

# MEMORANDUM OF UNDERSTANDING

CHOICES FLOORING LIMITED



DATE [#insert]

## PARTIES

- + **CHOICES FLOORING LIMITED** (NZCN 5777434), c/o Covisory C&A Limited Partnership, 301/6-8 Heather Street, Parnell, Auckland 1052, New Zealand (**Choices Flooring**)
- + **#[INSERT PARTY NAME]** [(#(NZCN [#insert]))] of [#insert address] (**Store**)

For the purposes of this Memorandum the parties above are collectively referred to as Parties to the Memorandum.

## BACKGROUND

- A. Choices Flooring is incorporated in New Zealand.
- B. Choices Flooring is a related subsidiary of Newfurn Floor Coverings Ltd (“**Newfurn**”).
- C. Newfurn operates a significant floor covering marketing and buying retail group in Australia.
- D. With support from Newfurn, Choices Flooring intends to establish a floor covering marketing and buying retail group in New Zealand, provided that it can establish a sufficient number of floor covering stores that are interested in joining the proposed Choices Flooring group (“**Proposed Group**”).
- E. The Store intends to join the Proposed Group if it has sufficient commitments within six (6) months of the date of this Memorandum.
- F. Although the Memorandum is not intended to be legally binding on the Parties (with the exception of any confidentiality obligations set out in this Memorandum), it:
  - (i) sets out a brief summary of the understanding of the proposed relationship between, and obligations of, the Parties, if the Store joins the Proposed Group upon its establishment; and
  - (ii) indicates, by the Store signing it, the Store’s non-binding genuine interest in joining the Proposed Group, should it be established.

## OPERATIVE PART

### 1. AGREED TERMS OF MEMORANDUM AGREEMENT

---

- 1.1 With the exception of clauses 2 and 3 , the proposed obligations of the Parties set out in this Memorandum are subject to the Parties signing the binding Membership Agreement (“**Agreement**”), the draft form of which is attached to this Memorandum (“**Draft Agreement**”).
- 1.2 Unless indicated otherwise, terms that are defined in the Draft Agreement have the same meaning in this Memorandum.

- 1.3 The Store acknowledges that, in relation to the key obligations to be imposed on it, the Agreement will contain obligations on the Store to:
- (a) ensure that the Store's premises ("**Premises**") is fitted out, stocked and rebranded in accordance with Choices Flooring's requirements and using its Intellectual Property;
  - (b) obtain any necessary council or government registrations or licenses with respect to the Premises and the operation of the Business;
  - (c) pay to Choices Flooring various amounts including without limitation, the Initial Fee, the Marketing Fee and the Membership Fee;
  - (d) provide such security (including personal guarantees, charges over company property, bank guarantees and mortgages over real property) as required by Choices Flooring;
  - (e) ensure that all of its purchases of the Preferred Products are made through orders that are placed with Choices Flooring in accordance with its centralised billing system ("**Centralised Billing System**");
  - (f) ensure that it does not make any unauthorised use or disclosure of Choices Flooring's Confidential Information; and
  - (g) ensure that it complies with all of its obligations set out in the Agreement in relation to Choices Flooring's Intellectual Property.
- 1.4 Choices Flooring acknowledges that, in relation to the key obligations to be imposed on it, the Agreement will contain obligations on Choices Flooring to:
- (a) source and advise on product ranges, trends and opportunities, including the Preferred Product Lines;
  - (b) provide and / or procure that the following will be provided to the Store:
    - (i) sample books of the Preferred Product Lines;
    - (ii) a recommended price list book for the Preferred Product Lines;
    - (iii) a list of Choices Flooring's suppliers of the Preferred Product Lines; and
    - (iv) all relevant manuals;
  - (c) use its best efforts to maintain the availability of the Preferred Product Lines to the Store and to locate and obtain adequate supplies of new product lines at competitive prices;
  - (d) provide reasonable access to expert knowledge, experienced management and office systems appropriate to the Preferred Product Lines;
  - (e) provide access to training programs that Choices Flooring considers appropriate for the operation of a floor covering business by the Store;

- (f) assist the Store in connection with the marketing activities of the Proposed Group; and
- (g) when the Store pays an account by the due date using the Centralised Billing System, provide the Store with a 1% discount on the applicable invoice amount.

**2. CONFIDENTIALITY**

The Parties must keep confidential and not, without the consent of the other party, disclose to any person other than their respective legal and financial advisers and to the extent required by law:

- (a) the existence of this Memorandum;
- (b) any terms and particulars of this Memorandum;
- (c) any facts and circumstances which resulted in the Parties entering into this Memorandum; and
- (d) the matters discussed during the negotiations and the outcome of the negotiations.

**3. GOVERNING LAW**

This Memorandum is governed by the law of New Zealand and the Parties submit to the jurisdiction of the tribunals and courts of New Zealand in relation to disputes concerning this Memorandum.

**EXECUTED AS AN AGREEMENT**

Signed by:.....	Witness:.....
Print Name: ..... Authorised representative of <b>Choices Flooring Limited</b>	Witness Name:

Signed by:.....	Witness:.....
Print Name: ..... Authorised representative of <b>the Store</b>	Witness Name: