

**COMMERCIAL LEASING – NATIONAL CABINET MANDATORY CODE OF CONDUCT (“THE CODE”) – COVID 19 PANDEMIC**

**MEMORANDUM OF UNDERSTANDING BETWEEN LANDLORD AND TENANT**

The Landlord leases the Premises to the Tenant pursuant to the Lease and the Tenant is an eligible business for the purpose of the Commonwealth Government’s JobKeeper program.

The Landlord and the Tenant wish to observe and comply with the Code and wish to record their understanding in writing on this document so as to provide a practical calculation and outcome in regard to the amendments to the Lease, arising from the principles contained within the Code, during the Covid 19 pandemic.

This Memorandum of Understanding will apply up to the earlier of the following dates: –

1. The date that the Covid 19 pandemic period is at an end as declared or announced by the Commonwealth Government (envisaged to be the date on which the JobKeeper program ends);
2. The date that is agreed in writing by the Landlord and the Tenant;
3. The date that either party gives a written notice to the other party that the party no longer intends to comply with this Memorandum of Understanding. In this case, the Landlord and the Tenant agree that they will use their best endeavours to reach agreement in regard to their leasing arrangements and if they cannot reach agreement, they must co-operate and apply without delay for binding mediation by way of dispute resolution process available in the State where the premises are located.

Landlord Name	
Tenant Name	
Premises (address)	
Lease (registered number and/or date of lease, if known)	
Lease End Date	

<p>Does the Tenant operate a business from the Premises in accordance with the use prescribed and/or allowed pursuant to the Lease that is an eligible business for the purpose of the Commonwealth Government’s JobKeeper program?</p>	<p><input type="checkbox"/> Yes. The Tenant warrants to the Landlord that the Tenant operates a business from the Premises that is an eligible business for the purpose of the Commonwealth Government’s JobKeeper program</p> <p><input type="checkbox"/> No. (The Code may not apply to the Lease).</p>
<p>Is the Tenant suffering or will suffer distress as a result of the impact and commercial disruption caused by the economic impacts of industry and Government responses to the declared coronavirus (“Covid 19”) pandemic?</p>	<p><input type="checkbox"/> Yes. The Tenant is suffering or believes it will suffer distress as a result of the impact and commercial disruption caused by the economic impacts of industry and Government responses to the declared coronavirus (“covid 19”) pandemic</p> <p><input type="checkbox"/> No. (The Code may not apply to the Lease).</p>
<p>Does the Landlord agree not to terminate the Lease due to non-payment of rent during the Covid 19 pandemic period?</p>	<p><input type="checkbox"/> Yes. Landlord agrees not to terminate.</p> <p><input type="checkbox"/> No. Landlord may purport to terminate the Lease – (if this box is ticked the Landlord and Tenant may be better to engage in consultation and/or mediation).</p>
<p>Does the Tenant agree to remain committed and perform the terms and conditions of the Lease subject to any amendments contained in this Memorandum of Understanding?</p>	<p><input type="checkbox"/> Yes. (If the Tenant does not comply with the terms and conditions of the Lease then the Tenant will not have any protections provided to the Tenant under this Memorandum of Understanding and/or under the Code). There may be other financial obligations of the Tenant under the Lease (for example, payment of/contribution to outgoings) that are not affected or reduced by this Memorandum of Understanding.</p> <p><input type="checkbox"/> No. (The Tenant will not have any protections provided to the Tenant under this Memorandum of Understanding and/or under the Code)</p>

<p>Tenant historic turnover – (previous year turnover)  (The Tenant warrants to the Landlord that the turnover figures provided by the Tenant in this Memorandum of Understanding are true and accurate and, if requested by the Landlord, will be evidenced by Tenant providing to the landlord the business activity statement (“BAS”) of the Tenant for the respective period and/or a report generated on the Tenant’s accounting software showing the turnover for the respective period.</p>	Historic Turnover Figures of the Tenant		
	Period	Turnover 2019	
	1 April 2019 – 30 April 2019	\$	
	1 May 2019 – 31 May 2019	\$	
	1 June 2019 – 30 June 2019	\$	
	1 July 2019 – 31 July 2019	\$	
	1 August 2019 – 31 August 2019	\$	
	1 Sept 2019 – 30 September 2019	\$	
<p>Tenant turnover during Covid – 19 Pandemic Period.  This information to be disclosed to the Landlord by the Tenant within 4 business days of the end of each respective period and, if requested by the Landlord, will be evidenced by Tenant providing to the Landlord the business activity statement (“BAS”) of the Tenant for the respective period and/or a report generated on the Tenant’s accounting software showing the turnover for the respective period.</p>	Tenant turnover during Covid – 19 Pandemic Period (2020)		
	Period	Turnover 2020	Change in turnover from 2019 (% Change for Period)
	1 April 2020 – 30 April 2020	\$	%
	1 May 2020 – 31 May 2020	\$	%
	1 June 2020 – 30 June 2020	\$	%
	1 July 2020 – 31 July 2020	\$	%
	1 August 2020 – 31 August 2020	\$	%
	1 Sept 2020 – 30 September 2020	\$	%

**Change in Turnover % calculation-  
 (Turnover 2019 minus Turnover 2020) x 100 divided by Turnover 2019 = % change.**

Rent Reduction Amount Calculated by multiplying the % Change in Turnover for each respective period.	<b>A</b> Period	<b>B</b> Rent that would have been payable for the period (according to the Lease)	<b>C</b> % Change for period	<b>D</b> Amount of Reduction (Rent Payable multiplied by % Change)	<b>E</b> 50% waiver - amount	<b>F</b> 50% deferral – amount	<b>G</b> Rent to be paid by Tenant for the period (Rent in column <b>B</b> less Amount of Reduction in column <b>D</b> )
	1 April 2020 – 30 April 2020	\$	%	\$	\$	\$	\$
	1 May 2020 – 31 May 2020	\$	%	\$	\$	\$	\$
	1 June 2020 – 30 June 2020	\$	%	\$	\$	\$	\$
	1 July 2020 – 31 July 2020	\$	%	\$	\$	\$	\$
	1 August 2020 – 31 August 2020	\$	%	\$	\$	\$	\$
	1 Sept 2020 – 30 Sept 2020	\$	%	\$	\$	\$	\$
Total Rent Waived					\$		
Total Rent Deferred						\$	

<p>Period (in months) over which deferred rent is to be paid. (The period should be the balance of the lease term but no less than 24 months, unless otherwise agreed)</p>	<p>Number of months over which deferred rent is to be paid = _____ months (Number of Months).</p>
<p>Monthly amount of deferred rent (Total Rent Deferred divided by Number of Months)</p>	<p>\$ _____ per month (Deferred Rent Instalment) The deferred rent is payable by consecutive monthly instalments until paid in full.</p>
<p>Date upon which first Deferred Rent Instalment is due (the Deferred Rent Instalment might also be payable in addition to the rent specified in the lease, if the pandemic period has ended).</p>	<p>Date – _____  (and thereafter by monthly instalments until Total Deferred Rent is paid)</p>
<p>Lease to be Lengthened?</p>	<p><input type="checkbox"/> Yes. The Landlord and the Tenant agree that the Lease is to be lengthened up to .....(date to which lease is extended). The Landlord and Tenant will endeavour to have the Lease varied as soon as possible to take into account the extension however the Landlord and the Tenant should consider the Rent Review Dates under the Lease or any subsequent lease (particularly if the rent review date in a subsequent lease refers to the “Commencement Date” – as a rent review date).</p> <p><input type="checkbox"/> No. The Landlord and the Tenant do not agree to extending the length of the Lease.</p>

## **Dispute Resolution**

The Landlord and Tenant agree that if a dispute arises between the Landlord and Tenant after signing this Memorandum of Understanding then the Landlord and Tenant will use their best endeavours to resolve that dispute having regard to the principles of the mandatory code of conduct and the relevant State law (which implements the principles of the mandatory code of conduct) and if the Landlord and Tenant are unable to resolve that dispute then the Landlord and the Tenant will co-operate and submit the dispute for mediation.

## **Turnover**

It may not be possible for the Tenant to know their reduction in turnover for a particular period until the period has expired which might mean that it is not possible to accurately calculate rent in advance for a particular period. In these circumstances the Landlord and Tenant will endeavour to estimate the Tenant's reduction in turnover for the purpose of calculating the Amount of Reduction. After a particular period has expired the Landlord and the Tenant will endeavour to adjust any shortfall or overpayment and will make amendments to the schedules above to ensure that the schedules reflect the accurate Amount of Reduction, once known.

## **GST**

The rent and turnover figures should be stated exclusive of GST. If the Lease requires GST to be paid in addition to the rent then the Landlord and Tenant should gross up any payments under this Memorandum of Understanding to comply with the Lease regarding GST.

## **Confidentiality**

If the Tenant and/or the Landlord give to the other party any information (including but not limited to information regarding business turnover, business activity statements, bank statements, tax returns, sales data, financial statements, balance sheet, profit and loss statement) then the party receiving that information will keep the information confidential and will not disclose the information to any other person without the written consent of the party giving the information (apart from the legal representative, business advisor and/or accountant of the person receiving the information and in that case, only for the purposes of advising in regard to the principles of the mandatory code of conduct and advising in regard to the information in this Memorandum of Understanding).

Dated

Signed by the :Landlord	Signed by the Tenant
<p><b>Company</b>  Executed on behalf of the Landlord corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.  Authority: Section 127 of the Corporations Act 2001</p> <p>.....  Signature of authorised person:                      Signature of authorised person:</p> <p>.....  Name of authorised person:                      Name of authorised person:</p> <p>.....  Office held:    Office held:</p>	<p><b>Company</b>  Executed on behalf of the Tenant corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.  Authority: Section 127 of the Corporations Act 2001</p> <p>.....  Signature of authorised person:                      Signature of authorised person:</p> <p>.....  Name of authorised person:                      Name of authorised person:</p> <p>.....  Office held:    Office held:</p>
<p><b>Individual/s</b></p> <p>Signed by the Landlord  In the presence of:-                      .....</p> <p>.....  Signature of Witness</p> <p>.....  Print Name of Witness</p>	<p><b>Individual/s</b></p> <p>Signed by the Tenant  In the presence of:-                      .....</p> <p>.....  Signature of Witness</p> <p>.....  Print Name of Witness</p>

<p>Signed by the Landlord In the presence of:- .....</p> <p>Landlord</p> <p>..... Signature of Witness</p> <p>..... Print Name of Witness</p>	<p>Signed by the Tenant In the presence of:- .....</p> <p>Tenant</p> <p>..... Signature of Witness</p> <p>..... Print Name of Witness</p>
<p>Signed by the Landlord In the presence of:- .....</p> <p>Landlord</p> <p>..... Signature of Witness</p> <p>..... Print Name of Witness</p>	<p>Signed by the Tenant In the presence of:- .....</p> <p>Tenant</p> <p>..... Signature of Witness</p> <p>..... Print Name of Witness</p>