

MEMBERSHIP AGREEMENT

Dated _____

BETWEEN CHOICES FLOORING LIMITED (NZCN 5777434) c/o Covisory C & A Limited Partnership, 301/6-8 Heather Street, Parnell, Auckland 1052 (**"Choices Flooring"**)

AND The person whose name and address is detailed in Item 2 of Schedule 1 (**"Member"**)

RECITALS

- A. Choices Flooring is incorporated in New Zealand and Choices Group members primarily comprise floor covering retailers involved in buying and marketing floor coverings and related goods and services.
- B. Choices Flooring organises on behalf of Choices Group members collective buying facilities, the promotion of the Preferred Product Lines and the supply or manufacture of the Preferred Products. In addition, Choices Flooring also grants licenses to Choices Group members to use Choices Flooring's Trade Marks and other Intellectual Property to sell the Preferred Products and the Preferred Product Lines, and complimentary services.
- C. The Member carries on or will carry on business at the premise/s detailed in Item 5 of Schedule 1 (**"Licensed Outlets"**).
- D. The relationship between the Member and Choices Flooring is one of mutual co-operation and respect. The core purpose of the activities of the Choices Group, unless otherwise resolved by its members, is to provide services to each of its members to assist them to be more successful as floor covering retailers.
- E. Choices Flooring recognises that the Member is an independent floor covering retailer which is free to conduct, manage and dispose of its business in any way it sees fit. If in the reasonable opinion of Choices Flooring the Member's conduct has damaged or may damage the Choices reputation or operations and the Member fails to respond to Choices Flooring's request to stop such action, the Member is free to continue to carry on such actions by choosing to resign as a Member of the Choices Group or this Agreement may be terminated.
- F. The Member and Choices Flooring have agreed to record in this Agreement in terms of the benefits and obligations of the relationship, the licence arrangements relating to the Member's use of the Trade Marks and the Member's trading terms in acquiring the Preferred Products from Choices Flooring.

OPERATIVE PROVISIONS

1. GRANT OF MEMBERSHIP

1.1 The Member acknowledges that it is the objective of Choices Flooring to promote a strong and viable network of retail floor covering outlets trading under the Trade Marks. In order to achieve this objective Choices Flooring will from time to time admit new members to the Choices Group and grant to the new members a licence to use the Trade Marks.

1.2 Subject to satisfaction of the pre-conditions in clause 1.3 and in consideration of the Member paying the Membership Fees and otherwise complying with its obligations under this Agreement, Choices Flooring grants to the Member the right to operate as a Member of the Choices Group from the Licensed Outlets for the Term on the terms of this Agreement.

1.3 The following are pre-conditions to this membership:

- (a) each Licensed Outlet being fitted out and stocked in accordance with Choices Flooring's requirements prior to the Commencement Date;
- (b) the Member obtaining any council or government registrations or licenses with respect to each Licensed Outlet and the operation of the Business;
- (c) the payment to Choices Flooring of the Initial Fee and any other amounts payable to Choices Flooring or a related company;
- (d) the proper execution by the Member, all directors or shareholders of the Member and any other person Choices Flooring reasonably requires, of trading or supply account applications;
- (e) the completion by the Member or its Manager of Choices Flooring's initial training program to the satisfaction of Choices Flooring;
- (f) the Initial Stock being acquired and installed or stored in the Licensed Outlets; and
- (g) the payment for the Initial Stock.

1.4 If any of the preconditions contained in clause 1.3 are not satisfied on or prior to the Commencement Date, Choices Flooring may immediately terminate this Agreement by written notice.

2. INTELLECTUAL PROPERTY

2.1 Choices Flooring, subject to clause 2.5, grants to the Member a non-exclusive and non-transferable licence for the Term of this Agreement to use:

- (a) the Trade Marks and other Intellectual Property solely in the manner directed from time to time by Choices Flooring, and in any case, solely in connection with the sale of floor coverings from the Licensed Outlets;
- (b) the “Choices Flooring” name as part of the Member’s trading or business name under which business is to be conducted at the Licensed Outlets, provided that the Member has given to Choices Flooring a signed, but undated notice of cessation of its business name, by which notice the Member authorises Choices Flooring to date and lodge on termination of this Agreement for any reason; and
- (c) Choices Flooring’s signs, emblems, logos, insignia or colour schemes on business stationery, documents, vehicles, garments or any other goods for use in the operation of the Member’s business from the Licensed Outlets.

2.2 The Member will not without prior written consent of Choices Flooring:

- (a) include any reference to any Unidentified Outlets in any advertisements by the Member;
- (b) attach to any catalogues, handbills or other electronic or printed material provided by Choices Flooring any other material, including any additional letter or advertising material, other than material that is of an appropriate nature and relevant to floor coverings retailing;
- (c) in the Licensed Outlets place or display (including any signs, emblems, lettering, posters, point of sale material, advertising, logos, stands or other like material) the products from Non Preferred Suppliers so as to give those Non Preferred Suppliers’ products dominance over the display of the Preferred Products;
- (d) disclose to any other person at any time (whether during the Term of this Agreement or after) any Confidential Information and without limiting the generality of the foregoing the Member must do or cause to be done everything reasonably possible to keep confidential to itself and Choices Flooring all Confidential Information.

2.3 The Member agrees that it will:

- (a) do everything reasonable to prevent Choices Flooring’s Trade Marks or Choices Flooring’s goodwill and reputation from being adversely affected; and
- (b) immediately comply with any written request from Choices Flooring to protect Choices Flooring’s Intellectual Property or to remedy any breach by the Member of its obligations under clause 2.2 or 2.3(a).

- 2.4 All goodwill and other rights which accrue in respect of the use by the Member of Choices Flooring's Trade Marks pursuant to the license conferred under clause 2.1, accrues exclusively for the benefit of Choices Flooring and the Member has no proprietary or other rights in respect of any goodwill, Trade Marks and any other Intellectual Property.
- 2.5 Where Choices Flooring and the Member agree in writing that the Member may operate the Licensed Outlets (or any of them) as non-identified stores the Member:
- (a) will not be licensed to use the Trade Marks in accordance with clause 2.1 in respect of the non-identified stores; and
 - (b) must not in respect of the non-identified stores offer for sale, consignment or otherwise deal with or sell any of the Preferred Product Lines.

In all other respects the obligations of the Member as outlined in this Agreement will continue to apply and be adhered to by the Member.

3. CHOICES FLOORING'S OBLIGATIONS

- 3.1 Choices Flooring on signing this Agreement will provide, or will procure the following are provided, to the Member:
- (a) sample books of the Preferred Product Lines;
 - (b) a Choices Flooring recommended price list book for the Preferred Product Lines in a format and manner deemed appropriate by Choices Flooring;
 - (c) a list of Choices Flooring's suppliers of the Preferred Product Lines; and
 - (d) Choices Group Documentation.
- 3.2 During the Term of this Agreement Choices Flooring will at its discretion provide to the Member from time to time the following Services:
- (a) use its best efforts to maintain the availability of Preferred Product Lines to the Choices Group and to locate and obtain adequate supplies of new product lines at prices which are competitive with other retail suppliers of similar floor coverings;
 - (b) provide reasonable access to expert knowledge, experienced management and office systems appropriate to the Preferred Products Lines;
 - (c) access to training programs that Choices Flooring considers

appropriate for the operation of a floor coverings business by the Member; and

(d) assist with marketing activities for the Choices Group.

3.3 Choices Flooring reserves the right to vary the provision of the Services to the Member having regard to turnover and the geographical location of the Member's Licensed Outlets.

3.4 During the Term of this Agreement Choices Flooring:

(a) will provide the following to the Member in respect of any meetings organised for Choices Group members by Choices Flooring:

(i) written notice of the meeting; and

(ii) a written agenda of the business to be transacted at the meeting in question,

which will be provided not less than fourteen (14) days prior to the date of the meeting.

(b) may from time to time arrange for meetings or conferences (for marketing, training and other presentations) for Choices Group members at the members' expense (unless otherwise advised by Choices Flooring) and the Member agrees to attend such meetings or conferences where requested by Choices Flooring, and pay to Choices Flooring its share of the total costs of the said meetings and conferences if requested to do so.

4. OPERATIONAL

4.1 Unless a different period is otherwise agreed in writing by Choices Flooring, the Member will within fourteen (14) days of signing this Agreement at the Member's expense:

(a) erect in a manner approved by Choices Flooring all signage required by Choices Flooring to show that the Member is a licensed Member of the Choices Group;

(b) ensure that the Licensed Outlets are painted in a manner approved by Choices Flooring in accordance with Choices Flooring's approved colour scheme and will to the fullest extent possible, use all other signs, emblems, logos, insignia and advertising materials provided by or as subsequently directed by Choices Flooring;

(c) adopt staff uniforms and stationery in a manner consistent with that approved from time to time by Choices Flooring for use by the Member in the Licensed Outlets; and

- (d) connect computer (hardware and software), telephone and such other office facilities to a standard required by Choices Flooring and maintain those facilities for the Term of this Agreement.

4.2 During the Term of this Agreement the Member must unless authorised in writing by Choices Flooring:

- (a) at all times keep the Licensed Outlets including all shop, store and other areas adjoining them in a clean and hygienic condition;
- (b) present and maintain the Licensed Outlets to the standard and quality determined from time to time by Choices Flooring (including such refurbishment as may be required by Choices Flooring in accordance with the then current image for the Choices Group);
- (c) attend all training programs convened by Choices Flooring in accordance with clause 3.2(c);
- (d) maintain adequate insurance, including public liability insurance (incorporating product liability risk) and fire insurance for its business;
- (e) not join or become a Member of or have any financial interest (whether direct or indirect) in any association, group, company or organisation (other than Choices Flooring) which concerns the joint buying, selling, marketing or advertising of floor covering products or associated goods;
- (f) not to offer for sale, consignment or otherwise deal with or sell any of the Exclusive Choices Products other than for retail sale to the public from the Member's Licensed Outlets. Without limiting the generality of the above, the Member agrees not to sell or make available (whether on consignment or any other basis) any of the Exclusive Choices Products to any other floor covering retailer or to any person who it is reasonable to suspect may on sell the Exclusive Choices Products;
- (g) not to sell or make available any Preferred Product Line to:
 - (i) any floor covering retailer; or
 - (ii) any other person,
 who, it is reasonable to suspect, may on sell the Preferred Product Line; and
- (h) not to conduct or operate (whether in respect of the Licensed Outlets or Unidentified Outlets) a direct billing account with any Preferred Supplier.

4.3 Choices Flooring may from time to time impose:

- (a) a levy on the Member on terms and conditions as Choices Flooring reasonably determines desirable for Choices Flooring's funding requirements, which levy is to be imposed by Choices Flooring on all members which conduct business under the Choices Group using the Trade Marks; and/or
- (b) a levy on the Member determined by Choices Flooring on a geographical basis where the majority of Choices Flooring's members in the relevant geographical area have approved the imposition of the levy for a specific purpose.

The Member agrees to pay to Choices Flooring any such levies in accordance with Choices Flooring's trading terms. If the levies received exceed Choices Flooring's requirements, Choices Flooring may retain the surplus funds to further Choices Flooring's objectives or apply credit or offer any surplus funds pro-rata against any amounts owed by the Member to Choices Flooring.

4.4 If Choices Flooring implements an integrated computer network or a uniform accounting procedure for Choices Group members or other like system, the Member agrees:

- (a) to acquire the necessary equipment to allow the Licensed Outlets to be connected to that network or to comply with the uniform accounting procedures for all members of Choices Flooring; and
- (b) to maintain that equipment and adhere to the operational requirements to ensure the utilisation of the network or the accounting system for the benefit of all members.

4.5 The Member acknowledges that any Services, benefits or privileges provided to it by Choices Flooring under this Agreement are to be used exclusively by the Member at its Licensed Outlets and not for any other business conducted by the Member. The Member acknowledges that its primary responsibility is to maximise retail sales of the Preferred Product Lines at the Licensed Outlets. The parties agree that nothing in this clause limits the operation of the Member's business as carried on at the date of this Agreement to the extent that:

- (a) within the Licensed Outlets the Member has other business operations which are complementary to the retail sale of floor coverings (for example the sale of floor rugs or window furnishings);
- (b) the other business operations referred to in paragraph (a) are confined to a single section of the Licensed Outlets; and
- (c) the display of the products relating to the other business referred to in

paragraph (a) are not displayed in a way which in the opinion of Choices Flooring dominates the business operations carried on by the Member at the Licensed Outlets.

- 4.6 The parties agree that the Member is free to continue or to open Unidentified Outlets which are not identified or held out as forming part of the Choices Group. Prior to opening an Unidentified Outlet the Member must inform Choices Flooring in writing of the location of the proposed Unidentified Outlet. Further the Member undertakes not to sell the Preferred Product Lines from Unidentified Outlets.

5. CONDUCT OF MEMBER'S BUSINESS

5.1 The Member will:

- (a) at all times strictly comply with the *Consumer Guarantees Act 1993* (NZ), the *Fair Trading Act 1986* (NZ), the *Commerce Act 1986* (NZ) and all other applicable corresponding fair trading legislation;
- (b) at all times comply with the *Privacy Act 2020* (NZ) and its associated Regulations;
- (c) obtain at its own expense all required permits and comply with all applicable laws and regulations (including employment) relating to the conduct of its business from the Licensed Outlets;
- (d) use its best endeavours to properly operate the business at the Licensed Outlets and, where the Member is a company, ensure that the Nominated Manager devotes his or her complete attention to the conduct of the business at the Licensed Outlets;
- (e) comply with the conditions of all of Choices Flooring's plans and schemes at any time for in-store promotions, window dressing, stock displays and market development generally.

5.2 The Member will in a proper and businesslike manner carry on business and at all times maintain an adequate display of the Preferred Product Lines to give prominence at the Licensed Outlets to Choices Flooring's Preferred Product Lines. To this end the Member must:

- (a) keep the Licensed Outlets open during normal business hours,
- (b) appropriately display all floor coverings (including the Preferred Product Lines) in all Licensed Outlets including having the Licensed Outlets appropriately cleaned, lit, managed, staffed, and all proper systems in place;
- (c) properly maintain adequate books of account;

- (d) give prompt, courteous, friendly and efficient service to all customers and in all dealings with customers and suppliers, act fairly and ethically; and
- (e) provide the highest levels of service quality to all customers.

5.3 The Member:

- (a) is to use its best endeavours to support Choices Flooring's Preferred Suppliers concerning the purchase of products for sale at the Licensed Outlets;
- (b) must not commit Choices Flooring to any liability or obligation, or use Choices Flooring's name to obtain finance or credit for the Member's business without Choices Flooring's prior written authority;
- (c) acknowledges that except as provided to the contrary in this Agreement the Member must **not** represent to anyone that:
 - (i) the Member or its business is owned or operated by Choices Flooring or has any other association with Choices Flooring, save for being a Member of the Choices Group;
 - (ii) Choices Flooring has any financial or proprietary interest in the Member's business; or
 - (iii) the Member is Choices Flooring's agent, employee or consultant.

5.4 Where Choices Flooring is of the opinion that, having regard to the geographical location of the Licensed Outlets and the potential market for sales of the Preferred Products from the Licensed Outlets, the Member is not:

- (a) achieving sufficient retail turnover levels; or
- (b) purchasing adequate quantities of the Preferred Product Lines (being floor coverings as distinct from underlay);

in either case to justify the continued support and provision by Choices Flooring of the Services to the Member in accordance with this Agreement, Choices Flooring may specify any reasonable turnover and purchase targets in respect of the Preferred Product Lines for the Member.

5.5 The Member will have such period as determined by Choices Flooring (being not less than 3 months) to achieve the turnover and purchase targets specified by Choices Flooring under clause 5.4. Where those turnover and purchase targets are not achieved by the Member in the period provided by Choices Flooring, the Member will be deemed to be in breach of this Agreement.

6. MEMBER'S TRADING

- 6.1 The Member agrees to provide Choices Flooring with any financial information which may assist Choices Flooring to provide or renew a suitable credit facility in either case concerning the Member's future or existing indebtedness to Choices Flooring or its Preferred Suppliers. The Member must at its own cost provide such security (including personal guarantees, charges over company assets, bank guarantees and mortgages over real property) as required from time to time by Choices Flooring in its absolute discretion.
- 6.2 The Member acknowledges that:
- (a) Choices Flooring may grant credit to the Member, but if credit is granted it may be withdrawn at any time if:
 - (i) Choices Flooring is satisfied on reasonable grounds that the Member is or may be unable to meet any of its financial commitments to Choices Flooring; or
 - (ii) credit insurance for the Member in accordance with clause 6.1 is refused, cancelled or varied;
 - (b) Choices Flooring may withdraw any credit granted to the Member and demand immediate payment of all moneys due and payable if a resolution to that effect is made by Choices Flooring; and
 - (c) if the Member defaults in meeting its commitments to Choices Flooring as they fall due (whether acting as collection agent or in its personal capacity), Choices Flooring may demand payment in full of all moneys due and payable.
- 6.3 The Member appoints Choices Flooring to act as its agent from time to time on the Member's behalf to purchase the Preferred Products. Where the Member wishes to acquire the Preferred Products, the Member must, subject to clause 6.5, place the order on Choices Flooring's account with the Preferred Suppliers. Choices Flooring is authorised by the Member:
- (a) to make arrangements with the Preferred Suppliers as to the terms and conditions for the supply of the Preferred Product Lines; and
 - (b) to cancel any order or contract made with a Preferred Supplier by the Member.
- 6.4 The Member agrees and acknowledges that all purchases of the Preferred Products from the Preferred Suppliers will be invoiced by Choices Flooring through a centralised billing system ("**Centralised Billing System**").
- 6.5 The Member will remain liable to Choices Flooring for any debts, costs or expenses Choices Flooring incurs in respect of all purchases of Preferred Products made by or on behalf of the Member with a Preferred Supplier.

- 6.6 Choices Flooring agrees and acknowledges that, where the Member pays an account by its due date using the Centralised Billing System, Choices Flooring will provide the Member with the Discount on the applicable invoice amount.
- 6.7 Nothing in this Agreement obliges Choices Flooring to confirm or place any orders on behalf of the Member. Choices Flooring may at any time terminate the Member's authorisation to use Choices Flooring's account facilities with Preferred Suppliers in which case the Member may negotiate its own trading terms with the Preferred Suppliers.
- 6.8 Without limiting the Member's right to claim against any Preferred Supplier, the Member will have no claim of any nature against Choices Flooring for:
- (a) any delay in the delivery of, or refusal or inability to supply the Preferred Product Lines; or
 - (b) in any way arising out of any representations or warranties (whether express or implied by law to the extent permitted by the law) concerning the Preferred Products or the Preferred Product Lines.
- 6.9 The Member:
- (a) agrees that Choices Flooring accepts no risk to or loss of any products purchased pursuant to clause 6;
 - (b) acknowledges that at no time does ownership or risk in respect of the product supplied to the Member vest in Choices Flooring. Where Choices Flooring is in possession of or control of any product ordered by the Member, it does so in its capacity as bailee or agent (as the case may be) of the Member;
 - (c) agrees to comply with the Choices Group Documentation (which include the accounts reconciliation procedure) in respect to the Member's purchase of Preferred Product Lines, and advertising material from Choices Flooring. The Choices Group Documentation:
 - (i) specify the time and manner for payment of all accounts and invoices issued or sent by Choices Flooring (whether acting as collection agent or in its personal capacity);
 - (ii) entitle Choices Flooring to charge the Member interest on overdue accounts and the interest rate may be set and varied by Choices Flooring according to the amount of time that accounts have been outstanding; and
 - (iii) entitle Choices Flooring to withhold rebates, dividends, discounts or other credits from the Member; and
 - (d) acknowledges that nothing in this Agreement affects any retention of

title rights of any suppliers to the Member.

6.10 The Member will pay to Choices Flooring in accordance with the Choices Group Documentation:

- (a) any general levy imposed in accordance with clause 4.3;
- (b) all purchases of the Preferred Product Lines by Choices Flooring on the Member's behalf in accordance with clause 6;
- (c) any special Promotion levies in accordance with clause 8; and
- (d) any other fees, costs, expenses which are incurred by Choices Flooring on behalf of the Member.

6.11 The Member must provide to Choices Flooring on request in the form prescribed from time to time by Choices Flooring:

- (a) the gross retail sales figure of floor coverings for the relevant period;
- (b) the aggregate purchases of floor coverings made by the Member during the relevant period from all specified suppliers of floor coverings; and
- (c) if necessary under clause 6.1, a copy of the Member's financial statements (including profit and loss and balance sheet) as at the end of each financial year, or other specified period.

6.12 Choices Flooring agrees to do every act or thing reasonably possible to keep confidential to itself all information provided to it by the Member under this clause 6.

6.13 Without in any way limiting Choices Flooring's rights, the Member agrees that Choices Flooring may set off (in whole or in part) any amounts which are due or become due on any account whatever by Choices Flooring to the Member against any amounts which are due or become due by the Member to Choices Flooring on any account whatever. For the purpose of clarity the parties confirm that Choices Flooring's right of set off under this clause is not affected by and continues to apply where the Member is a body corporate despite the appointment of a receiver, manager, liquidator, administrator or other like appointment or, where the Member is a person, despite the bankruptcy of the Member or any form of arrangement concerning the Member's financial affairs.

7. MEMBER'S FINANCIAL OBLIGATIONS

7.1 As set out in clause 1.3(c) above, the Member must pay the Initial Fee in full on or before the execution of this Agreement.

7.2 The Member must pay the Royalty and Administration Fee each month to

Choices Flooring.

- 7.3 The Member must pay the Marketing Fee each month to Choices Flooring.
- 7.4 The Member must pay the Membership Fee each month to Choices Flooring.
- 7.5 The Member must not, on the grounds of alleged non-performance by Choices Flooring of any of its obligations or, for any other reason, withhold payment of any amount due whatsoever. Choices Flooring may set off against any payment due to the Member any unpaid debts of the Member of Choices Flooring or to any related company of Choices Flooring.
- 7.6 The Initial Fee, Royalty and Administration Fees, Marketing Fee, and all other amounts required to be paid to Choices Flooring in respect of a taxable supply are exclusive of GST. In addition to these amounts, the Member must pay to Choices Flooring the GST payable by Choices Flooring on the Services and goods supplied by it.

8. MARKETING

- 8.1 As part of the Choices Group, the Member:
- (a) will not, without the prior written approval of Choices Flooring, advertise any special promotional plans, including exclusive merchandise, in any media within 7 days prior to the commencement of a Promotional Period to be conducted by Choices Flooring;
 - (b) agrees to take part in all general promotions as referred to in clause 8.2 and any Special Promotion as referred to in clause 8.3.
- 8.2 Choices Flooring may from time to time conduct general promotions for the Choices Group or the Preferred Product Lines using press, radio, television, digital/electronic means or any other form of media announcements. General promotions may for example involve the publication of catalogues or similar printed material including the Member's name and addresses of the Licensed Outlets. The Member agrees:
- (a) to participate in all of Choices Flooring's general promotions;
 - (b) where the general promotion involves the publication and distribution of any catalogue or other printed material, to order a sufficient quantity of such material properly to service its distribution area (as determined by Choices Flooring); and
 - (c) to display prominently in all Licensed Outlets all promotional material required by Choices Flooring for the general promotions.
- 8.3 In addition to the Marketing Fee, the Member agrees to pay to Choices Flooring a levy to pay for any Special Promotion which is conducted by Choices Flooring

in accordance with clause 8.4, the amount of which levy is to be determined from time to time by Choices Flooring.

- 8.4 Where Choices Flooring proposes to conduct any special regional promotion (“**Special Promotion**”) and the majority of members in the geographical area which is to be the subject of the proposed Special Promotion agree that they will benefit from the Special Promotion, the Member agrees:
- (a) to pay to Choices Flooring an equitable proportion of the total costs of conducting the Special Promotions as reasonably determined by Choices Flooring;
 - (b) to participate in the Special Promotion;
 - (c) where the Special Promotion involves the publication and distribution of any catalogue or other printed material, to order a sufficient quantity of such material properly to service its distribution area (as determined by Choices Flooring); and
 - (d) to display all promotional material required by Choices Flooring for the Special Promotion.

8.5 The Member may in writing request a complete or partial exemption from participation in any proposed promotions to be conducted by Choices Flooring. Choices Flooring (or its authorised delegate) will consider any such request in its absolute discretion and either grant or refuse the request. Exemption will only be granted in exceptional circumstances.

8.6 The Member acknowledges that the reasonable costs of administering and auditing the fund will be paid for from the contributions of the members to the fund.

9. MEMBERSHIP CODE OF CONDUCT

9.1 The Member acknowledges that Choices Flooring has a substantial commitment to the reputation and growth of the Choices Group. As such the Member’s conduct can have a significant impact on the reputation of the Choices Group and the value of the businesses conducted by other Choices Flooring members. Choices Flooring has developed the Membership Code and the Choices Group Documentation in recognition of the foregoing. Accordingly the Member agrees to comply with:

- (a) the Membership Code and the Choices Group Documentation as amended from time to time by Choices Flooring; and
- (b) resolutions of the members of Choices Flooring passed at any general meeting of the Choices Group.

9.2 The services, benefits or privileges provided to the Member by Choices Flooring under this Agreement will be exclusively used by the Member at the Licensed

Outlets and not for the conduct by the Member of its business at the Unidentified Outlets or any business which is not associated with Choices Flooring.

- 9.3 The Member agrees that it will not do anything which may be detrimental to the reputation of Choices Flooring, the Choices Group or another member of Choices Flooring or Choices Flooring's suppliers.

10. INDEMNITY

- 10.1 The Member indemnifies and holds Choices Flooring harmless in respect of any demands, claims, costs, damages, liability, and loss (including in relation to any claim made by a third person) which may be made against or incurred by Choices Flooring (including all such costs or expenses incurred in defending any relevant proceedings, including reasonable lawyers' fees on a solicitor and own client basis) concerning:

- (a) the operation of the Member's business or arising out of any of the Services (or any other services provided by Choices Flooring under this Agreement), training, assistance or advice given by Choices Flooring pursuant to this Agreement;
- (b) any representations or comments made by the Member or any of its directors, employees or agents;
- (c) any negligence or wilful act or omission by the Member or any of its directors, employees or agents;
- (d) the breach by the Member of this Agreement; or
- (e) the Member's breach of applicable law.

- 10.2 This indemnity survives termination of this Agreement.

11. ASSIGNMENT AND TRANSFER

- 11.1 The Member may not assign, transfer or otherwise deal with (including encumber) its rights or benefits under this Agreement unless it has the informed written consent of Choices Flooring.

- 11.2 If a Member provides a written request to Choices Flooring to assign or transfer its rights or benefits under this Agreement in accordance with clause 11.1, Choices Flooring must not unreasonably withhold its consent.

- 11.3 Choices Flooring may withhold its consent to any request of the Member for the assignment or transfer of this Agreement if:

- (a) the proposed transferee is not likely to be able to meet the financial obligations that it would have under the Membership Agreement;

- (b) the proposed transferee does not agree, in writing, to comply with the obligations of the Member under this Agreement;
- (c) the Member has not paid or made reasonable provision to pay an amount owing to Choices Flooring; or
- (d) the Member has not remedied a breach of this Agreement.

11.4 For the purposes of this clause 11, any change of control of the Member is deemed to be an assignment to which clause 11.1 applies. In this clause, “**change of control**” means any transfer of shares or other arrangement affecting the Member or any member of its group which results in a change in the effective control of the Member.

12. GUARANTEES

12.1 Where the Member is a company, the Member if requested by Choices Flooring must procure that the shareholders of the Member and its directors execute a guarantee of the Member’s obligations under this Agreement and in respect of the trading debts incurred by the Member with Choices Flooring in such form as required by Choices Flooring in its absolute discretion.

12.2 The provisions of this clause do not limit or affect:

- (a) any security or guarantees that may be required in accordance with clause 6.1; or
- (b) any retention of title or similar claim by Choices Flooring, its Preferred Suppliers or any of the Member’s other suppliers.

13. TERM AND TERMINATION OF AGREEMENT

13.1 This Agreement commences on its execution and continues for the Initial Term unless it is terminated in accordance with clause 1.4 or 13.4.

13.2 At the conclusion of the Initial Term, the Agreement will automatically be renewed and it will continue until it is terminated in accordance with clause 13.3 or 13.4.

13.3 At any time after completion of the Initial Term, this Agreement may be terminated by either party by giving the other party at least six (6) months’ written notice.

13.4 If either party (“**Defaulting Party**”):

- (a) commits a breach of this Agreement, Membership Code and/or the Choices Group Documentation and that breach is not capable of remedy or, if capable of remedy, the Defaulting Party fails to remedy

such breach within 30 days of written notice from the other party (“**Non-defaulting Party**”) requiring such breach to be remedied;

- (b) acts in a way that is likely to substantially prejudice the reputation or goodwill of the Non-defaulting Party, in the case of the Member, or the Products or the Intellectual Property;
- (c) becomes insolvent or is made subject to an application for winding up or has a receiver (or similar functionary) or an administrator appointed or ceases or threatens to cease to carry on business or any other similar action occurs; or
- (d) is unable to perform a material obligation of this Agreement for one month or more due to Force Majeure,

then the Non-defaulting Party may terminate this Agreement immediately by giving written notice of termination to the Defaulting Party.

14. CONSEQUENCES OF TERMINATION

14.1 On the termination of this Agreement for any reason the licence granted under clause 2.1 will immediately terminate and the Member must immediately at its own cost:

- (a) cease using the Trade Marks and the Intellectual Property;
- (b) return to Choices Flooring all Confidential Information and samples of Choices Flooring’s exclusive Preferred Product Lines and not retain (whether in documents, electronic or in any other medium) any copies, extracts or notes compiled by reference to that Confidential Information;
- (c) remove from each of the Licensed Outlets and cease using all business stationery, documents, cheques, goods, vehicles, garments or any other things any names, signs, emblems, logos, insignia or colour schemes which might mislead or deceive any person into believing that the Licensed Outlets continue to be operated as a Member of the Choices Group or are in any way associated with Choices Flooring or the Choices Group;
- (d) lodge any necessary forms with the New Zealand Companies Office at Choices Flooring’s option to transfer to Choices Flooring’s nominee or to terminate all business names or company names used by the Member which include the Trade Marks or the Choices Group (or any of them); and
- (e) repay any moneys owing to Choices Flooring (whether on account of trading or for contributions, levies, fees, or other amounts determined by Choices Flooring pursuant to this Agreement) unless Choices

Flooring otherwise consents in writing.

14.2 If required by Choices Flooring the Member will co-operate with and authorise Choices Flooring and its agents:

- (a) to remove the Member's name and telephone number from any telephone listings which include reference to the Trade Marks;
- (b) to enter into the Licensed Outlets to remove at the Member's cost all identification signs, emblems, logos, insignia or colour schemes which might mislead or deceive any person into believing that the Licensed Outlets continue to be Choices outlets or are in any way associated with Choices Flooring or the Choices Group.

14.3 The Member acknowledges that Choices Flooring has invested substantial time and money in the development of the store display hardware, equipment and systems. On termination of this Agreement, Choices Flooring shall have the right but not the obligation to purchase the store display hardware, stands, equipment and samples used in the Member's business by:

- (a) delivering a written notice to the Member at any time within two (2) weeks after termination to purchase all or part of the display stands, equipment and samples;

and the Member agrees:

- (b) the purchase price shall be equal to the written down tax depreciated value of the items to be purchased by Choices Flooring;
- (c) if Choices Flooring and the Member cannot agree on the purchase price to be valued in the above manner, within two (2) weeks following Choices Flooring's exercise of its option to buy, the purchase price shall be determined by a chartered accountant appointed by a New Zealand member of the Council of the Chartered Accountants Australia and New Zealand (or their nominee) on the request of any party, who will determine the written down value as an expert, not as an arbitrator, and whose determination will be final under this clause except in the case of manifest error; and
- (d) all costs incurred in the valuation will be borne equally by both parties.

15. DISPUTE RESOLUTION

15.1 Should any dispute arise in respect of any of the provisions of this Agreement, the parties must comply with the following procedures:

- (a) Where a dispute arises between Choices Flooring and the Member, the complainant must set out in writing:

- (i) the nature of the dispute;
 - (ii) what outcome the complainant wants;
 - (iii) what action the complainant thinks will settle the dispute.
- (b) The parties must make every effort to resolve the dispute by mutual negotiation.
 - (c) In the event that the parties are unable to reach a resolution of the dispute within 3 weeks of the notice of dispute, either of the parties may by notice in writing, refer the matter to a mediator.
 - (d) If the parties cannot agree who should be the mediator, either party may ask the Chair of the Resolution Institute (or their nominee) to appoint a mediator.
 - (e) Mediation must be conducted in Auckland and the mediator may decide the time and the place for mediation.
 - (f) The mediator must deal with any matter as expeditiously as possible, but must not deal with the matter later than 30 days after referral to the mediator.
 - (g) The parties must report back to the mediator within 14 days, on actions taken, based on the outcome of the mediation.
 - (h) If at least 30 days have lapsed since the start of mediation and the dispute has not been resolved, either party may ask the mediator to terminate the mediation.

15.2 The parties agree that mediation must occur on the following terms:

- (a) The mediator will have the right to determine the time, place and procedures for the mediation.
- (b) The mediator is to be satisfied that both parties have made a determined and genuine effort to resolve the dispute and have cooperated with the mediator.
- (c) Proceedings of the mediator will be as informal as is consistent with the proper conduct of the matter and will allow the mediator to communicate privately with the parties or with their lawyers.
- (d) The parties to the mediation agree that:
 - (i) everything that occurs before the mediator will be in confidence and in closed session;

- (ii) all discussions will be without prejudice; and
 - (iii) no documents brought into existence specifically for the purpose of the conciliation process will be called into evidence in any subsequent litigation by either of the parties.
- (e) It will be the role of the mediator to act fairly, in good faith and without bias with the purpose of seeking a resolution of the dispute and will treat all matters in confidence.
- (f) Each of the parties must have the opportunity to adequately present their case.
- (g) The mediator will have regard to the fairness and reasonableness of any matters pertaining to a dispute.
- (h) Both parties of the mediation will bear:
- (i) the costs of mediation equally, unless agreed otherwise; and
 - (ii) their own costs of attending mediation.
- (i) The parties to the mediation will grant immunity from liability to the mediator.
- 15.3 If resolution of the dispute is not reached by mutual negotiation and mediation undertaken in accordance with this clause 15 is terminated in accordance with clause 15.1(h), the parties are free to take such steps as they wish to pursue their rights.
- 15.4 Nothing in this clause 15 prevents a party from seeking urgent interlocutory relief.
- 16. NOTICE**
- 16.1 A party giving notice or notifying under this Agreement must do so in writing to the recipient's address, in the case of Choices Flooring as detailed in Item 1 of Schedule 1 and, in the case of the Member as detailed in Item 2 of Schedule 1, as varied from time to time by written notice to the other party.
- 16.2 A notice given in accordance with clause 16 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post 3 days after the date of posting; or
 - (c) if sent by email, at the time of transmission specified in a sent report from the sender's transmission system, but not if the sender's

transmission system receives an automatically generated response such as an out of office notification or a delivery failure notification.

17. INTERPRETATION

17.1 Definitions

The following words have these meanings in this Agreement (and the recitals) unless the contrary intention appears:

“Business” is a reference to a business providing the Preferred Products or the Preferred Product Lines under the Choices Flooring name and logo and using the Intellectual Property;

“Choices Group” means the trading group constituted by Choices Flooring and Members using the Trade Marks;

“Choices Group Documentation” means any documents issued by Choices Flooring to its members (as amended from time to time) in connection with the Business, including, but not limited to, the accounting and administration (Operations) documents and marketing documents;

“Commencement Date” means the date set out in Item 6 of Schedule 1;

“Commercial Preferred Products” means commercial grade floor covering items including, without limitation, carpet tiles, commercial grade carpet and vinyl, adhesive and floor preparation accessories;

“Confidential Information” means all of Choices Flooring’s trade secrets and financial, marketing and technical information, ideas, concepts, know-how, technology, processes, procedures, policies, manuals, costing books, publications, material information and knowledge which is confidential or of a sensitive nature;

“Discount” means the discount provided by Choices Flooring to the Member in accordance with clause 6.6 and in the amount set out in Item 12 of Schedule 1;

“Domestic Preferred Products” means residential grade floor covering items including, without limitation, residential sheet vinyl, vinyl plank, luxury vinyl tiles, residential grade carpet and floating floors;

“Exclusive Choices Products” being products not available to retailers or wholesalers outside the Choices Group and being those lines identified from time to time in the Choices recommended price listing as exclusive products of the Choices Group;

“GST” means the Goods and Services Tax set out in the *Goods and Services Tax Act 1985* (NZ);

“Initial Fee” means the amount stated in Item 7 of Schedule 1;

“Initial Term” means the initial term set out in Item 13 of Schedule 1;

“Intellectual Property” means the Trade Marks and all Confidential Information, copyright, designs, Choices Flooring’s reputation, know-how, techniques, training courses, written materials, special systems and procedures, software and databases owned by Choices Flooring or created during the operation of the Choices Group, and all other intellectual property rights owned or used at any time by Choices Flooring in the context of the Choices Group;

“Initial Stock” means all Stock and samples required by the Member to commence the Business;

“Force Majeure” means an event that is beyond the reasonable control of a party, excluding an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care or a lack of funds for any reason;

“Licensed Outlets” means in respect of the Member the premise/s detailed in Item 5 of Schedule 1;

“Marketing Fee” means the amount set out in Item 9 of Schedule 1;

“Member” includes the employees and agents of the Member and, where the Member is a natural person, the permitted heirs, executors, administrators, and assigns of the Member or, if the Member is a company, its successors in title and permitted assigns and those claiming through or under them respectively;

“Membership Code” means the code of conduct for members of Choices Flooring as varied from time to time, the current version being set out in schedule 2;

“Membership Fee” means the amount stated in Item 10 of Schedule 1;

“Nominated Manager” means where the Member is a company, the person designated in Item 3 of Schedule 1 as the nominated manager for the Member;

“Non Preferred Suppliers” mean all product suppliers other than a Preferred Supplier;

“Preferred Suppliers” mean those suppliers nominated from time to time by Choices Flooring as being suppliers of the Preferred Product Lines;

“Preferred Products” or “Preferred Product Lines” means those Commercial Preferred Products and Domestic Preferred Products authorised by Choices Flooring from time to time as Choices labelled and/or Exclusive Choices

Products;

“Promotion Period” means the period during which Choices Flooring undertakes or proposes to undertake a marketing campaign under this Agreement;

“Royalty and Administration Fee” means the percentage stated in Item 8 of Schedule 1 of the Gross Sales;

“Services” mean the services set out in clause 3.2 and as varied in accordance with clause 3.3.

“Stock” includes all stationery, marketing material and other consumables used in the Membership by the Member;

“Tax Depreciated Value” means the written down value of the items calculated in accordance with the *Income Tax Act 2007* (NZ);

“Term” means the term of this Agreement, as set out clause 13.1;

“Trade Marks” means all logos, symbols, get up, trade names, service marks, brand names, business names, company names and similar rights (whether registered or unregistered), insignia, logos, colour schemes, domain names or internet addresses used by Choices Flooring from time to time in connection with the Choices Group, and all associated goodwill owned by Choices Flooring, including the trade marks listed in Item 11 of Schedule 1;

“Unauthorised Product Lines” means those products which are not manufactured or produced by Preferred Suppliers;

“Unidentified Outlets” means a floor covering or other store or retail businesses operated or owned by the Member, not being the Licensed Outlets.

17.2 In this Agreement unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) other grammatical forms of defined words and expressions have corresponding meanings;
- (c) words importing persons include firms, bodies corporate, unincorporated associations or authorities;
- (d) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes and assigns;
- (e) headings are for ease of reference only and do not affect the construction of this Agreement;
- (f) a reference to *writing* includes typewriting, printing, lithography,

photography and any other mode of representing or reproducing words, figures or symbols in a permanent and visible form;

- (g) any obligation not to do any thing will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- (h) *including* and similar terms do not imply limitation;
- (i) if any action is completed after 5.00pm on any day it will be deemed to have been done on the next working day;
- (j) where two or more persons comprise the Member, the agreements, covenants and obligations on the part of the Member will bind each of those persons jointly and severally; and
- (k) any approval or consent or similar of Choices Flooring required under this Agreement, the Membership Code and/or the Choices Group Documentation may be given or withheld at Choices Floorings sole and absolute discretion or given subject to such conditions as Choices Flooring may in its sole and absolute discretion require.

18. GENERAL

18.1 This Agreement is governed by the law applicable in New Zealand. Subject to clause 15, each party irrevocably and unconditionally submits to the exclusive jurisdiction of the tribunals and courts of New Zealand.

18.2 Acknowledgements:

- (a) The Member acknowledges and agrees that it has made its own independent enquiry and investigations in relation to the Business and the Choices Group and has entered into this Agreement in reliance solely on its own judgement and not in reliance on any statements, warranties or representations of Choices Flooring or any other person. Except as expressly provided in this Agreement, all express or implied (whether by statute or otherwise) statements, representations, conditions, guarantees, or warranties by or on behalf of Choices Flooring or any other person in connection with this Agreement (including any warranty under part 3 of the *Contract and Commercial Law Act 2017* (NZ)) are expressly excluded from this Agreement to the maximum extent permitted by law, and to the extent that they cannot be excluded, liability for them is limited to \$100.
- (b) The Member agrees and represents that it is acquiring the Preferred Products and the Services, and entering into this Agreement, for the purposes of trade. The parties agree:
 - (i) to the maximum extent permissible by law, that the *Consumer Guarantees Act 1993* (NZ) does not apply to the supply of the Preferred Products or the Services, or this Agreement;

- (ii) to contract out of sections 9, 12A and 13 of the *Fair Trading Act 1986* (NZ); and
 - (iii) it is fair and reasonable that the parties are bound by this clause 18.2(b).
- 18.3 Neither party is liable to the other for any failure to perform its obligations under this Agreement to the extent caused by Force Majeure, provided that the affected party:
 - (a) immediately notifies the other party and provides full information about the Force Majeure;
 - (b) uses best efforts to overcome the Force Majeure; and
 - (c) continues to perform its obligations to the extent practicable.
- 18.4 If, notwithstanding any other provision of this Agreement, Choices Flooring has liability to the Member, to the maximum extent permitted by law the maximum liability of Choices Group under or in connection with this Agreement or relating to the Services or the Preferred Products, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will not in any calendar year exceed the Membership Fee paid by the Member in the previous calendar year.
- 18.5 Neither party is liable to the other under or in connection with this Agreement for any consequential, indirect, incidental, or special damage or loss of any kind, including, without limitation, loss of profit, revenue, savings, business, data, or goodwill.
- 18.6 Each party must:
 - (a) use reasonable efforts to do all things necessary or desirable to give full effect to this Agreement; and
 - (b) refrain from doing anything that might hinder performance of this Agreement.
- 18.7 Where the Member is in partnership, each of the partners covenants that he will be jointly and severally liable in respect of all duties, obligations, responsibilities and liabilities of the Member under this Agreement.
- 18.8 The parties covenant with each other that if a party is a trustee it will be bound in its capacity as a trustee or in its several capacities as trustees and also in its personal capacity.
- 18.9 This Agreement (including Schedule 1):
 - (a) constitutes the entire Agreement between the parties as to its subject

matter; and

- (b) in relation to that subject matter, supersedes any prior understanding or Agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party,

excluding any application for credit or any other documents which Choices Flooring deems to be critical in deciding whether the Member is a suitable applicant and the information contained in those documents has been relied upon by Choices Flooring, and the Member warrants the accuracy and completeness of that information.

18.10 The failure of Choices Flooring at any time to require performance of any obligation on the Member under this Agreement is not a waiver of Choices Flooring's rights:

- (a) to insist on the performance of, or claim damages for breach of, that obligation unless Choices Flooring acknowledges in writing that the failure is a waiver; and
- (b) at any time to require performance of that or any other obligation under this Agreement.

18.11 Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

18.12 This Agreement may be signed in two or more counterparts (including facsimile or email copies), all of which when taken together will constitute one and the same instrument and a binding and enforceable agreement between the parties.

EXECUTED as an Agreement

SIGNED for **CHOICES FLOORING LIMITED**)
by an authorised signatory in the presence)
of) Signature

Signature of witness

Name of signatory (print)

Name of witness (print)

Position held

Where the Member is a company:

SIGNED for the **MEMBER** by an authorised)
officer in the presence of) Signature

Signature of witness

Name of signatory (print)

Name of witness (print)

Position held

Where the Member is an individual or partnership or trust*:

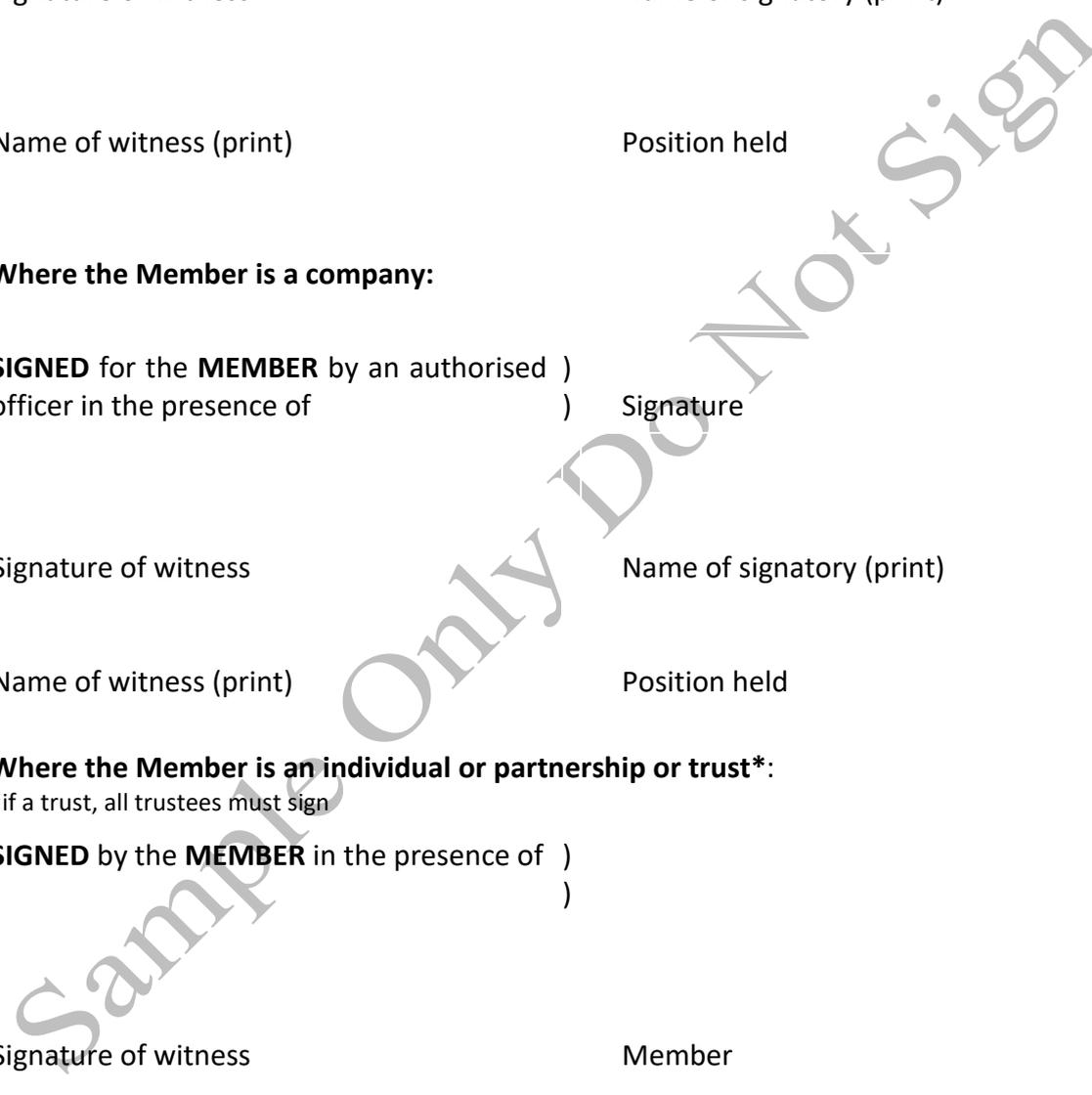
*if a trust, all trustees must sign

SIGNED by the **MEMBER** in the presence of)
)

Signature of witness

Member

Name of witness (print)



- Item 8** ADMINISTRATION & SYSTEM FEE:
 [#Nil]% of the Member's Gross Sales of the Preferred Products
 \$[#608] plus GST per month – Administration fee
 \$[#650] plus GST per month – System fee
- Item 9** MARKETING FEE
 \$[#4,500] plus GST per month
- Item 10** MEMBERSHIP FEE
 (a) [#1.25%] of the Commercial Preferred Products; and
 (b) [#4%] of the Domestic Preferred Products,
 purchased by the Member from the Preferred Suppliers through Choices
 Flooring
- Item 11** TRADE MARKS
 New Zealand Trade Mark Registration Number 1016930 and the trade marks
 appearing below:
 Choices Flooring
-
-
- Item 12** DISCOUNT
 [#1%] on the applicable invoice amount for full payment received on or before
 14 days after the date of invoice.
 [#1%] on the applicable invoice amount for full payment received on or before
 the due date specified in the invoice.
- Item 13** INITIAL TERM
 [#Three Years]

SCHEDULE 2**MEMBERSHIP CODE**

- As a member of Choices, I agree not to engage in any business practice which may jeopardise the professional standing and goodwill of the group or any individual member. I am particularly conscious of the need to ensure that...
 - The quality of my workmanship will be of the highest standard.
 - In respect to product, I will ensure my customer's expectations are fully met.
 - I will deliver a level of customer service that enhances the reputation of the group.
 - In the use of the logo, I will treat it with respect and in accordance with the guidelines laid down for its usage.

- In my dealings with fellow Choices Group members, I will protect their interests by...
 - Not on selling group lines to non Choices retailers.
 - Ensuring I will pay for purchases from fellow members within seven days of receipt, unless otherwise agreed.
 - Assisting fellow members with reasonable stock requests.
 - Subject to the requirements of the Commerce Act 1986 my dealings with fellow members will always be conducted in a spirit of mutual co-operation.

- As a Choices Group member, and in the marketing of my store, I will always endeavour to...
 - Present a retail store of a high standard.
 - Ensure all local advertising strongly features "Choices" and that such advertising presents a credible, positive image and in no way damages the standing of Choices.

- I recognise that suppliers are our partners and in my dealings with them will always be honest, and ethical, and expect the same standards of them. I will also strongly support the Preferred Suppliers, and particularly those that support the group's co-operative advertising programs.

- My relationship with the central office will be maintained on a professional basis by promptly responding to requests for information and settling accounts within the group's trading terms. I will always endeavour to attend group meetings and will fully support group activities.

**CHOICES FLOORING LIMITED
NZCN 5777434
("Choices Flooring")**

AND

**THE PERSON WHOSE NAME AND ADDRESS IS DETAILED IN
SCHEDULE 1
("Member")**

Sample Only Do Not Sign