

Version 2  
Dated 15 March 2022

**CODE OF CONDUCT FOR LEASING OF  
RETAIL PREMISES IN SINGAPORE**

## TABLE OF CONTENTS

<b>Contents</b>	<b>Page</b>
<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. OBJECTIVES OF THE CODE OF CONDUCT .....</b>	<b>1</b>
<b>3. APPLICATION OF THIS CODE OF CONDUCT.....</b>	<b>2</b>
<b>PART A: CONDUCT AND SPIRIT OF NEGOTIATIONS.....</b>	<b>7</b>
<b>PART B: LEASING PRINCIPLES FOR KEY TENANCY TERMS .....</b>	<b>8</b>
<b>SCHEDULE 1 OF PART B: SAMPLE CLAUSE (REFERRED TO IN PARAGRAPH     4.12 OF PART B).....</b>	<b>22</b>
<b>SCHEDULE 2 OF PART B: SAMPLE CLAUSE (REFERRED TO IN PARAGRAPH     7.6 OF PART B).....</b>	<b>26</b>
<b>SCHEDULE 3 OF PART B: SAMPLE CLAUSE (REFERRED TO IN PARAGRAPH     9.6 OF PART B).....</b>	<b>28</b>
<b>PART C: DATA TRANSPARENCY .....</b>	<b>32</b>
<b>PART D: DISPUTE RESOLUTION AND ENFORCEMENT OF CODE OF CONDUCT..</b>	<b>33</b>
<b>APPENDIX 1 OF PART D: CHECKLIST (REFERRED TO IN PARAGRAPH 1.1 OF     PART D).....</b>	<b>35</b>

## 1. INTRODUCTION

In June 2020, a Fair Tenancy Pro Tem Committee was set up under the auspices of the Singapore Business Federation. The Fair Tenancy Pro Tem Committee comprises representatives from both landlord and tenant communities, members of Government, industry experts and academia.

One of the objectives of the Fair Tenancy Pro Tem Committee is to jointly develop a Code of Conduct for Leasing of Retail Premises (“**Code of Conduct**”) to set out clear leasing guidelines and negotiation principles for landlords and tenants of Qualifying Retail Premises (QRP) in Singapore.

This Code of Conduct is divided into four main sections:

Part A	:	Conduct and Spirit of Negotiations
Part B	:	Leasing Principles for Key Tenancy Terms
Part C	:	Data Transparency
Part D	:	Dispute Resolution & Enforcement of Code of Conduct

The Schedules and Appendices to this Code of Conduct shall be taken, read and construed as parts of this Code of Conduct and the provisions thereof shall have the same force and effect as if expressly set out in the body of this Code of Conduct.

This Code of Conduct is effective from 1 June 2022, superseding the Code of Conduct dated 1 April 2021.

## 2. OBJECTIVES OF THE CODE OF CONDUCT

The key objectives of this Code of Conduct are to:

- 2.1 serve as a set of mandatory guidelines to provide guidance to landlords and tenants of Qualifying Retail Premises to enable a fair and balanced position in lease negotiations; and
- 2.2 provide landlords and tenants of Qualifying Retail Premises with a governance framework to ensure compliance by landlords and tenants and provide an accessible dispute resolution framework for both landlords and tenants, recognising that landlords and tenants share a symbiotic interest in building and maintaining a long term and productive partnership.

### 3. APPLICATION OF THIS CODE OF CONDUCT

This Code of Conduct applies to all Qualifying Retail Premises in Singapore located in, without limitation, shopping centres, office buildings, industrial and business parks, mixed-use developments, shop houses and shop flats, hotels, community centres, recreation and social clubs, museums, schools, hospitals, petrol kiosks, MRT stations, bus interchanges and airports.

Qualifying Retail Premises are premises which are:

- 3.1 held under a lease agreement<sup>1</sup> entered into on or after 1 June 2021 with a tenure of at least one year; and
- 3.2 permitted to be used by the Urban Redevelopment Authority (URA) and other relevant authorities for any of the following uses:

Qualifying Retail Premises Uses	General Description of Premises	Examples <sup>2</sup>
Food & Beverage	<ul style="list-style-type: none"> <li>• <b>Restaurants:</b> Premises primarily used for sale of food for consumption at the premises without performance of live music, or live entertainment. The sale of liquor and alcoholic drinks, if any, is for consumption on the premises and incidental to the consumption of food.</li> <li>• <b>Bar/Pub:</b> Premises primarily used for the sale of alcoholic drinks for consumption on the premises without dancing, singing or performance of live music or live entertainment.</li> </ul>	<ul style="list-style-type: none"> <li>• Restaurant, café, cyber café, coffee shop, eating house, snack bar, cafeteria, food court and fast-food restaurant excluding canteen.</li> <li>• Outdoor refreshment areas (ORA), push carts, food kiosks</li> </ul>

<sup>1</sup> References in this Code of Conduct to a lease agreement includes a sub-lease agreement, licence agreement, an agreement for lease and an accepted letter of offer which are made between landlord/licensor and tenant/licensee under a written agreement. References in this Code of Conduct to a lease agreement includes a renewal lease agreement or any agreement which extends the term of a lease for at least one year.

<sup>2</sup> Examples in this Code of Conduct are for reference and illustrative purposes only and are not intended to be exhaustive.

Qualifying Retail Premises Uses	General Description of Premises	Examples <sup>2</sup>
	<ul style="list-style-type: none"> <li>• <b>Restaurant and Bar:</b> Premises used for the sale of food &amp; meals and alcoholic drinks for consumption on the premises without dancing, singing or performance of live music or live entertainment.</li> <li>• <b>Night Club:</b> Premises primarily used for the sale of alcoholic drinks (and food, if any) for consumption on the premises, with dancing, singing or performances involving recorded music, live music or live entertainment.</li> </ul>	<ul style="list-style-type: none"> <li>• Karaoke lounges and discotheques.</li> </ul>
Shop	<ul style="list-style-type: none"> <li>• Premises used for any trade or business where its primary purpose is the sale of goods or foodstuff by retail or provision of services.</li> </ul>	<ul style="list-style-type: none"> <li>• Retail shops (e.g. departmental store, supermarket, provision shop, minimart, pawnshop, fashion boutique, florist, gift shop, stationery shop, furniture shop, home furnishings and textile shop, art gallery, electrical appliances / equipment, computers and accessories shop, dispensary, Chinese medical hall, aquarium and other shops selling takeaway food and beverages without consumption on the premises); and</li> <li>• Services (e.g. barber shop, beauty salon, hairdressing salon, photo studio, tailor shop, massage and spa services, foot reflexology, receiving agency, money changer, shoe repair, key cutting shop, travel / ticket agency, launderette (collection of goods to be cleaned elsewhere) and laundromat (washing machines and drying</li> </ul>

Qualifying Retail Premises Uses	General Description of Premises	Examples <sup>2</sup>
		machines are provided for use on a self-service basis)).
Medical / Dental Clinic / Aesthetic Clinic	<ul style="list-style-type: none"> <li>• Premises used by a medical practitioner, a dentist or any other person for diagnosis or treatment of persons suffering from any disease, injury or disability.</li> <li>• Premises used for aesthetic and beauty treatments, spa and beauty treatments and grooming services, by licensed practitioners.</li> </ul>	<ul style="list-style-type: none"> <li>• Clinics, Chinese physician / acupuncture, physiotherapy clinics.</li> <li>• Aesthetic clinics, medical spas.</li> </ul>
Pet Shop and Pet Boarding	<ul style="list-style-type: none"> <li>• Premises used for the sale of live animals normally kept as domestic pets.</li> <li>• Premises which are primarily used for the boarding for pets. These are places where pet-owners pay to have their pets housed and cared for over a certain period of time.</li> </ul>	<ul style="list-style-type: none"> <li>• A veterinary clinic, pet grooming service and sale of pet related accessories.</li> <li>• Places where pet-owners pay to have their pets housed and cared for over a certain period of time.</li> </ul>
Commercial School	<ul style="list-style-type: none"> <li>• Premises used for the purpose of teaching, training or imparting of knowledge or skill.</li> </ul>	<ul style="list-style-type: none"> <li>• Tuition centre, language school, computer school, baking and cooking school, art school, music school and dance school, speech and drama school, but excluding primary school, secondary school, junior college, vocational and technical institution, polytechnic and university.</li> </ul>
Childcare Centre	<ul style="list-style-type: none"> <li>• Premises used for the purposes of care and supervision of children during part of the day or for longer periods</li> </ul>	Kindergarten, student care centre and infant care centre

<b>Qualifying Retail Premises Uses</b>	<b>General Description of Premises</b>	<b>Examples<sup>2</sup></b>
Sports and Recreation / Place of Entertainment	<ul style="list-style-type: none"> <li>• Premises used for physical exercise and fitness activities.</li> <li>• Premises with game machines (e.g. jackpot machines, pin-ball machines, darts machines) for entertainment.</li> </ul>	<ul style="list-style-type: none"> <li>• Gyms, sports club, sports complex and community sports and fitness buildings.</li> <li>• Arcade centre, computer gaming centre, billiard centre, bowling alley and darts club, visual and performing art studio.</li> <li>• Cinema.</li> </ul>

**IMPORTANT**

The material contained in this Code of Conduct is provided with the understanding that Fair Tenancy Pro Tem Committee and the authors of this Code of Conduct are not rendering legal, accounting, tax, other professional advice and services. Accordingly this Code of Conduct should not be used as a substitute for consultation with the relevant professionals. In no event will the Fair Tenancy Pro Tem Committee or any of its members, agents or employees and the authors of this Code of Conduct be liable to you or anyone using this Code of Conduct for any decision made or action taken or refraining from making such decision or taking such action in reliance of the information contained in this Code of Conduct for any consequential, special or similar damages, even if advised or notified of the possibility of such damage.



## **PART A: CONDUCT AND SPIRIT OF NEGOTIATIONS**

The following overarching principles apply in guiding landlords and tenants in the conduct of negotiations of lease agreements of Qualifying Retail Premises:

1. Landlords and tenants share a symbiotic interest in working together to co-create a collaborative landlord-tenant ecosystem in which all stakeholders reap long term benefits from the increased vibrancy and competitiveness of Singapore's retail, food & beverage and lifestyle sectors.
2. Landlords and tenants must adopt a consensual approach to negotiate in good faith, which includes acting honestly and fairly having regard to the legitimate interests of the other party and observing accepted or reasonable commercial standards of fair dealing in the performance of identified obligations. Neither party shall attempt to unfairly profit, or take unfair advantage of the other party, from the known ignorance of the other party.
3. Landlords and tenants must refrain from conduct which in the relevant context, would be regarded as commercially unacceptable or unreasonable by honest and reasonable people.
4. Landlords and tenants must act in an open, honest and transparent manner and each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this Code of Conduct.
5. Landlords and tenants are entitled to have regard to their own commercial self-interest in the course of negotiations as long as they do not act in bad faith. Either party may in good faith take the position that certain provisions requested or required by the other party are not acceptable for commercial, business or risk allocation reasons.

Examples of negotiating in bad faith are:

- A. A party has deliberately or by negligence misled the other party as to the nature or terms of the proposed lease, either by actually misrepresenting facts, or by not disclosing facts which should have been disclosed.
- B. A party has deliberately provided misleading or incomplete information which may mislead or wrongly influence the other party during the negotiations.

## **PART B: LEASING PRINCIPLES FOR KEY TENANCY TERMS**

In furtherance of the objective of this Code of Conduct as set out in Section 2.1 above, Part B of this Code of Conduct sets out the leasing principles for 11 key tenancy terms ("**Leasing Principles**") which have been identified by the Fair Tenancy Pro Tem Committee.

Paragraphs of the Leasing Principles that use the word "should" are areas of best practices. Paragraphs of the Leasing Principles that use the words "must" or "shall" set mandatory requirements. Any deviation from such mandatory requirements cannot be made unless the relevant Leasing Principle in this Code of Conduct expressly allows for such deviation with the agreement of both parties to the lease agreement. A checklist in the form as set out in **Appendix 1 of Part D** of this Code of Conduct ("**Checklist**") must be completed for each lease agreement and (where applicable) acknowledged by both landlord and tenant, in accordance with Part D of this Code of Conduct.

If a Leasing Principle in this Code of Conduct expressly provides that a lease agreement must contain the said Leasing Principle, such Leasing Principle must be included in the lease agreement.

Please refer to Part D (Dispute Resolution and Enforcement of Code of Conduct) of this Code of Conduct in the event of any non-compliance by Landlord or Tenant with Part B of this Code of Conduct.

### **1. Exclusivity**

- 1.1** As a general rule, exclusivity clauses (e.g. any provision which prevents or restricts a tenant from opening a branch or franchise within a certain radius of the Qualifying Retail Premises or which prevents or restricts a landlord from leasing premises with a similar trade or business in the same building where the Qualifying Retail Premises are located), whether during or after the end of the lease term, must not be included in the lease agreement.
- 1.2** On an exceptional basis, if both parties agree to include an exclusivity clause in the lease agreement, such an exclusivity clause in the lease agreement can be included.
- 1.3** A joint declaration by both parties on the inclusion of the exclusivity clause must be made to Fair Tenancy Industry Committee (FTIC) within 14 days after the lease agreement has been signed by both parties.

### **2. Costs to Prepare the Lease Agreement and Third Party Costs**

- 2.1** **General Principles on all Costs:** Landlords and tenants must abide by the following general principles in respect of all costs incurred or to be incurred in connection with the lease of Qualifying Retail Premises:
  - 2.1.1** Transparency i.e. upfront disclosure of costs charged.
  - 2.1.2** Fees must be legitimate and justifiable in order to cover real costs (e.g. labour costs in coordinating work).
  - 2.1.3** There must be no profiteering.

**2.2 Point-of-Sales system (POS system):** In instances where landlords require integration between landlord's POS system and tenant's POS system, the following principles must apply:

**2.2.1** Each party must pay for its own costs for the regular maintenance of its own POS system.

**2.2.2** To enable tenant to share sales data with landlord during the lease term:

(i) If tenant's existing POS system is compatible for integration with landlord's POS system, the costs and expenses for ad-hoc POS integration (including software) of tenant's POS system with landlord's POS system should be borne by tenant and landlord on a 50:50 cost sharing basis.

(ii) If tenant's existing POS system is not compatible for integration with landlord's POS system and tenant has to purchase a new POS system in order to integrate with landlord's POS system, (a) the additional costs and expenses for the purchase of such new POS system must be borne by tenant and landlord on a 50:50 cost sharing basis and (b) the costs and expenses for the ad-hoc POS integration (including software) of tenant's POS system with landlord's POS system should be borne by tenant and landlord on a 50:50 cost sharing basis.

**2.2.3** New tenants must purchase a POS system which is compatible for integration with landlord's POS system at the costs and expenses of tenant. However, if the options for a compatible POS system which is available in the market are limited and the cost to a tenant to purchase a compatible POS system is substantially higher than a non-compatible POS system, new tenants must purchase a POS system which is compatible for integration with landlord's POS system and the costs and expenses for the purchase of such compatible POS system must be borne by tenant and landlord on a 50:50 cost sharing basis. The costs and expenses for the ad-hoc POS integration (including software) of tenant's POS system with landlord's POS system should be borne by tenant and landlord on a 50:50 cost sharing basis.

**2.3 Costs to Prepare the Lease Agreement:**

**2.3.1** Each of landlord and tenant must have the flexibility to appoint its own lawyers. Landlord must not impose on tenant to use any specific panel of lawyers.

**2.3.2** If there are no amendments to landlord's standard lease template that is compliant with this Code of Conduct, landlord must prepare the lease agreement at its own costs as part of its business operations and no legal or administrative fees shall be payable by tenant to landlord for the preparation of the lease agreement.

**2.3.3** If tenant asks for amendments to be made to landlord's standard lease template which is compliant with this Code of Conduct (including any amendment to include a Leasing Principle from this Code of Conduct which landlord has indicated in the Checklist as being "not applicable"), tenant must bear either the legal costs or admin costs (but not

both) of landlord and its own legal costs associated with such amendments. If tenant requests for a Leasing Principle from this Code of Conduct to be included in the lease agreement, landlord must include such Leasing Principle from this Code of Conduct in the lease agreement.

- 2.3.4** If tenant asks for amendments to be made to landlord’s standard lease template which is not compliant with this Code of Conduct to address any provisions which deviate from this Code of Conduct, landlord must bear either the legal costs or admin costs (but not both) of tenant and its own legal costs associated with such amendments.

<b>Requested Amendments</b>	<b>Is landlord’s standard lease template Code – Compliant? (Y/N)</b>	<b>Legal or Admin Fees (but not both) to be borne by</b>
No amendments to landlord’s standard lease template	<b>Yes</b>	<b>Not applicable</b>
Tenant asks for amendments to be made to landlord’s standard lease template which is compliant with this Code of Conduct (including any amendments to include a Leasing Principle from this Code of Conduct)	<b>Yes</b>	<b>Tenant</b>
Tenant asks for amendments to address any deviations in landlord’s standard lease template	<b>No</b>	<b>Landlord</b>

- 2.3.5** In the event the first draft lease agreement is prepared by tenant, in this paragraph 2.3 of Part B of this Code of Conduct, in paragraph 1 and paragraph 4 of Part D of this Code of Conduct and in Appendix 1 of Part D of this Code of Conduct, all references to “tenant” shall refer to “landlord”, and all references to “landlord” shall refer to “tenant”.

**2.4 Fees for Tenant-Initiated Requests:**

Landlord is entitled to charge tenant either administrative fees or legal fees (but not both) for the preparation of ancillary documents arising from tenant-initiated requests. Examples of such ancillary documents include, but not limited to, side letters, letters of variation, settlement agreement, novation agreement, supplemental agreement and surrender agreement. Landlord must inform tenant of such administrative or legal fees upfront upon receipt of tenant’s request.

## 2.5 Third Party Costs:

### 2.5.1 General Principles on Third Party Costs:

- (i) The lease agreement must not contain a “catch-all” provision requiring tenant to pay all unspecified and generic third-party costs.
- (ii) All third-party costs (e.g. consultant fees, vetting fees) which are to be borne by tenants must be communicated upfront to tenant and clearly set out in the lease agreement.

**2.5.2 Sales Audit Fees:** Landlord shall only be allowed to require tenants to conduct sales audit in instances where the rent payable to landlord comprises a variable component based on tenant’s gross sales or gross turnover (“**GTO Rent**”). In such cases, the following principles must apply:

(i) **If tenant’s POS system is integrated to landlord’s POS system:**

- (a) In place of an annual audited sales report submission, tenant must be allowed to provide an upfront monthly undertaking by tenant’s director or Certified Public Accountant (CPA) on the accuracy of sales submission concurrently with tenant’s monthly sales submission together with an annual statutory declaration by tenant’s director.
- (b) However, landlord may request for tenant to submit an annual audited sales report. In which case, landlord’s right to make such request must be set out in the lease agreement together with the requirement for landlord and tenant to share the costs of such annual audited sales report on 50:50 basis.

(ii) **If tenant’s POS system is not integrated to landlord’s POS system:**

Tenant must comply with landlord’s requirements for sales verification as set out in the lease agreement. If landlord requires for an annual sales audit to be conducted and submission of an annual audited sales report, tenant must bear the full costs of such annual sales audit.

In all other cases where the rent payable to landlord does not comprise GTO Rent, landlords shall not be allowed to require tenants to conduct sales audit.

**2.5.3 Public Liability Insurance:** Landlord must not require tenant’s public liability insurance coverage limit to be more than S\$3 million or the public liability insurance coverage limit in landlord’s public liability insurance policy, whichever is lower. This paragraph 2.5.3 does not apply to Qualifying Retail Premises which have a floor area of more than 15,000 square feet.

#### **2.5.4 Electricity Charges:**

(i) **If landlord is on the En-bloc Contestability Scheme (ECS):**

- (a) Landlord is not required to provide tenants with a choice of electricity retailer and landlord may arrange for the purchase of electricity for the building from an electricity retailer of its choice.
- (b) Landlord must charge tenants for the total costs for the supply of electricity to tenant's premises calculated at the same rate(s) payable by landlord to the electricity retailer on a pass-through basis without any mark-up or price discrimination among landlord and its tenants in the same building.
- (c) Landlord is entitled to charge tenants reasonable administrative costs for the administration of the bulk electricity purchase arrangement, provided that such administrative costs are communicated upfront to tenants.
- (d) Landlord must not charge tenants for any infrastructure costs incurred by landlord in order to benefit from the open electricity market.

(ii) **If landlord is not on ECS:**

- (a) Tenants must be allowed to choose their own open electricity market (OEM) retailers as long as the existing physical infrastructure of the building can support this.
- (b) Tenants must bear all costs and expenses incurred in procuring electricity from their choice of OEM retailers or any change of OEM retailers.

### **3. Advertising and Promotion Charge and Service Charge**

- 3.1** Gross rent typically consists of base rent, service charge and advertising and promotion (A&P) charge.
- 3.2** Landlord is entitled to adjust the service charge and the A&P charge during the lease term, provided that the overall gross rent payable by tenant during the lease term after such adjustment in the service charge and the A&P charge does not increase.
- 3.3** Landlord should keep proper records and accounts in respect of the service charge and the A&P charge.

#### **4. Pre-termination by Landlord due to Landlord's Redevelopment Works**

This Leasing Principle shall apply in the event landlord requires a right to pre-terminate the lease due to redevelopment works. Where landlord requires a right to pre-terminate the lease due to redevelopment works, the lease agreement must contain provisions granting landlord such right of pre-termination in accordance with this paragraph 4 of Part B of this Code of Conduct.

- 4.1** Landlord is only entitled to pre-terminate the lease of any premises if landlord intends to carry out substantial redevelopment, asset enhancement or reconfiguration works to the building or part of the building where such premises is located for any reason (including changing the tenant mix in the building) ("**redevelopment works**") and requires vacant possession of such premises in order to carry out such redevelopment works. Landlord is not entitled to pre-terminate the lease purely for the purposes of changing the tenant mix in the Building without carrying out any redevelopment works or if landlord is able to carry out such redevelopment works without requiring vacant possession of such premises.
- 4.2** Landlord must give no less than 6 months' prior written notice to tenant if landlord wishes to terminate the lease by reason of the proposed redevelopment works, save where the proposed redevelopment works are required to be carried out pursuant to any prevailing laws, orders, directions, by-laws, codes, rules, regulations, notices or requirements of the authorities ("**Requirements**") and the time period given to landlord to comply with such Requirements is of such duration that landlord is unable to give tenant the requisite 6 months' prior written notice. Landlord must give the termination notice to tenant promptly and without undue delay as soon as landlord is aware of such Requirements.
- 4.3** In the interest of transparency, where landlord has obtained Written Permission (WP) from URA for any asset enhancement initiative (AEI) works, landlord must inform tenant of such proposed AEI works prior to signing of the lease agreement. If landlord fails to do so, and the lease is pre-terminated by landlord by reason of the proposed redevelopment works, an additional compensation sum is payable by landlord to tenant on top of the compensation sums payable under paragraph 4.4 or paragraph 4.5 below upon landlord's pre-termination of the lease. Landlord and tenant will try to agree on the amount of the additional compensation sum. In the event landlord and tenant are not able to agree on the amount of the additional compensation sum, either party may escalate the matter to the Singapore Mediation Centre (SMC) to resolve the disagreement and if the matter is escalated to SMC, both parties must attend mediation session(s) and comply with the resolutions of the SMC.
- 4.4** If the initial lease term is pre-terminated by landlord by reason of the proposed redevelopment works, landlord must pay tenant a compensation sum calculated based on the Agreed Declared Value of the Tenant's Fit Out Capex Works less depreciation on such Agreed Declared Value amortised on a straight-line basis across the entire period of the initial lease term.
- 4.5** No compensation is payable by landlord to tenant if the lease is pre-terminated during any renewal term(s) unless tenant has carried out the Tenant's Renewal Capex Works which has been agreed between landlord and tenant to form part of the Tenant's Renewal Capex Works

for the purpose of computing the Agreed Declared Value. If tenant has carried out the Tenant's Renewal Capex Works and the renewal term is pre-terminated by landlord by reason of the proposed redevelopment works, landlord must pay tenant a compensation sum calculated based on the Agreed Declared Value of the Tenant's Renewal Capex Works less depreciation on such Agreed Declared Value amortised on a straight line basis across the entire period of the renewal term.

**4.6** For the purposes of this paragraph 4:

**4.6.1** "Agreed Declared Value" refers to the lower of:

- (i) the estimated value of the Tenant's Capex Works; and
- (ii) the actual value of the Tenant's Capex Works.

**4.6.2** "Tenant's Capex Works" refers to:

- (i) (in respect of the initial lease term) capital expenditure works (including external design fees but excluding any salvageable items) carried out by tenant during the fitting out period to fit out the premises ("**Tenant's Fit Out Capex Works**"); and
- (ii) (in respect of any renewal term) capital expenditure works (including external design fees but excluding any salvageable items) carried out by tenant at the time of renewal in order to repair, improve, upgrade or refresh the premises ("**Tenant's Renewal Capex Works**").

For the avoidance of doubt, Tenant's Capex Works shall not include any tenant-initiated capital expenditure works carried out by tenant in its sole discretion during the initial term or any renewal term(s) if such works are not agreed to by landlord and tenant to form part of the Tenant's Capex Works for the purpose of computing the Agreed Declared Value.

**4.7** Prior to parties' entry into a binding lease agreement, landlord and tenant shall, each acting reasonably, have discussions in good faith to agree on:

- (i) the items to be included as part of the Tenant's Capex Works; and
- (ii) the estimated value of such Tenant's Capex Works for the purpose of the computation of Agreed Declared Value.

In the event landlord and tenant are not able to agree on whether an item is a "salvageable item" or not, landlord and tenant agree that such item shall be considered a non-salvageable item and included as part of the Tenant's Capex Works, and its value shall be taken into account for the purpose of the computation of the Agreed Declared Value. However, in the event the aforesaid item is subsequently salvaged by tenant when removing its items and vacating the premises pursuant to paragraph 4.10 below, landlord shall be entitled to deduct



the value of such item from the Agreed Declared Value for the purpose of computing the compensation sum under paragraphs 4.4 and 4.5 above.

- 4.8** Not later than 3 months after the completion of the Tenant's Capex Works, tenant must declare the actual value of the Tenant's Capex Works to landlord in writing together with copies of all third-party invoices for verification and validation by landlord. If tenant does not declare the actual value of the Tenant's Capex Works to landlord in writing and/or submit copies of the aforesaid invoices within 3 months after the completion of the Tenant's Capex Works, landlord (acting reasonably) shall be entitled to determine the Agreed Declared Value, having regard to the estimated value of the Tenant's Capex Works (where applicable). Landlord shall notify tenant in writing of its determination of the Agreed Declared Value and the determination of the Agreed Declared Value by landlord (acting reasonably) shall be accepted by both landlord and tenant as being the Agreed Declared Value.
- 4.9** Without affecting paragraph 4.8 above, in the event landlord accepts the estimated cost of Tenant's Capex Works as the Agreed Declared Value, landlord shall notify tenant in writing of its acceptance of the estimated cost of Tenant's Capex Works as the Agreed Declared Value and the requirements of paragraph 4.8 shall be waived. In such a case, the "**Agreed Declared Value**" shall refer to the estimated cost of the Tenant's Capex Works as accepted by landlord hereunder.
- 4.10** If the lease is pre-terminated by landlord by reason of the proposed redevelopment works, tenant shall not be required to reinstate the premises on termination but tenant must remove all tenant's signs, moveable items, furniture and belongings from the premises and deliver the premises and landlord's installations to landlord in a clean state and in a condition which does not pose any threat to health, safety and the environment. Tenant must make good all damage caused to the building where the premises are located resulting from such removal.
- 4.11** For the avoidance of doubt, this paragraph 4 does not affect landlord's and tenant's rights, remedies and obligations under the lease agreement if the lease term is pre-terminated by landlord for any other reason other than for redevelopment works.
- 4.12** A sample clause is set out in **Schedule 1** of this Part B of this Code of Conduct.

## **5. Sales Performance**

- 5.1** As a general rule, sales performance clauses (e.g. a clause which allows landlord to penalise the tenant in any manner, such as pre-termination of the lease, if the tenant does not fulfil a stipulated sales target) must not be included in the lease agreement.
- 5.2** On an exceptional basis, if both parties agree to include a sales performance clause on the lease agreement, such sales performance clause in the lease agreement can be included.
- 5.3** A joint declaration by both parties on the inclusion of the sales performance clause must be made to FTIC within 14 days after the lease agreement has been signed by both parties.

## 6. Material Adverse Change

While not mandatory, landlord and tenant are encouraged to re-negotiate the lease agreement in cases where tenant is prevented, obstructed or hindered from performing its typical business activity at the leased premises due to events beyond tenant's control e.g. compliance with the requirements of any law, regulation, by-law or requirements of a public authority (including but not limited to store closure due to public health interest).

## 7. Pre-Termination by Tenants

This Leasing Principle shall apply in the event tenant requires a right to pre-terminate the lease due to exceptional conditions. Where tenant requires a right to pre-terminate the lease due to exceptional conditions, the lease agreement must contain provisions granting tenant such right of pre-termination in accordance with paragraph 7 of Part B of this Code of Conduct.

**7.1** Tenant is entitled to pre-terminate the lease upon the occurrence of either of the following two exceptional conditions ("**exceptional conditions**"):

**7.1.1** the business principal of the goods and/or services from which tenant has obtained the rights to sell the goods and/or provide the services which is being retailed at the premises is insolvent (as determined in accordance with the laws of insolvency in the country where the business principal is established or incorporated); or

**7.1.2** tenant loses the distributorship or franchise rights to sell the goods and/or provide the services which are being retailed at the premises where the loss of distributorship or franchise is not due to either the non-performance or breach by tenant of the distributorship or franchise agreement.

**7.2** Tenant must give no less than 6 months' prior written notice or opt to pay 6 months' gross rent in lieu of the 6 months' notice period to landlord if tenant wishes to terminate the lease by reason of the occurrence of either of the exceptional conditions. Tenant may also shorten the 6 months' notice period by paying an amount equivalent to the gross rent for the unfulfilled notice period, capped at 6 months' gross rent.

**7.3** A compensation sum equivalent to the security deposit amount is payable by tenant to landlord for any pre-termination of the lease by tenant by reason of the occurrence of either of the exceptional conditions. Landlord may apply the entire security deposit towards the compensation sum on the termination of the lease and any shortfall must be made good by tenant. The termination of the lease agreement and the payment of the compensation sum does not affect any outstanding amounts owing by tenant to landlord under the lease agreement.

**7.4** On the termination of the lease by reason of the occurrence of either of the exceptional conditions, tenant must reinstate the premises and yield up the premises in accordance with the lease agreement. Tenant must make good all damage caused to the premises or the building resulting from such reinstatement and yielding up.

**7.5** On the occurrence of either of the exceptional conditions, instead of exercising its right to pre-terminate the lease, tenant may request to assign the lease to a replacement tenant, subject to landlord's approval (such approval not to be unreasonably withheld).

**7.6** A sample clause is set out in **Schedule 2** of this Part B of this Code of Conduct.

## **8. Security Deposit**

**8.1** The security deposit amount for Qualifying Retail Premises with a floor area of up to 5,000 square feet and with a lease term of up to 3 years shall not exceed an amount equal to 3 months' gross rent. For the purpose of this paragraph 8:

**8.1.1** where the rent payable to landlord comprises GTO Rent, "gross rent" may include the projected GTO Rent as may be agreed between landlord and tenant; and

**8.1.2** for escalating or staggered rental structures, "gross rent" may be calculated based on the lowest, average or highest rent rate payable during the lease term, as may be agreed between landlord and tenant.

**8.2** Landlord and tenant can mutually agree to alternative security deposit amounts for such Qualifying Retail Premises to be stated in the lease agreement. In such cases, a joint declaration by both parties on the alternative security deposit amount must be made to FTIC within 14 days after the lease agreement has been signed by both parties. In the event parties fail to declare the alternative security deposit amount to FTIC, the security deposit amount required under the lease agreement shall be 3 months' gross rent.

**8.3** Paragraph 8.1 and paragraph 8.2 of Part B of this Code of Conduct do not apply to Qualifying Retail Premises which have a floor area of more than 5,000 square feet and/or has a lease term of more than 3 years. Paragraph 8.1 and paragraph 8.2 of Part B of this Code of Conduct also do not apply if the amount equal to 3 months' gross rent is equal to or less than S\$500.

**8.4** If tenant chooses not to furnish the security deposit fully in cash, tenant must notify landlord upfront prior to the signing of the lease agreement and landlord must accept up to 50% of the security deposit by way of a non-cash mode of payment (for example, an 'on demand' bank guarantee) to be issued by reputable financial institution in Singapore and based on landlord's prescribed format. The mode of non-cash payment of the security deposit is to be prescribed by landlord.

**8.5** A cover-all guarantee clause stating that tenant's directors, shareholders, employees or any persons are personally liable in cases of default by tenant must not be included in the lease agreement. However, tenant may choose to provide the security deposit by way of a personal guarantee, in lieu of cash or bank guarantee, subject to landlord's acceptance.

## **9. Floor Area Alterations**

**9.1** For each new letting (excluding renewals of the same premises), landlord must provide a certificate from the registered surveyor confirming the surveyed area of the premises prior to

handover (or such later date as landlord and tenant may agree). However, if the agreed floor area of the premises is equal to or less than 300 square feet, landlord and tenant may agree to waive the requirements of this paragraph 9.1.

**9.2** For premises which have been formed or re-configured after redevelopment of the building or completion of AEI works, landlord must cause a re-survey of the premises to be carried out by a registered surveyor and provide a certificate from the registered surveyor confirming the surveyed area of the premises prior to handover (or such later date as landlord and tenant may agree).

**9.3** If the surveyed floor area is larger than the floor area originally specified in the lease agreement:

**9.3.1** if the difference is more than 5%, there shall be an upward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) capped at 5%; and

**9.3.2** if the difference is 5% or less, there shall be an upward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) based on the surveyed floor area.

**9.4** If the surveyed floor area is smaller than the floor area originally specified in the lease agreement:

**9.4.1** if the difference is 10% or less, there shall be a downward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) based on the surveyed floor area; and

**9.4.2** if the difference is more than 10%, each of landlord and tenant has the right to terminate the lease agreement without liability (save as otherwise provided in this paragraph 9.4) by giving written notice to the other party within one month after landlord has provided the certificate from the registered surveyor to tenant.

**9.4.3** If, at the time of the termination of the lease agreement, tenant has not taken possession of the premises, the lease agreement shall be deemed null and void from the beginning with the intent that each of landlord and tenant shall be put in the same respective position as if the lease agreement was not entered into. In this connection:

(i) tenant shall not be required to reinstate the premises as tenant has not taken possession of the premises; and

(ii) landlord shall refund all monies paid by tenant to landlord pursuant to the lease agreement without interest (including any rent, service charge, A&P charge, security deposit and other deposits but excluding stamp duties and legal fees (if any)).

**9.4.4** If, at the time of the termination of the lease agreement, tenant has taken possession of the premises and:

- (i) the lease agreement is terminated by landlord pursuant to a written notice given by landlord pursuant to paragraph 9.4.2 above, the lease agreement shall be deemed null and void from the beginning with the intent that tenant shall be put in the same position as if the lease agreement was not entered into. In this connection:
  - (a) tenant shall not be required to reinstate the premises and shall promptly deliver up possession of the premises to landlord; and
  - (b) landlord shall refund all monies paid by tenant to landlord pursuant to the lease agreement without interest (including any rent, service charge, A&P charge, security deposit and other deposits but excluding stamp duties and legal fees (if any)); and
  - (c) landlord shall pay a compensation sum equivalent to the amount actually incurred by tenant for the Tenant's Capex Works prior and up to the date of landlord's notice of termination under paragraph 9.4.2 above, as evidenced by invoices provided by tenant to landlord for verification and validation. In the event landlord and tenant are not able to agree on the amount of the aforesaid compensation sum, either party may escalate the matter to the Singapore Mediation Centre (SMC) to resolve the disagreement and if the matter is escalated to SMC, both parties must attend mediation session(s) and comply with the resolutions of SMC; or
- (ii) the lease agreement is terminated by tenant pursuant to a written notice given by tenant pursuant to paragraph 9.4.2 above, tenant must promptly reinstate the premises and deliver up possession of the premises to landlord properly reinstated in accordance with the provisions of the lease agreement and the lease agreement shall be deemed terminated on the date of such delivery of possession of the premises by tenant to landlord, without prejudice to the rights and remedies of either party against the other party in respect of any prior breach of the lease agreement by the other party. For the avoidance of doubt, all the provisions of the lease agreement shall continue to apply and be binding on landlord and tenant until the date of the deemed termination of the lease agreement.

**9.4.5** In the event neither landlord nor tenant exercises its right to terminate the lease agreement, there shall be a downward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) based on the surveyed floor area.

**9.5** In cases where the surveyed floor area varies from the floor area originally specified in the lease agreement and gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) need to be adjusted, such

adjustments should take place within 2 months from landlord furnishing the certificate from the registered surveyor to tenant. All adjustments pursuant to paragraph 9.3 and paragraph 9.4 of Part B of this Code of Conduct shall be with effect from the commencement date of the lease.

**9.6** A sample clause (to be included in the letter of offer or agreement for lease) is set out in **Schedule 3** of this Part B of this Code of Conduct.

## **10. Building Maintenance**

**10.1** The lease agreement shall contain an obligation on landlord to maintain:

- (i) the building where the leased premises are located (if landlord owns such building);  
or
- (ii) such part(s) of the building which are owned by landlord where the leased premises are located (if the landlord does not own such whole building).

**10.2** Landlord must be responsible for any loss or damage suffered by tenant due to the gross negligence or wilful default on the part of landlord to maintain the building or such part(s) thereof where the leased premises are located as provided in paragraph 10.1.

## **11. Rental Structure**

**11.1** As a general rule, rental formula must be based on a single rental computation throughout the lease term, i.e. the rent structure must not have an “either/or, whichever is higher” formula.

Example of Rental Structure	Compliant with Code? (Y/N)
S\$X psf <u>or</u> Y% of GTO, <u>whichever is higher</u>	<b>No – any exception must be mutually agreed by landlord and tenant</b>
(S\$X psf + Y% of GTO) <u>or</u> Z% of GTO, <u>whichever is higher</u>	<b>No – any exception must be mutually agreed by landlord and tenant</b>
S\$X psf + Y% of GTO above S\$Z per month	<b>No – any exception must be mutually agreed by landlord and tenant</b>
S\$X psf	<b>Yes</b>
Y% of GTO	<b>Yes</b>
S\$X psf + Y% of GTO	<b>Yes</b>

- 11.2** On an exceptional basis, if both parties agree to an alternative rental structure that is not based on a single rental computation, such alternative rental structure can be included in the lease agreement.
- 11.3** A joint declaration by both parties on the agreed alternative rental structure must be made to FTIC within 14 days after the lease agreement has been signed by both parties.

## SCHEDULE 1 OF PART B

### SAMPLE CLAUSE (REFERRED TO IN PARAGRAPH 4.12 OF PART B)

*(Note: This sample clause is provided for reference only and should not be used in its entirety without the necessary changes (where appropriate) being made to align this clause with the other provisions (including definitions) of each individual lease agreement)*

#### [ ] **Landlord's Termination Right in the event of Redevelopment Works**

- (i) In the event the Landlord intends to carry out substantial redevelopment, asset enhancement or reconfiguration works to the Building or part of the Building where the Premises is located for any reason whatsoever (including changing the tenant mix in the Building) ("**redevelopment works**") and requires vacant possession of the Premises in order to carry out such redevelopment works, the Landlord shall be entitled to terminate this Lease by giving to the Tenant six (6) months' notice in writing ("**Landlord's Termination Notice**") subject to Clause [•](iii) below. For the avoidance of doubt, Landlord shall not be entitled to terminate this Lease purely for the purposes of changing the tenant mix in the Building without carrying out any redevelopment works or if the Landlord is able to carry out such redevelopment works without requiring vacant possession of the Premises.
- (ii) In the event the Landlord has obtained the grant of written permission from Urban Redevelopment Authority for any asset enhancement initiative works ("**AEI Works**"), the Landlord must inform the Tenant of such AEI Works prior to [signing of this Lease/ the Tenant's acceptance of the Letter of Offer]. If the Landlord fails to do so, and this Lease is pre-terminated by the Landlord by reason of the proposed redevelopment works, an additional compensation sum shall be payable by the Landlord to the Tenant in addition to the compensation sums payable under Clause [•](iv) or Clause [•](v) below upon the termination of this Lease pursuant to this Clause [•]. The Landlord and the Tenant shall use commercially reasonable endeavours to agree on the amount of such additional compensation sum. In the event the Landlord and the Tenant are not able to agree on the amount of such additional compensation sum, either Party may escalate the matter to the *Singapore Mediation Centre* ("**SMC**") to resolve the disagreement and if the matter is escalated to SMC, both Parties must attend mediation session(s) and comply with the resolutions of the SMC.
- (iii) In the event the proposed redevelopment works are required to be carried out by the Landlord pursuant to any prevailing laws, orders, directions, by-laws, codes, rules, regulations, notices or requirements of the authorities ("**Requirements**") and the time period given to the Landlord to comply with such Requirements is of such duration that the Landlord is unable to give the Tenant the requisite six (6) months' notice in writing, the Landlord shall, as soon as practicable, after the Landlord is aware of such Requirements, give the Tenant such shorter notice in writing as may be required to enable the Landlord to comply with the Requirements.



- (iv) # [If this Lease is pre-terminated by the Landlord during the Term by reason of redevelopment works, the Landlord must pay the Tenant a compensation sum calculated based on the Agreed Declared Value (as defined below) of the Tenant's Fit Out Capex Works (as defined below) less depreciation on such Agreed Declared Value amortised on a straight line basis across the entire period of the Term.]

**# [Drafting Note: Clause [•](iv) to be deleted from renewal leases if tenant has not carried out any Tenant's Renewal Capex Works.]**

- (v) No compensation is payable by the Landlord to the Tenant if the lease of the Premises is pre-terminated during any renewal term(s) unless the Tenant has carried out the Tenant's Renewal Capex Works (as defined below) which has been agreed between the Landlord and the Tenant to form part of the Tenant's Renewal Capex Works for the purpose of computing the Agreed Declared Value. Prior to the Landlord's and the Tenant's entry into a binding agreement for the renewal of the lease for the Premises, the Landlord and the Tenant shall, each acting reasonably, have discussions in good faith to agree on (a) the items to be included as part of the Tenant's Renewal Capex Works and (b) the estimated value of such Tenant's Renewal Capex Works for the purpose of the computation of Agreed Declared Value under this Clause [•](v). If the Tenant has carried out the Tenant's Renewal Capex Works and the renewal term is pre-terminated by Landlord by reason of redevelopment works, the Landlord must pay the Tenant a compensation sum calculated based on the Agreed Declared Value of the Tenant's Renewal Capex Works less depreciation on such Agreed Declared Value amortised on a straight line basis across the entire period of the renewal term.

- (vi) For the purposes of this Clause [•]:

- (a) "Agreed Declared Value" refers to the lower of:

(I) the estimated value of the Tenant's Capex Works being S\$[•] **[Note: to insert estimated value of Tenant's Capex Works as discussed and agreed between the parties prior to the entry into a binding lease agreement];** and

(II) the actual value of the Tenant's Capex Works as declared or to be declared by the Tenant to the Landlord in writing not later than 3 months after completion of the Tenant's Capex Works together with copies of all third-party invoices for verification and validation by the Landlord.

- (b) "Tenant's Capex Works" refers to:

(I) (in respect of the Term) capital expenditure works (including external design fees but excluding salvageable items) carried out by the Tenant during the fitting out period in order to fit out the Premises ("Tenant's Fit Out Capex Works"); and

- (II) (in respect of any renewal term) capital expenditure works (including external design fees but excluding salvageable items) carried out by the Tenant at the time of renewal in order to repair, improve, upgrade or refresh the Premises (“**Tenant’s Renewal Capex Works**”).

For the avoidance of doubt, Tenant’s Capex Works shall not include any tenant-initiated capital expenditure works carried out by the Tenant in its sole discretion during the Term or any renewal term(s) if such works are not agreed to by the Landlord and the Tenant to form part of the Tenant’s Capex Works for the purpose of computing the Agreed Declared Value.

- (c) In respect of any item which has been agreed between the Landlord and the Tenant to be a “non-salvageable item” and included as part of Tenant’s Capex Works, and its value was taken into account for the purpose of the computation of the Agreed Declared Value, in the event such item is subsequently salvaged by the Tenant when removing its items and vacating the Premises pursuant to Clause [•](viii) below, the Landlord shall be entitled to deduct the value of any such item from the Agreed Declared Value for the purpose of computing the compensation sum under Clause [•](iv) or Clause [•](v) above.
- (vii) Not later than three (3) months after completion of the Tenant’s Capex Works, the Tenant must declare the value of the Tenant’s Capex Works actually incurred by the Tenant to the Landlord in writing together with copies of all third-party invoices for verification and validation by the Landlord. In the event the Tenant does not declare the value of the Tenant’s Capex Works to the Landlord in writing and/or submit copies of the aforesaid invoices within 3 months after the completion of the Tenant’s Capex Works, the Landlord (acting reasonably) shall be entitled to determine the Agreed Declared Value, having regard to the estimated value of the Tenant’s Capex Works (where applicable). The Landlord shall notify the Tenant in writing of its determination of the Agreed Declared Value and references to “**Agreed Declared Value**” in this Lease shall refer to the Agreed Declared Value as determined by the Landlord (acting reasonably) and notified in writing by the Landlord to the Tenant.
- (viii) Without affecting Clause [•](vii) above, in the event the Landlord accepts the estimated cost of Tenant’s Capex Works as the Agreed Declared Value, the Landlord shall notify the Tenant in writing of its acceptance of the estimated cost of Tenant’s Capex Works as the Agreed Declared Value and the requirements of Clause [•](vii) shall be waived. References to “**Agreed Declared Value**” in this Lease shall refer to the estimated cost of the Tenant’s Capex Works as accepted by the Landlord.
- (ix) Upon the expiry of the Landlord’s Termination Notice, the Term shall absolutely cease and determine but without prejudice to the rights and remedies of either Party against the other Party in respect of any antecedent breach of this Lease by the other Party and the Tenant must remove the Tenant’s signs, moveable items, furniture and belongings from the Premises and shall deliver vacant possession of the Premises

and the Landlord's installations in a clean state and in a condition which does not pose any threat to health, safety and the environment. The Tenant shall make good any damage caused to the Building resulting from such removal. The Landlord shall refund the Tenant the Security Deposit without interest in accordance with the provisions of Clause [•] or return the bank guarantee(s) furnished by the Tenant for cancellation, after proper deductions by the Landlord in accordance with the provisions of this Lease.

- (x) The Tenant hereby agrees that save for the compensation sum under Clause [•] (ii), Clause [•](iv) or Clause [•](v) (as the case may be) and the refund of the Security Deposit in accordance with Clause [•], the Tenant shall have no further claims against the Landlord arising out of or in connection with the termination of this Lease pursuant to this Clause [•].
- (xi) The provisions of this Clause [•] shall continue to apply notwithstanding the earlier termination of this Lease.

## SCHEDULE 2 OF PART B

### SAMPLE CLAUSE (REFERRED TO IN PARAGRAPH 7.6 OF PART B)

*(Note: This sample clause is provided for reference and for illustrative purposes only and should not be used in its entirety without the necessary changes (where appropriate) being made to align this clause with the other provisions (including definitions) of each individual lease agreement.)*

#### [ ] **Tenant's Termination Right under Exceptional Conditions**

[ ] The Tenant shall be entitled to terminate this Lease by giving to the Landlord no less than six (6) months' notice in writing upon the occurrence of either of the following two exceptional conditions ("**exceptional conditions**"):

[ ] the business principal of the goods and/or services from which the Tenant has obtained the rights to sell the goods and/or provide the services which is being retailed at the Premises is insolvent (as determined in accordance with the laws of insolvency in the country where the business principal is established or incorporated); or

[ ] the Tenant loses the distributorship or franchise rights to sell the goods and/or provide the services which are being retailed at the Premises where the loss of distributorship or franchise is not due to either the non-performance or breach by Tenant of the distributorship or franchise agreement.

[ ] The Tenant may elect to pay six (6) months' gross rent in lieu of the six (6) months' notice period to the Landlord or shorten the six (6) months' notice period by paying an amount equivalent to the gross rent for the unfulfilled notice period, capped at six (6) months' gross rent. The six (6) months' notice period or such shorter notice period applicable pursuant to this Clause [•] shall herein be called the "**Applicable Notice Period**".

[ ] The Tenant shall pay a compensation sum equivalent to the Security Deposit Amount (the "**Compensation Sum**") to the Landlord for any pre-termination of this Lease by the Tenant pursuant to this Clause [•] on or prior to the expiry of the Applicable Notice Period. The Landlord shall be entitled to apply the entire security deposit towards the Compensation Sum on the expiry of the Applicable Notice Period and any shortfall shall be payable by the Tenant on or prior to the expiry of the Applicable Notice Period. The termination of this Lease and the payment of the Compensation Sum pursuant to this Clause [•] shall not affect any outstanding amounts owing by the Tenant to the Landlord under this Lease.

[ ] Upon the termination of this Lease pursuant to this Clause [•], the Tenant must reinstate the Premises and yield up the Premises in accordance with Clause [•] of this Lease on the expiry of the Applicable Notice Period. For the avoidance of doubt, the Tenant must make good all damage caused to the Premises or the Building resulting from such reinstatement and yielding up.

- [ ] Upon the expiry of the Applicable Notice Period, the Term shall absolutely cease and determine but without prejudice to the rights and remedies of either Party against the other Party in respect of any antecedent breach of this Lease by the other Party.
  
- [ ] Upon the occurrence of either of two exceptional conditions, instead of exercising its right to pre-terminate the lease under this Clause [•], the Tenant may request to assign this Lease to a replacement tenant, subject to the Landlord's approval (such approval not to be unreasonably withheld).
  
- [ ] The provisions of this Clause [•] shall continue to apply notwithstanding the earlier termination of this Lease.

## SCHEDULE 3 OF PART B

### SAMPLE CLAUSE (REFERRED TO IN PARAGRAPH 9.6 OF PART B)

*(Note: This sample clause is provided for reference and for illustrative purposes only and should not be used in its entirety without the necessary changes (where appropriate) being made to align this clause with the other provisions (including definitions) of each individual lease agreement.)*

“**Floor Area**” means *[Drafting Note: definition to set out surveyor practice of measuring floor area]*:

#### [ ] **Determination of Floor Area**

- [ ] Pending survey of the Floor Area of the Premises pursuant to Clause [•], the estimated floor area of the Premises is [•] (“**Estimated Floor Area**”). The Parties hereby agree that:
  - (a) until the Floor Area of the Premises is determined by measurement by the Landlord’s Surveyor, the Floor Area shall be the Estimated Floor Area; and
  - (b) upon determination of the Floor Area of the Premises by the Landlord’s Surveyor (whose certificate of the Floor Area shall be accepted by the Parties as final and conclusive) all references to the Floor Area in this Lease shall refer to the Agreed Floor Area.
  
- [ ] The Landlord shall, at the Landlord’s cost and expense, appoint a registered surveyor (the “**Surveyor**”) to carry out a survey to determine the Floor Area of the Premises. The Landlord shall provide the Tenant with a copy of the certificate from the Surveyor certifying the Surveyor’s final determination of the Floor Area of the Premises prior to the Possession Date (or such later date as the Parties may agree). The Floor Area of the Premises as stated in the Surveyor’s certificate shall herein be called the “**Surveyed Floor Area**”. The determination of the Surveyed Floor Area by the Surveyor shall be final, conclusive and binding upon the Parties.
  
- [ ] Upon the determination of the Surveyed Floor Area by the Surveyor, there shall be an adjustment in the Rent, Service Charge, A&P Charge and Security Deposit, with effect from the Lease Commencement Date, subject always to the following provisions:
  - (i) where the Surveyed Floor Area is more than the Estimated Floor Area and the difference between the Surveyed Floor Area and the Estimated Floor Area is less than or equal to 5% of the Estimated Floor Area, the Rent, Service Charge, A&P Charge and Security Deposit shall be calculated based on the Surveyed Floor Area;

- (ii) where the Surveyed Floor Area is more than the Estimated Floor Area and the difference between the Surveyed Floor Area and the Estimated Floor Area is more than 5% of the Estimated Floor Area, the Rent, Service Charge, A&P Charge and Security Deposit shall be calculated based on a Floor Area which is equivalent to 105% of the Estimated Floor Area; and
- (iii) where the Surveyed Floor Area is less than the Estimated Floor Area, the Rent, Service Charge, A&P Charge and Security Deposit shall be calculated based on the Surveyed Floor Area.

[ ] The Landlord and Tenant hereby agree that the Floor Area which shall be used for the purpose of calculating the Rent, Service Charge, A&P Charge and Security Deposit payable by the Tenant under this Lease pursuant to Clause [•](i) or Clause [•](ii) or Clause [•](iii) (whichever is applicable) shall herein be called the “**Agreed Floor Area**”.

[ ] In addition and without prejudice to any provisions in this Lease, if the Surveyed Floor Area is less than the Estimated Floor Area and the difference between the Surveyed Floor Area and the Estimated Floor Area is more than 10% of the Estimated Floor Area, either Party may terminate this Lease by giving to the other Party written notice (“**Termination Notice**”) within one (1) month after the Landlord has provided the Surveyor’s certificate to the Tenant. Upon receipt of the notice, the Term will be terminated and the following provisions shall apply:

- (i) If, on the date of the Termination Notice, the Tenant has not taken possession of the Premises, this Lease shall be deemed null and void from the beginning with the intent that each of the Landlord and the Tenant shall be put in the same respective position as if this Lease was not entered into. In this connection:
  - (a) the Tenant shall not be required to reinstate the Premises as the Tenant has not taken possession of the Premises; and
  - (b) the Landlord shall refund all monies paid by the Tenant to the Landlord pursuant to this Lease without interest (including any Rent, Service Charge, A&P Charge, Security Deposit and other deposits but excluding stamp duties and legal fees (if any)).
- (ii) If, on the date of the Termination Notice, the Tenant has taken possession of the Premises and:
  - (a) this Lease is terminated pursuant to a Termination Notice given by the Landlord to the Tenant, then this Lease shall be deemed null and void from the beginning with the intent that the Tenant shall be put in the same position as if this Lease was not entered into. In this connection:

- (I) the Tenant shall not be required to reinstate the Premises and shall promptly deliver up possession of the Premises to the Landlord; and
  - (II) the Landlord shall refund all monies paid by the Tenant to the Landlord pursuant to this Lease without interest (including any Rent, Service Charge, A&P Charge, Security Deposit and other deposits but excluding stamp duties and legal fees (if any)); and
  - (III) the Landlord shall pay a compensation sum equivalent to the amount actually incurred by the Tenant for the Tenant's Capex Works prior and up to the date of Landlord's Termination Notice, as evidenced by invoices provided by the Tenant to the Landlord for verification and validation. In the event the Landlord and the Tenant are not able to agree on the amount of the aforesaid compensation sum, either Party may escalate the matter to the Singapore Mediation Centre ("**SMC**") to resolve the disagreement and if the matter is escalated to SMC, both Parties must attend mediation session(s) and comply with the resolutions of SMC.
- (b) this Lease is terminated pursuant to a Termination Notice given by the Tenant to the Landlord, then the Tenant must promptly reinstate the Premises and deliver up possession of the Premises to the Landlord properly reinstated in accordance with the provisions of this Lease and this Lease shall be deemed terminated on the date of such delivery of possession of the Premises by the Tenant to the Landlord, without prejudice to the rights and remedies of either Party against the other Party in respect of any antecedent breach of this Lease by the other Party. For the avoidance of doubt, all the provisions of this Lease shall continue to apply and be binding on the Landlord and the Tenant until the date of the deemed termination of this Lease.

Save as otherwise provided in this Clause [●], the Landlord and the Tenant will not be liable to the other Party for any loss, damage, cost, expense or compensation in connection with the termination under this Clause [●].

- [ ] In the event neither the Landlord nor the Tenant exercises its right to terminate the lease agreement within one (1) month after the Landlord has provided the Surveyor's certificate to the Tenant, there shall be a downward adjustment of the Rent, Service Charge, A&P Charge and Security Deposit based on the Surveyed Floor Area in accordance with Clause [●](iii).
- [ ] Any underpayment in the Rent, Service Charge, A&P Charge and Security Deposit under this Lease determined by reference to the Agreed Floor Area shall be paid by the Tenant to the Landlord, free of interest, within two (2) months of the Tenant's receipt of the Surveyor's certificate. Any overpayment in the Rent, Service Charge, A&P Charge and Security Deposit under this Lease determined by reference to the



Agreed Floor Area shall be applied by the Landlord towards the Rent payable by the Tenant for the subsequent months after the Tenant's receipt of the Surveyor's Certificate.

## PART C: DATA TRANSPARENCY

In furtherance of the objective of this Code of Conduct as set out in Section 2.1 above, Part C of this Code of Conduct sets out the guidelines to allow for more data transparency as agreed by the Fair Tenancy Pro Tem Committee.

1. This paragraph 1 only applies to landlords who collect sales data from tenants as part of the GTO Rent structure. Such landlords must share sales data metrics by trade category (i.e. total monthly sales and total floor area) on a one-on-one basis before the signing of the lease agreement. For existing tenants, landlords must share such sales data on a bi-annual basis. For reasons of confidentiality, sales data will not be shared where the number of tenants for the relevant trade category is less than 3.

By way of illustration only:

Period	Trade Category	Number of units	Total monthly sales turnover of category	Total Floor Area (sqft) occupied by category	Average Sales (psf)
E.g. 1 Jan – 30 June 2021	Fashion	6	\$1,323,000	10,000	\$132.36

2. Lease agreements may contain confidentiality clause requiring landlords and tenants not to share lease-related information. If a confidentiality clause (with such exceptions as may be agreed between landlord and tenant) is included in lease agreements, it must be drafted to apply to both landlord and tenant as such confidentiality clause is intended to ensure the sanctity of information exchanged between landlord and tenant in respect of the lease of the premises in a reciprocal manner, provided always that each party shall be allowed to disclose any lease-related information:
  - 2.1 as may be required by present and future laws, legislation, subsidiary legislation, statutes, orders, directions, by-laws, codes, rules (including rules of any relevant stock exchange), regulations and notices and requirements of any relevant governmental, quasi-governmental, statutory, regulatory, administrative or supervisory body (“**Authority**”); or
  - 2.2 which is required in connection with any arbitral or judicial proceedings or any legal process issued by any court or any Authority.

## **PART D: DISPUTE RESOLUTION AND ENFORCEMENT OF CODE OF CONDUCT**

### **1. Checklist**

- 1.1** Landlord must complete the checklist in the form as set out in **Appendix 1** of Part D of this Code of Conduct (“**Checklist**”) and provide it to tenant at the same time when landlord sends the first draft of the lease agreement to tenant.
- 1.2** The completed Checklist must clearly indicate:
- (i) the Leasing Principles which deviate from the mandatory requirements of this Code of Conduct (if any); and
  - (ii) the Leasing Principles which are not applicable (if any).
- 1.3** Where there is any Leasing Principle which deviate from the mandatory requirements of this Code of Conduct and both parties mutually agree to such deviation, both parties must indicate its acknowledgement in the Checklist.
- 1.4** Tenant must conduct its own due diligence to review the lease agreement.
- 1.5** Once the lease agreement is signed by both parties, it is binding on them.

### **2. Non-Compliance during Lease Negotiations**

- 2.1** In the event of any non-compliance by landlord or tenant with Part B and/or Part C of this Code of Conduct during lease negotiations (e.g. landlord demands that tenant agree to a “mutually agreed” deviation), either party may refer the matter to the Fair Tenancy Industry Committee (FTIC).
- 2.2** The FTIC will monitor the incidence of non-compliance by landlord or tenant with Part B and/or Part C of this Code of Conduct during lease negotiations. If there are many reports made against a particular party, FTIC may name and shame the party for acting in a manner that is against the Code of Conduct and the spirit of the fair tenancy framework.

### **3. Non-Compliance after signing of Lease Agreement**

In the event of any non-compliance in the lease agreement by landlord or tenant with Part B and/or Part C of this Code of Conduct after the lease agreement is signed, either party may escalate the matter to the Singapore Mediation Centre (SMC) within 14 days of the signing of the lease agreement to resolve the dispute or disagreement. If the matter is escalated to SMC, landlord and tenant must attend the mediation session(s) and comply with the resolutions of the SMC.

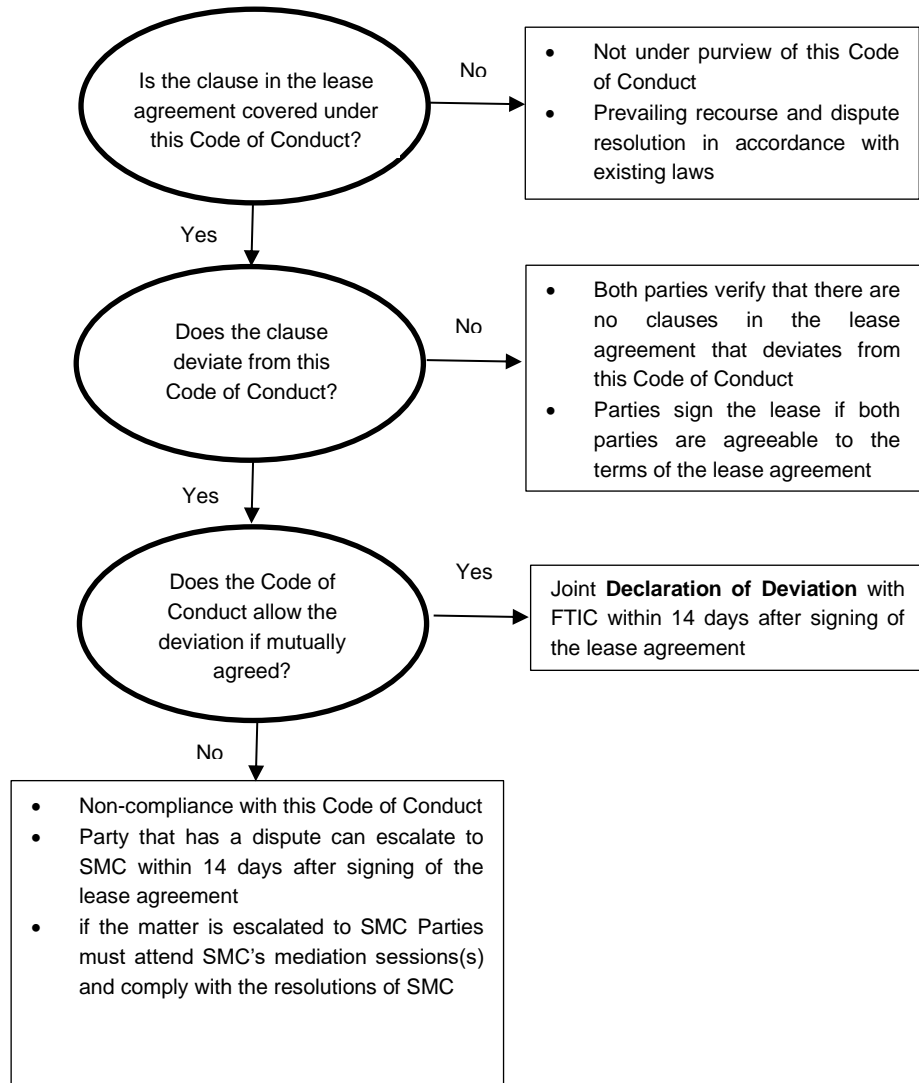
#### 4. Process for Dispute Resolution and Enforcement of this Code

##### Pre-contract phase

For non-compliant practices (e.g. landlord demands that tenant agree to 'mutual agreement clause' before signing the lease agreement, parties can report these cases to FTIC. FTIC will collate and monitor the reported cases. If there are many reports made on a particular party, FTIC may name and shame the party for going against the conduct and spirit of this Code of Conduct.

##### Post-contract phase (Within 14 days of signing of the lease agreement)

All lease agreements issued must be accompanied by a Checklist (Appendix 1 of Part D of this Code of Conduct). All clauses which deviate from this Code of Conduct have to be flagged by landlord for tenant's attention. Tenant must conduct its own due diligence to review the lease agreement. Once signed, the lease agreement is binding on both parties.



**APPENDIX 1 OF PART D  
CHECKLIST  
(REFERRED TO IN PARAGRAPH 1.1 OF PART D)**

*(Note: Landlord shall complete and provide the Checklist to tenant together with the first draft of the lease agreement in respect of Qualifying Retail Premises. Where there are any deviation in any of the Leasing Principles, landlord must indicate the same by checking the box under “Deviation” column and may include remarks under the “Remarks” section. Please ensure that one box is checked for every item in this Checklist.*

*The Code of Conduct only allows for deviations in the Leasing Principles which are indicated with an asterisk (\*), if such deviation is mutually agreed by both landlord and tenant. No deviations are allowed for Leasing Principles which are not indicated with an asterisk (\*).*

*If landlord and tenant mutually agree to the deviation, kindly initial in the two boxes below the check box. Please do not initial in the box if you do not agree to the deviation.*

*If a Leasing Principle is not applicable to the lease agreement, parties may indicate this by checking the box indicating that it is “Not Applicable”, e.g. if the rent structure in the lease agreement does not comprise a GTO Rent, the “Not Applicable” section under S/N 2.2 must be checked.)*

S/N	Leasing Principle	Code - Compliant	Deviation from Code?	Not Applicable				
<b>PART B OF CODE OF CONDUCT: LEASING PRINCIPLES FOR KEY TENANCY TERMS</b>								
1.	* Exclusivity	<input type="checkbox"/> To check if there is no exclusivity clause	<input type="checkbox"/> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Landlord</td> <td style="width: 50%; text-align: center;">Tenant</td> </tr> <tr> <td colspan="2" style="text-align: center;">To initial if deviation is agreed</td> </tr> </table>	Landlord	Tenant	To initial if deviation is agreed		-
Landlord	Tenant							
To initial if deviation is agreed								
<b>Remarks:</b>								
2.	Costs to Prepare the Lease Agreement and Third Party Costs							
2.1	General Principles on all Costs	<input type="checkbox"/>	-	-				
2.2	Point-of-Sales system (POS system)	<input type="checkbox"/>	-	<input type="checkbox"/> To check if landlord does not require integration of tenant's POS system with landlord's POS system				
2.3	Costs to Prepare the Lease Agreement	<input type="checkbox"/>	-	-				
2.4	Fees for Tenant-Initiated Requests	<input type="checkbox"/>	-	<input type="checkbox"/> To check if there are no ancillary documents arising from tenant-initiated requests at the time of lease preparation				

S/N	Leasing Principle	Code - Compliant	Deviation from Code?	Not Applicable			
	2.5	Third Party Costs					
	2.5.1	General Principles on Third Party Costs	<input type="checkbox"/>	-	-		
	2.5.2	Sales Audit Fees	<input type="checkbox"/>	-	<input type="checkbox"/> To check if the rent payable to landlord does not comprise GTO Rent		
	2.5.3	Public Liability Insurance	<input type="checkbox"/>	-	<input type="checkbox"/> This box may only be checked if the floor area of the leased premises is more than 15,000 square feet		
	2.5.4	Electricity Charges	<input type="checkbox"/>	-	-		
3.	Advertising and Promotion Charge and Service Charge	<input type="checkbox"/>	-	<input type="checkbox"/> To check if there is no A&P charge and no service charge payable to landlord			
4.	Pre-termination by Landlord due to Landlord's Redevelopment Works	<input type="checkbox"/>	-	<input type="checkbox"/> To check if landlord does not require the right to pre-terminate the lease for redevelopment works			
5.	* Sales Performance		<input type="checkbox"/> To check if there is no sales performance clause	<input type="checkbox"/>	-		
				<table border="1"> <tr> <td>Landlord</td> <td>Tenant</td> </tr> <tr> <td colspan="2">To initial if deviation is agreed</td> </tr> </table>		Landlord	Tenant
Landlord	Tenant						
To initial if deviation is agreed							
<b>Remarks:</b>							
6.	Pre-Termination by Tenants		<input type="checkbox"/>	-	<input type="checkbox"/> To check if tenant does not require the right to pre-terminate the lease for exceptional conditions		
					Tenant To initial above if tenant is not trading under the brand name of a principal or franchisor		
7.	* Security Deposit		<input type="checkbox"/> To check if security deposit does not exceed 3 months' gross rent	<input type="checkbox"/>	<input type="checkbox"/> This box may only be checked if floor area of premises is more than 5,000 square feet and/or lease term is more than 3 years or if 3 months' gross rent is equal to or less than \$500		
				<table border="1"> <tr> <td>Landlord</td> <td>Tenant</td> </tr> <tr> <td colspan="2">To initial if deviation is agreed</td> </tr> </table>		Landlord	Tenant
Landlord	Tenant						
To initial if deviation is agreed							

S/N	Leasing Principle	Code - Compliant	Deviation from Code?	Not Applicable
	<b>Remarks:</b>			
8.	Floor Area Alterations	<input type="checkbox"/>	-	<input type="checkbox"/> This box may only be checked if lease is a renewal lease or if the agreed floor area is equal to or less than 300 square feet
9.	Building Maintenance	<input type="checkbox"/>	-	<input type="checkbox"/> This box may only be checked if the lease agreement does not contain any obligation on landlord to maintain the building, or such part(s) of the building, which is/are owned by landlord
10.	*Rental Structure	<input type="checkbox"/> To check if rent structure is not an "either/or" formula, or does not have a GTO component if GTO is more than S\$Z	<input type="checkbox"/>	-
			<table border="1"> <tr> <td>Landlord</td> <td>Tenant</td> </tr> <tr> <td colspan="2">To initial if deviation is agreed</td> </tr> </table>	
Landlord	Tenant			
To initial if deviation is agreed				
	<b>Remarks:</b>			
<b>PART C OF CODE OF CONDUCT: DATA TRANSPARENCY</b>				
11.	Sales data metric is provided by Landlord at new lease negotiation	<input type="checkbox"/>	-	<input type="checkbox"/> This box may only be checked if landlord do not collect sales data from tenants as part of the GTO Rent structure
12.	Landlords must share such sales data on a bi-annual basis to existing tenants	<input type="checkbox"/>	-	<input type="checkbox"/> This box may only be checked if landlord do not collect sales data from tenants as part of the GTO Rent structure
13.	Confidentiality clauses in lease agreements shall apply to both landlord and tenant	<input type="checkbox"/>	-	<input type="checkbox"/> This box may only be checked if there is no confidentiality clause binding on both parties