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**Written evidence submitted By Subway Realty Limited in relation
to the Commercial Rent (Coronavirus) Bill**

Executive Summary

- A. A request that the definition of "Business tenancy" in Section 2(5) of the Bill is reconsidered, and widened.
- B. As presently drafted, the proposed definition would create significant unfairness and disparity in situations where subleases of business premises are in place and which could significantly impact economic recovery.

Evidence

- 1. Subway Realty Limited ("SRL") is a leasing company, established to enter into head leases of sites from which franchises will operate stores of the well known chain of Subway® sandwich restaurants (of which there are presently over 2,200 in the UK).
- 2. Typically, SRL enters into a head lease with the relevant freeholder/landlord. At the same time, it enters into a sublease with the individual Subway® franchise owner, who will own and operate the business under licence from Subway International BV (in return for the payment of royalties on sales). The effect of the arrangement is that SRL is the tenant, and the franchise operator is SRL's subtenant. It is the franchise operator who is physically present at, and in occupation of, the premises.
- 3. The sublease terms mirror the terms of the head lease. Whatever sums are payable to the landlord pursuant to the head lease are also payable by the franchise operator to SRL pursuant to the

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sublease. A standard form sublease is annexed hereto and we would reference clauses 1.1 and 1.2. For example, if the rent is £25,000 a year, this sum is payable by the subtenant to SRL and in turn by SRL to the head landlord (i.e. SRL does not profit from the arrangements).

4. The business purpose for this structure is to ensure that the site can be retained as a Subway® store if the franchisee/subtenant no longer wishes or is unable to continue with the business. This structure assists in preserving the business and the jobs of the employees, as well as maintaining an occupied unit for business rates purposes.
5. As it is currently drafted, the draft Bill would enable subtenants to seek arbitration in relation to the Rent owed to SRL under the sublease (as they are in occupation for business purposes in accordance with Section 2(5)). However, the current drafting would not enable SRL to seek arbitration in relation to the same Rent due under the head lease, as it is not in occupation as required by Section 2(5). This means that SRL (rather than the head landlord) would bear the burden of any relief granted via arbitration to any franchisee (the head landlords, who profit from the leasing structure, would not). That is notwithstanding that the head landlords are the parties expected to share the burden of the economic impact of the pandemic where they are able to do so¹. The proposed bill therefore contains a lacuna in the event of leasing structures such as that mentioned above, and it does not as a consequence properly and fully address the issue it is designed to resolve.
6. It is for that reason that we submit that the definition of "business tenancy" should be reconsidered and widened appropriately, in order to provide that any arbitration the parties elect to bring in the absence of agreement should be between the end tenant whose business has been impacted by

¹ Paragraph 14 Code of Practice for commercial property relationships following the Covid-19 pandemic in November 2021.

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the Covid-19 pandemic on the one hand, and the ultimate recipient of the Rent in question on the other. I would respectfully suggest that these are the parties who in reality are intended to be involved in any arbitration that proves necessary.

7. The head lease/sublease model is not exclusive to SRL and is not uncommon, particularly in franchised industries. Without the suggested amendment:

- The head landlord/freeholder, which may be best able to bear some of the burden of the pandemic, will be able to insist on payment in full from the head tenant without the option of a referral to arbitration due to this loophole; and
- Head tenants (such as SRL) will be forced to carry the burden of any relief granted and this may affect their viability moving forward. By way of example, the annual rent (not including service charge) payable by SRL for the period in relation to which its subtenants would be able to seek relief via arbitration (21 March 2020 to 18 July 2021) was over £44million. If any head tenants fail this could have a severe impact on jobs and the high street.

Should the Committee require any further information or assistance they should not hesitate to contact me.

PP  DA WINTER

Nigel Doughty, County Director – UK and Ireland
Subway Realty Limited