied on reasonable grounds that the consumer complaint is justifiable and attributable to negligence or default or breach of a consensus between the supplier and the retailer.

(2) Subject to paragraph 15(3) below, where any consumer complaint cannot be resolved in store by a Retailer refunding the retail price or replacing the relevant goods that Retailer must not directly or indirectly require a Supplier to make any Payment for resolving such a complaint unless:

- (a) the Payment is reasonably related to that Retailer's costs arising from that complaint;
- (b) that Retailer has verified that the consumer complaint is justifiable and attributable to negligence or default on the part of that Supplier;
- (c) a full report about the complaint (including the basis of the attribution) has been made by that Retailer to that Supplier; and
- (d) the Retailer has provided the Supplier with adequate evidence of the fact that the consumer complaint is justifiable and attributable to negligence or default or breach of a Supply Agreement on the part of the Supplier.

(3) A Retailer may agree with a Supplier an average figure for Payments for resolving customer complaints as an alternative to accounting for complaints in accordance with paragraphs 15(1) and 15(2) above. This average figure must not exceed the expected costs to the Retailer of resolving such complaints.

## **16. Duties in relation to De-listing**

(1) A Retailer may only De-list a Supplier for genuine commercial reasons. For the avoidance of doubt, the exercise by the Supplier of its rights under any Supply Agreement (including this Code) or the failure by a Retailer to fulfil its obligations under the Code or this Order will not be a genuine commercial reason to De-list a Supplier.

(2) Prior to De-listing a Supplier or a product, a Retailer must:

- ☐ provide reasonable notice to the Supplier of the Retailer's decision to De-list. In addition to the elements identified in paragraph 1(1) of this Code, for the purposes of this paragraph 'Reasonable Notice' will include providing the Supplier with sufficient time to have the decision to De-list reviewed using the measures set out in paragraphs 16(2)(b) and 16(2)(c) below;
- ☐ inform the Supplier of its right to have the decision reviewed by senior management as described







REPUBLIC OF KENYA

**MINISTRY OF INDUSTRY, TRADE  
AND COOPERATIVES**

STATE DEPARTMENT FOR TRADE

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