

## COMMERCIAL LEASE

This lease is made on 1<sup>st</sup> July 2021 (lease)

between

LARK Investments Pty Ltd AFT LARK Superannuation Fund (ABN 80 859 812 852) of PO Box 1993, South Plympton, South Australia, 5038 (lessor)

and

Adelaide Coachlines Pty Ltd (ACN 008 041 905) of 40-42 Dumbarton Ave, Edwardstown, South Australia, 5039 (lessee).

### OPERATIVE PROVISIONS

#### 1. Definitions and Interpretation

##### 1.1. Definitions

In this lease, the following terms have the following meanings unless the context otherwise requires.

**accounting period** means any period, not exceeding 12 months, from time to time selected by the lessor for the purpose of calculating lessor's outgoings.

**appurtenances** means all mechanical ventilation, stop-cocks, alarm systems, fire prevention and extinguishing equipment, lavatories, grease traps, water apparatus, gas fittings, electrical fittings and apparatus and other services at the building or the premises, as the context requires.

**authority** means any federal, state or local government authority or body.

**bank guarantee** means an unconditional bank guarantee with no expiry date issued by an Australian trading bank in favour of the lessor for the amount of the security bond.

**building** means all improvements from time to time existing on the land and improvements developed in conjunction with the land and where appropriate, includes the land.

**CLM Act** means the Contaminated Land Management Act 1997.

**commencement date** means the date of commencement of this lease as specified in item 4.

**consumer price index** means the all groups consumer price index published from time to time by the Australian Bureau of Statistics in relation to the city or Brisbane.

**contaminated land** has the meaning given in the CLM Act.

**CPI review** means a review of rental calculated by using the formula:

$$(X \cdot Y) / 2$$

where:

X = consumer price index figure for the quarter ended immediately prior to the commencement of the rental year for which the rental is being calculated;

Y = rental payable during the rental year immediately preceding the rental year for which the rental is being calculated; and

Z = consumer price index figure for the quarter ended immediately prior to the commencement of the rental year immediately preceding the rental year for which the rental is being calculated.

**creditable acquisition, GST, GST exclusive market value, input tax credit, supply and tax invoice** each has the meaning attributed to each of those terms in the GST law.

**default rate** means the average bid rate for a 1 year term displayed on the Reuters screen BBSY page at or about 11.00am in Sydney on the due date for payment of the relevant moneys.

**expiry date** means the date of expiry of this lease as specified in item 4.

**gardening** means the cost of maintaining and replacing the landscaped areas on the land.

**GST law** means that term as defined in the A New Tax System (Goods and Services Tax) Act 1999.

**guarantee** means the guarantee and indemnity in this lease.

**guarantor** means the person or persons named as guarantor.

**increase in rates and taxes** means any extra rates and taxes which the lessor is charged (over and above those at the commencement date) by any authority or other body due to the lessee's use of the premises

**institute** means the Australian Property Institute in the relevant state or territory.

**item** means the relevant item number in the schedule 1 of this lease.

**land** means the land legally described as:

- (a) Lot 58 DP 2821 Vol: 5585 Fol: 11

**law** means any statute, regulation or ordinance made by an authority and includes the applicable common law.

**lease** means this document and any other schedules or annexures.

**lessee** means the lessee named above and in item 2, and if a corporation, its successors in title and assigns and if a natural person, his or her executors administrators and assigns.

**lessee's proportion of lessor's outgoings** means the percentage of the lessor's outgoings that is specified in item 8. If a percentage is not specified, then the percentage of the total lettable floor area of the building which is represented by the floor area of the premises where:

- (a) **floor area of the premises** means the net lettable area of the premises determined by reference to the method for measurement of buildings published by the Property Council of Australia Limited; and

(b) **total lettable floor area** means the net lettable area of the building determined in accordance with the method for measurement of buildings as published by the Property Council of Australia Limited.

**lessor** means the lessor named in above.

**lessor assets** means the lessor's fixtures and any of its improvements or alterations and any other personal property (as that term is defined in the PPSA) provided by the lessor to the lessee under this lease at any time including but not limited to one freestanding warehouse.

**lessor's fixtures** includes all appurtenances, equipment, fittings, fixtures and furnishings of whatever nature supplied from time to time at the premises by the lessor

**lessor's insurance** means the costs of any insurances effected by the lessor in respect of the building and lessor's fixtures.

**lessor's outgoings** means all expenses and outgoings paid or incurred by the lessor under the heads of expenditure listed in item 7.

**maintenance and cleaning** means the cost of cleaning and maintaining the premises, car parks, internal and external areas of the building, including cleaning materials, and the disposal or rubbish.

**management costs** means all charges imposed or incurred by the lessor in respect of the management of the land or the leasing of it including accountant's fees, rental collection, administration including the cost of auditing the lessor's outgoings, and providing estimates and statements of outgoing expenditure.

**market review** means a review of rental carried out pursuant to clause 2.3.

**month or monthly** means respectively calendar month or calendar monthly.

**payee** means the party receiving the payment.

**payer** means the party making the payment

**payment means:**

- (a) the amount of monetary consideration (exclusive of GST);
- (b) the GST exclusive market value of any non-monetary consideration; or
- (c) any amount required to be paid by the payer to the payee for a supply under this lease.

**permitted use** means the permitted use described in item 10.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and, its regulations as amended and in force from time to time.

**premises** means the land and any of the lessor's fixtures.

**quarter** means the respective 3 monthly periods adopted by the Australian Bureau of Statistics for the compilation and issue of the consumer price index.

**rates and taxes** means the amount of any rates, taxes or charges which during the term the lessor may be lawfully obliged to pay to any authority by reason of the ownership or use of the land.

**register** means the Personal Property Securities Register

**renewed term** means a further term of the lease granted under an exercise of an option, and as specified in item 5.

**rental** means the annual sum specified in Schedule 1.

**review date** means the dates the rental is to be reviewed, as set out in Schedule 1.

**security bond** means the amount of money specified in Schedule 1.

**services** means all services of any nature from time to time provided to the premises, the building or the land or available for use, and includes any electronic medium, electricity, lighting, gas, fire services, air-conditioning and the fittings and equipment utilised for such services

**term** means the term of this lease, including any renewed term as the context requires, being the period from and including the commencement date to and including the expiry date.

**valuer** means a valuer appointed by the president of the institute who has been a member of the institute for at least five years.

**waste charges** means costs and charges levied or assessed in respect of sewerage and removal of garbage and other waste from the land.

**water charges** means all rates, taxes and charges payable to any authority or body in respect of water supplied to the land (unless an individual water meter is installed at the premises, in which case these charges will not be payable and clause 2.5 will apply)

## **1.2. Interpretation**

- (a) Words importing the singular number include the plural and vice versa.
- (b) Reference to a person includes any corporation and vice versa
- (c) The respective obligations of each party under this lease are separate and independent, and continue throughout the term and any period of renewal and holding over (unless the context provides otherwise).
- (d) If any term of this lease becomes unenforceable, that term will not affect the validity of the remaining terms of this lease.
- (e) Reference to a law includes all laws amending or replacing a law.
- (f) Reference to an authority or body that have ceased to exist or been reconstituted, will constitute a reference to the authority or body established in lieu of the initial authority or body.
- (g) Where two or more persons are lessees or guarantors, the obligations of the lessee and guarantor (as the case may be) under this lease bind them jointly and each of them severally.
- (h) Headings and sub-headings have been included for ease of reference only and have no bearing on the construction of this lease.

## **2. Rental and other charges**

### **2.1. Payment of rental**

Rental is payable monthly in advance on the 16<sup>th</sup> day of each month by instalments each being one-twelfth (to the next whole cent) of the rental for that rental year.

## 2.2. Rental reviews

- (a) Rental reviews occur on the date and in the manner set out in items 13.
- (b) Pending determination of the rental for any rental year, rental is paid at the rate payable at the end of the previous rental year and an adjustment (if necessary) is made within 1 month of the rental -for that rental year being determined.

## 2.3. Market review

A market review of the rental is to be carried out in accordance with the following procedure:

- (a) the lessor may give a written notice to the lessee notifying the lessee of the lessor's proposed rental for the rental year (lessor's notice);
- (b) if the lessee disputes the rental proposed in the lessor's notice, the lessee must within 14 days of receiving the lessor's notice provide the lessor with written notice stating that it disputes the proposed rental (lessee's notice);
- (c) if the parties cannot agree on the market rental within 14 days of the lessor receiving the lessee's notice, the rental is determined by a valuer agreed to by both parties and on application by either party (with the costs of such valuation being borne equally by both the parties);
- (d) if the lessee does not provide a lessee's notice in accordance with clause 2.3(b), the lessee is deemed to agree with the rental in the lessor's notice;
- (e) within 30 days of being appointed, the valuer must determine the rental and notify both parties. If the valuer fails to provide the determination of rental, either party may apply to the president of the institute for a replacement valuer. The determination of the first valuer will be of no effect unless it is received prior to the appointment of the replacement valuer;
- (f) in determining the annual market rental, the valuer will:
  - i. be deemed to act as an expert and not as an arbitrator;
  - ii. value the premises as being fit for occupation and in full leasable repair (even if works or repairs are being carried out to the premises), and exclude any deleterious condition of the premises which has resulted from a breach of this lease by the lessee;
  - iii. value the premises as being available to be let immediately to a willing lessee without a premium, subject to the terms and conditions of this lease (other than the rental or any rental concession given to secure a lessee) and on the assumption that that lessee will perform all of its obligations under the lease,
  - iv. consider the market rental of comparable premises in the vicinity of the premises; and
  - v. if the premises comprise multiple offices, value each office separately;
- (g) if the lessor does not serve a lessor's notice on the lessee, the rental for the rental year will remain the same as the previous rental year. It is at the lessor's discretion as to whether to serve a lessor's notice on the lessee and
- (h) the lessor does not forfeit its right to serve a lessor's notice by reason of any subsequent review date occurring prior to service of the lessor's notice.

## **2.4. Payment of lessor's outgoings**

- (a) The lessee must pay the lessee's proportion of lessor's outgoings to the lessor in the following manner, whichever the lessor so elects:
  - i. within 14 days of being billed by the lessor for the lessor's outgoings or any part of them; or
  - ii. in advance in equal monthly instalments at the same time and in the same manner as the lessee pays the rental.
- (b) If the lessor requires the lessee to pay the lessee's proportion of outgoings in accordance with clause 2.4(a)(ii), then:
  - i. prior to the commencement of each accounting period, the lessor will provide the lessee with an estimate of the amount of the lessee's proportion of lessor's outgoings which the lessor estimates will be incurred during that accounting period; and
  - ii. following each accounting period, the lessor must give the lessee details of the lessor's outgoings that were incurred during that accounting period and within 1 month of the lessor providing the estimates, an adjustment (if necessary) is made to the estimated lessor's outgoings, between lessor's outgoings paid and those incurred.

## **2.5. Payment of other charges**

- (a) The lessee must pay all charges for electricity, gas and any other services at the premises:
  - i. if assessed directly against the lessee, to the assessing authority by the due date for payment; or
  - ii. if assessed against the lessor, the lessor must charge the lessee as if the lessee was a single consumer directly from the relevant authority and the lessee must pay such charges within 14 days of being billed by the lessor.
- (b) If a separate water meter is installed at the premises, the lessee must pay to the lessor within 14 days of being billed by the lessor all charges for supplying water to the premises.
- (c) If an authority provides cleansing or refuse services to the premises (whether at the request of either of the parties or such authority), the lessee must:
  - i. If the charges are assessed against the lessee, pay the authority by the due date; or
  - ii. if the charges are assessed against the lessor, pay the lessor within 14 days of being billed by the lessor.
- (d) The lessee must comply with all fire safety laws and directions in respect of the premises and pay any associated levies or charges.
- (e) The lessor must pay by the due date all other outgoings in respect of the land, except as otherwise provided for in this lease.

## **2.6. Costs of lease**

The lessee must pay upon demand the following expenses:

- (a) survey fees and registration fees associated with the registration of this lease;
- (b) the lessor's solicitors' costs (on a solicitor and own client basis) of and incidental to the preparation, execution and registration of this lease and any new lease, variation to or extension of lease; and
- (c) the lessor's expenses in obtaining the consent of the lessor's mortgagee to this lease.

## **2.7. Costs of notices, re-entry and consents**

The lessee must, upon demand by the lessor, pay all costs (on a solicitor and own client basis) and expenses incurred by the lessor in relation to:

- (a) any notice lawfully given to the lessee pursuant to this lease and any actions taken to enforce the performance of the lessee's obligations under this lease;
- (b) the lawful determination or attempted determination of this lease, or the lawful re-entry or attempted re-entry by the lessor into the premises;
- (c) the surrender of this lease (including any duty and registration fees);
- (d) the consideration of any consents by the lessor; and
- (e) the lessor, without fault, being made a party to litigation commenced by or against the lessee (other than litigation between the parties), and arising directly or indirectly from the lessee's occupation of the premises.

## **2.8. Goods and services tax**

- (a) Subject to clause 2.8(b), any payment required to be made under this lease will be increased by any GST payable by the payee for that supply. The payee will deliver a tax invoice for the payment to the payer in accordance with the GST law.
- (b) Where a payment is a repayment of, or contribution to, a creditable acquisition made by the payee, the payment will (prior to the increase provided for under clause 2.8(a)) be discounted by the amount of the input tax credit to which payee is entitled for that creditable acquisition under the GST law.

## **3. Personal property securities**

### **3.1. Title to lessor assets**

- (a) Despite anything to the contrary express or implied in this lease, the parties agree that the lessor retains full title to the lessor assets and title will not at any time pass to the lessee despite:
  - i. the delivery or collection of the lessor assets to/by the lessee (as the case may be); and
  - ii. the possession and use of the lessor assets by the lessee.
- (b) The lessee acknowledges that the lessee has the right to possess the lessor assets as a mere bailee only and will deal with the lessor assets in such a manner which enables it to be clearly identified as lessor assets belonging to the lessor and does not have any right to pledge the lessor's credit in connection with the lessor assets and agrees not to do so.
- (c) The lessee acknowledges and agrees that:

- i. it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the lessor assets without the express written consent of the lessor;
- ii. it will, if requested by the lessor, return the lessor assets to the lessor following non-fulfilment of any obligation of the lessee (including payment of moneys) without limiting any other right the lessor may have;
- iii. it will deliver up the lessor assets at the end of the term, and give the lessor or its agents or authorised representatives the right to enter any premises occupied by the lessee and any premises where the lessor believes any lessor assets may be stored (without liability for trespass or any resulting damage) and to use the name of the lessee and to act on its behalf, if necessary, to recover possession of the lessor assets and agrees to indemnify the lessor and its agents or authorised representatives from any damage, injury, loss, claim or expense arising from such recovery or attempted recovery of the lessor assets from the lessee's possession or control;
- iv. it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the lessor assets on trust for and as agent for the lessor immediately when they are receivable or are received; and
- v. the lessor may recover as a debt due and immediately payable by the lessee all amounts owing by the lessee to the lessor in any respect even though title to the lessor assets has not passed to the lessee.

(d) The lessee acknowledges and agrees that despite any other provision of this lease:

- i. the PPSA applies to any provision of the lessor assets by the lessor to the lessee;
- ii. the lessor assets are commercial property;
- iii. by agreeing to, and accepting or adopting this lease the lessee grants a purchase money security interest to the lessor in the lessor assets to secure the lessor's interest in the lessor assets and all moneys owing or payable by the lessee under this lease and any other moneys payable by the lessee to the lessor from time to time on any account whatsoever;
- iv. if a purchase money security interest is not able to be claimed on the lessor assets by the lessor for any reason, the lessor will have a security interest in the lessor assets,
- v. the lessee agrees that the lessor's security interest in the lessor assets covered by this lease may be registered on the register and the lessee agrees to do all things necessary and required by the lessor to effect registration or the lessor's security interest on the register in order to give the lessor's security interest the best priority possible and anything else the lessor requests the lessee to do in connection with the PPSA without delay;
- vi. the lessee warrants that all information provided by the lessee to the lessor, including but not limited to the lessee's details, including the entity name, ACN or ABN and address set out in this lease is correct in all



respects and must not change its name, address or other details set out in this lease without providing the lessor with at least 20 business days' prior written notice;

- vii. the lessee unconditionally and irrevocably appoints the lessor as its attorney to do any of the acts and matters set out in this clause 3 if the lessee fails, delays or declines to execute such documents or do such acts;
- viii. the lessee agrees that it will not grant a security interest or other encumbrance in the lessor assets whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of the lessor, which the lessor may refuse to provide or grant in its absolute and unfettered discretion. The lessor may request and the lessee must provide any information that the lessor requires, acting reasonably in order to fully consider whether to grant its consent,
- ix. the lessor's security interest in the lessor assets extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the lessee dealing with the lessor assets;
- x. it has received value as at the date of first delivery of the lessor assets and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to lessor under this lease;
- xi. the lessor assets are located in Australia at the date of the provision of the lessor assets and the lessee warrants that the lessor assets will remain located in Australia for the term of the lease;
- xii. neither the lessor or the lessee will disclose any information to any interested person unless required to do so under the PPSA;
- xiii. the lessee waives its right under the PPSA;
  - (a) to receive a copy of any verification statement, financing change statement, or any notice that the lessor intends to sell the lessor assets or to retain the lessor assets on enforcement of the security interest granted to the lessor under this lease or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
  - (b) to object to a proposal by the lessor to dispose of or purchase or retain the lessor assets in satisfaction of any obligation owed by the lessee to lessor,
  - (c) to receive a statement of account following the sale of the lessor assets; and
  - (d) to redeem the lessor assets:
- xiv. the lessee will not give (or allow any person to give) to the lessor a written demand requiring the lessor to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the register a financing change statement under the PPSA; and
- xv. a default by the lessee under any other security agreement of and under which a security interest has granted to any other party in respect of the

lessor assets or any default under such security agreement which results in an exercise of rights under the PPSA is deemed to be a breach of this lease.

- (e) The parties agree that the lessor is not required to respond to a request made under section 275 of the PPSA and that neither party will disclose information of the kind set out in section 275(1) of the PPSA.

### **3.2. Additional lessor assets**

The parties acknowledge and agree that any provision of any additional lessor assets made by the lessor to the lessee during the term which is not specifically set out in this lease is deemed to form part of this lease and is subject to the terms of this lease.

### **3.3. Enforcement**

- (a) The enforcement provisions contained in this lease are in addition to any rights available to the lessor under the PPSA and apply to the maximum extent permitted by law.
- (b) Without limitation to clause 3.3(a) and any other provision of this lease section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

### **3.4. Power of Attorney**

The lessee irrevocably nominates constitutes and appoints the lessor, its officers or its nominees severally to be the true and lawful attorneys of the lessee on behalf of and in the name of the lessee to do all things necessary and sign all such documents as may be necessary to deal with the lessor assets in accordance with the enforcement provisions of this lease, the PPSA or otherwise, if the lessee is in default of this lease.

### **3.5. Interpretation**

A term used in this clause is taken to have the meaning defined under the PPSA unless otherwise defined in this lease.

## **4. Occupation of premises**

### **4.1. Use and conduct**

- (a) The lessee must not use the premises for any use other than the permitted use.
- (b) The lessor does not warrant that the premises are, or will remain, suitable for the lessee's use and any warranties as to the suitability of the premises implied by law are negated.
- (c) The lessee must:
  - i. conduct its business at the premises in an orderly and businesslike manner and keep the premises open for business during the usual hours for that type of business;
  - ii. comply with all laws, and obtain and maintain all licences and approvals required at law to carry on the lessee's business from the premises;
  - iii. promptly notify the lessor in writing of any damage sustained to the premises or defective operation of the appurtenances;

- iv. observe the maximum floor loading weights nominated by the lessor from time to time and not install any safes or other heavy equipment at the premises; and
  - v. keep the premises free of rodents, vermin and any infectious diseases.
- (d) The lessee must not:
- i. without the lessor's prior written consent, mark or damage the premises, or erect any partitions, fittings or signs to the premises;
  - ii. use any form of light, power or heat (other than an apparatus for heating beverages, auxiliary power during any power failure or, electricity or gas supplied through meters);
  - iii. interfere with the services or appurtenances, or use the appurtenances for any purpose other than those for which they were constructed;
  - iv. carry on or permit to be carried on any annoying, offensive or illegal act, or any act which may void or invalidate the lessor's insurance at the premises;
  - v. hold, or permit to be held, any auction, bankrupt or fire sale on the premises, or
  - vi. bring upon the premises any explosive, flammable or corrosive fluid or any other dangerous substances or substances capable of causing contamination except that normally used by the lessee in its business, and only if such fluids are safely confined in containers and approved in advance by the lessor.
- (e) Subject to the lessor's rights under this lease, the lessee may occupy the premises during the term without interruption by the lessor.

#### **4.2. Obligations under Contaminated Land Management Act 1997**

- (a) The lessor does not warrant that the land is not contaminated land. The lessee acknowledges and agrees that it has made the necessary inspections and enquiries to satisfy itself whether or not the land is contaminated land.
- (b) The lessee must not permit its employees, agents or others (with or without invitation) who may be at or around the premises to cause the land to become contaminated land. If it does become contaminated land, the lessee must immediately take such remediation measures as reasonably required by the lessor and any authorised officer under the CLM Act.
- (c) The lessee must indemnify and keep indemnified the lessor against any claim, damage, liability or expense which the lessor may be, or becomes, liable (during or after the term) because the lessee fails to comply with clause 4.2(b)

### **5. Maintenance and repair of premises**

#### **5.1. Obligation to clean, repair and maintain**

- (a) The lessee must:
  - i. keep the premises (including the external surfaces) clean and tidy, and employ staff for the cleaning of the premises regularly at such intervals as are approved by the lessor;

- ii. maintain the exterior parts of the premises in good order and condition
  - iii. (including but not limited to weeding the gardens and mowing the lawns); and
  - iv. not allow any accumulation of useless property or rubbish at the premises and cause any wet refuse at the premises to be removed daily outside of normal trading hours.
- (b) The lessee must maintain the premises and all services in good condition as at the commencement date, except for:
- i. fair wear and tear, subject to the express obligations of the lessee in this clause 5.1, and then only if the lessee has taken all reasonable measures to ensure that any damage attributed to fair wear and tear will not contribute to any further damage to the premises;
  - ii. damage caused by fire, flood, storm, explosion, war, inevitable accident or act of God; or
  - iii. damage as a result of a structural defect at the premises, provided that damage is not caused or contributed to by the lessee.
- (c) Without limiting the generality of clause 5.1(b), the lessee must:
- i. maintain the doors, locks, windows and fittings of the premises in good condition and efficient working order as at the commencement date;
  - ii. replace any broken light bulbs, tubes or glass at the premises;
  - iii. keep and maintain any signs at the premises in good repair and of good appearance;
  - iv. maintain the waste pipes, drains and conduits within the premises in a clean and free-flowing condition and employ a licensed tradesperson to clear any blockages;
  - v. maintain the appurtenances in good condition and efficient working order; and
  - vi. where an air-conditioning system has been installed at the premises or exclusively services the premises, enter into and keep current service and repair contracts for the air-conditioning system.

## **5.2. No alterations without consent**

The lessee must not make any alterations or improvements (works) to the premises or services without the lessor's prior written consent, which (should it be forthcoming) will include the following conditions:

- (a) the lessee must provide detailed plans of the works to the lessor who may, at the lessee's cost, refer the plans to the lessor's architect for its approval;
- (b) the lessee must obtain all relevant authority approvals to the works before commencing the works. If required by the lessor, the lessee must construct the works under the supervision of the lessor's architect or other consultant with the cost of the supervision by the lessor, the lessor's architect or the lessor's consultant to be borne by the lessee;

- (c) the works must be carried out in a proper and workmanlike manner, and at the cost of the lessee, by contractors who have a current public liability insurance policy for at least \$20,000,000 and have previously been approved by the lessor; and
- (d) the lessee must indemnify and keep indemnified the lessor against all damage, injury, loss, claim or expense incurred by the lessor relating directly or indirectly to the construction of the works.

## **6. Damage or destruction of premises**

### **6.1. Abatement of rental and suspension of covenant to repair**

- (a) If, without any neglect or default by the lessee, all, or part, of the premises are damaged or destroyed by any flood, storm, riot, war or act of God which renders the premises wholly or partially unfit for use by the lessee in conducting its business, payment of the rental or a proportionate part (according to the damage sustained) will abate. The lessee's covenants to repair under this lease will suspend until the restoration of the premises.
- (b) Despite clause 6.1(a), the lessor is not required to restore the premises to its former specifications provided that the layout and the dimensions of the premises and services are not substantially different to their state and condition prior to the damage or destruction. If the lessee has altered the configuration of the premises during its occupation of the premises nothing in this clause requires the lessor to reinstate the premises to the altered configuration.
- (c) The lessee will during any period of repair of the premises continue to operate its business as far as practicable having regard to the nature of the lessee's business and the extent of the damage to the premises.

### **6.2. Parties may terminate if no reinstatement**

If, without any neglect or default by the lessee, the premises are damaged or destroyed by any flood, storm riot, war or act of God so as to render the premises:

- (a) wholly unfit for use by the lessee and the restoration of the premises by the lessor has not substantially commenced within a reasonable period of time from the damage occurring, the lessee may give a written notice to the lessor stating that the lessee will terminate the lease if the restoration of the premises has not substantially commenced within 3 months of the date of that notice. If the restoration has not substantially commenced within that time and continues not to be substantially commenced, the lessee may terminate this lease by executing and delivering a surrender of lease in registrable form to the lessor; or
- (b) wholly or substantially unfit for use by the lessee, the lessor may, in lieu of restoring the premises, give written notice to the lessee terminating this lease.

This termination will not prejudice either parties' rights regarding any antecedent breach of this lease

### **6.3. Arbitration of disputes**

If a dispute arises between the parties in respect of this clause 6, the dispute must be submitted for arbitration to an independent arbitrator, whose decision will be conclusive and binding on the parties. A determination from arbitration under this clause will be a condition precedent to the parties commencing legal proceedings relating to the dispute.

## **7. Reservations**

### **7.1. Right of entry**

The lessor reserves the right to:

- (a) at all reasonable times enter and view the premises. If the lessor considers it necessary, the lessor may leave a notice at the premises requiring the lessee, within a stated period, to carry out a repair or take the required action for the lessee to comply with the terms of this lease;
- (b) at all times effect any works to the premises considered necessary by the lessor for the safety or preservation of the premises or to comply with any laws. The lessor will (except in an emergency, of which the lessor will be the sole judge) carry out the works in a manner which minimises, so far as practicable, interruption to the lessee's business; and
- (c) at all reasonable times of the day enter the premises with prospective purchasers of the premises (and also prospective lessees of the premises during the period of 3 calendar months immediately preceding the expiry date). These prospective parties will either bear the written authority of, or be accompanied by, the lessor or its agents.

### **7.2. Third party interests**

- (a) The lessee must during the term permit any person having any interest in the premises superior to or concurrent with the lessor to exercise the lessor's and that person's lawful rights.
- (b) The lessor reserves the right to grant, and the lessee's rights under this lease are subject to, any easements or arrangements the lessor makes regarding the land for the purposes of providing access to the land or the provision of any services to the land, provided that such easements do not substantially interfere with the lessee's rights under this lease
- (c) If a person, other than the lessor becomes entitled to receive the rental, that person has the benefit of all of the lessee's covenants under this lease. The lessee (at the reasonable cost of the lessor) will enter into any agreements with such person in this regard, as reasonably required by the lessor.

## **8. Insurance and indemnities**

### **8.1. Insurances**

- (a) The lessee must take out and maintain in the lessee's name with the lessor's interest noted, a standard public liability insurance policy with an insurance company approved by the lessor, for at least the amount specified in item 9. If required by the lessor, the lessee must extend this policy to cover risks of an insurable nature regarding any indemnities that the lessee has provided to the lessor under this lease.
- (b) The lessee must take out and maintain an insurance policy to the replacement value of the lessee's property and fittings at the premises
- (c) If requested by the lessor, the lessee must produce to the lessor evidence of any insurance policies (including renewals) effected by the lessee under this clause 8.1.
- (d) The lessee must not do anything which could:

- i. prejudice any insurance of the premises or property in the premises; or
  - ii. increase the premium for that insurance without the lessor's consent.
- (e) If the lessee does anything that increases the premium of any insurance the lessor has in connection with the premises, the lessee must pay the amount of that increase to the lessor on demand.
- (f) If the lessee does anything that causes or contributes to a requirement for the lessor to make a claim under any of its insurances the lessee must pay the cost of any excess required to make that claim.

## **8.2. Indemnities**

- (a) The lessee occupies and uses the premises at its own risk. The lessor is not liable in any circumstances to the lessee for any damage to the lessee's property in or about the premises, interruption to the services or appurtenances nor any loss of profits by the lessee.
- (b) The lessee must indemnify and keep indemnified the lessor (during and after the term) against all actions, losses and expenses incurred by the lessor:
- i. for any loss, damage, death or injury caused by, or incidental to, the lessee's use of the premises or by the escape of any water, fire, gas, electricity or other such agent from the premises, except where the lessor has caused or contributed by negligence, wilful act or omission; and
  - ii. which are caused by, or incidental to, the lessee's failure to comply with this lease.
- (c) Despite anything in this lease to the contrary, the lessor will not be in default of this lease for a remediable breach, unless the lessee has given written notice to the lessor of the breach, and the lessor has failed to remedy the breach within a reasonable period of time.

## **9. Assignment, subletting and encumbering**

### **9.1. Assignment**

The lessee must not assign this lease without the prior written consent of the lessor. The consent will not be unreasonably withheld, if:

- (a) the proposed assignee is a respectable and financially responsible person with at least equal trading and turnover potential in conducting a business substantially similar to that of the lessee. The lessee has the onus of proving these requirements to the satisfaction of the lessor;
- (b) the lessee pays the lessor's costs and expenses of, and incidental to, making enquiries regarding the suitability of the proposed assignee;
- (c) at the date of assignment, the lessee has paid all rental and other moneys owing to the lessor, and has otherwise complied with all of its obligations under the lease;
- (d) the proposed assignee enters into a deed in the form required by the lessor and prepared by the lessor's solicitors at the lessee's expense. Under the deed, the proposed assignee must covenant with the lessor to observe the terms of the lease and appoint the lessor its attorney for the purposes described in clause 10.6. Where the proposed assignee is a corporation, the lessor may require the

directors or principal shareholders of the proposed assignee, or both, to guarantee the proposed assignee's obligations under that deed;

- (e) the lessee assigns its interest in any security bond or bank guarantee to the proposed assignee, or the proposed assignee provides its own replacement security; and
- (f) if the lessor's consent is subject to the consent of any other person or authority, the lessee, at its expense, attempts to obtain the consent of that other person or authority (as applicable) which is required for the assignment.

## **9.2. Corporation**

- (a) Where the lessee is a company (other than a company whose shares are listed on any Australian stock exchange), the lessee must not, without the lessor's prior written consent, transfer any share in the capital (including the beneficial interest) of the lessee. The company also must not issue any new shares or take such other action which results in the shareholders of the lessee at the commencement date having less than 51% of the voting, income and capital participation rights in the lessee.
- (b) The lessor's consent under clause 9.2(a) will not be unreasonably withheld, if:
  - i. the lessee gives the lessor at least 1 month's written notice of the intention of the lessee's directors to take the action referred to in clause 9.2(a);
  - ii. the lessee is not in default under this lease;
  - iii. the person receiving the share/s in the lessee (proposed transferee) prove to the satisfaction of the lessor that that person is respectably responsible and solvent, and that the lessee will remain capable of carrying on its business at the premises; and
  - iv. the proposed transferee guarantees the lessee's obligations under this lease. The guarantee is to be in the form required by the lessor.

## **9.3. Subletting and encumbering**

The lessee must not without the lessor's prior written consent

- (a) sublet or in any manner part with or share possession of the premises; or
- (b) mortgage or otherwise encumber the lessee's interest in this lease

## **10. Default of lessee**

### **10.1. Lessor may rectify**

If the lessee fails to perform any of its obligations under this lease, the lessor may (as the agent of the lessee) do all such things and incur such expenses as are necessary to perform these obligations. Those expenses constitute a liquidated debt due and owing by the lessee to the lessor and payable on the demand of the lessor.

### **10.2. Overdue payments**

- (a) If the lessee fails to pay any money payable on demand within 14 days of the lessor's demand, or fails to pay any other money due under this lease within 7 days of their due date, the lessee must pay to the lessor interest accruing daily at the default rate:



- i. on the money owing from the payment due date until the money is paid; and
  - ii. upon any judgment the lessor obtains against the lessee from the date of the judgment until the debt is satisfied.
- (b) Interest is capitalised on the last day of each month and payable on the first day of the next month. The interest is recoverable in the same manner as the rental in arrears.
- (c) If an amount of rental, or any other money due under this lease, remains unpaid by the lessee as a result of consecutive breaches of the same term or this lease, interest at the default rate accrues on that amount from the date when the breach first occurred.
- (d) Without prejudice to any other remedy, the lessor may sue the lessee for any money owing by the lessee under this lease. Neither the institution of legal proceedings nor the entering of judgment by a court will bar the lessor from bringing any subsequent suits against the lessee for any other money owing by the lessee to the lessor under this lease.

### **10.3. Definition of default**

The lessee will be in default of this lease, if:

- (a) any part of the rental is in arrears for 7 days, whether demanded or not;
- (b) any money (other than the rental) payable by the lessee under this lease on demand is not paid within 14 days of the lessor making such a demand, or if any other money payable by the lessee under this lease is not paid by the payment due date;
- (c) the lessee fails to comply with a term of this lease,
- (d) the lessee (except for the purpose of reconstruction) becomes bankrupt, insolvent, under administration, in liquidation or receivership, or otherwise without full capacity, or
- (e) the lessee's interest under this lease is taken in execution under any legal process.

### **10.4. Essential terms**

- (a) The covenants contained in clauses 2 1, 2.4, 2.5, 4 1, 5.1, 8, and 9 are essential terms of this lease. The failure to specify that a clause is an essential term does not in itself mean that that clause is not essential
- (b) A breach of an essential term of this lease entitles the lessor to do any one or more of the following (without prejudicing any other rights the lessor may have):
  - i. terminate this lease.
  - ii. re-enter the premises;
  - iii. forfeit the lease, and
  - iv. sue for and recover damages from the lessee for loss occasioned by the breach.

- (c) Should the lessor forfeit this lease, without prejudice to any other right it may have the lessor will be entitled to recover from the lessee by way of liquidated damages any cost incurred by the lessor from, and incidental to, the lessee's breach of this lease. This entitlement includes recovery for re-letting the premises and any difference in the rental and other money that would have been paid by the lessee for the unexpired residue of the term.

#### **10.5. Rights upon default**

- (a) If the lessee defaults under this lease, the lessor may (without prejudice to any other rights):
  - i. subject to any prior notice required by law, re-enter and take possession of the premises and eject the lessee and any persons in possession of the premises (which may be by force, if necessary), from which time this lease will be terminated;
  - ii. terminate this lease by giving written notice to the lessee; or
  - iii. by giving written notice to the lessee, elect to convert the unexpired residue of the term, to a monthly tenancy. The lease will be terminated and the lessee will hold the premises from the lessor pursuant to clause 10.7.
- (b) Upon re-entry to the premises, the lessor may remove any of the lessee's items which have been placed or added at the premises and store them at the cost of the lessee (those costs are payable by the lessee to the lessor on demand) without being guilty of conversion or liable for any loss or damage to these items. If the lessee fails to claim the items within 14 days of removal, those items are deemed abandoned by the lessee and will become the property of the lessor. In the event that the lessor sells any of these items, the lessor will not have to account to the lessee for the proceeds of any sale.

#### **10.6. Power of attorney**

The lessee irrevocably appoints the lessor to be the true and lawful attorney of the lessee to do the following acts on the lessee's behalf.

- (a) if the lessor has lawfully terminated this lease (proof of which will be the declaration of the lessor), the lessor may execute and do all things necessary to register a surrender of this lease: and
- (b) substitute the lessor as the attorney with a purchaser of the premises for the reversion of this lease.

#### **10.7. Holding over**

- (a) If the lessee remains in occupation of the premises after the expiration of the term with the consent of the lessor, the lessee becomes a monthly tenant. The lessee continues to pay the same amount of rental and other money under this lease as the lessee did at the expiry date.
- (b) The monthly tenancy created under clause 10.7(a) will continue on the same terms of this lease (so far as the terms can be applied to a monthly tenancy) until either party gives the other 1 month's written notice terminating the tenancy. However, if the lessee is in default, the lessor may give 72 hours written notice to the lessee terminating the tenancy.

## **11. End of lease**

### **11.1. Yield up**

The lessee must.

- (a) at the end of the lease, peacefully yield up the premises in the condition required by clauses 5.1 and 11.3, and return to the lessor all keys and security devices relating to the premises; and
- (b) during the last 14 days of the term remove the fittings, additions, signage and other branding it has erected or affixed to the premises during the term or any previous period of occupation of the premises by the lessee or a predecessor in title to the lessee or purchased with the consent of the lessor from a previous lessee, and the lessee must make good any damage caused in the installation or removal.

### **11.2. Failure to remove**

At the end of the lease, the lessor may elect to either:

- (a) deem any fittings, additions or signage not removed from the premises under clause 11.1 as abandoned and those fittings, additions or signage will become the property of the lessor; or
- (b) remove any fittings, additions or signage not removed from the premises under clause 11.1 with any costs associated with the removal of the fittings, additions or signage to be at the lessee's sole cost.

### **11.3. Redecoration**

The lessee must immediately, prior to vacating the premises:

- (a) paint or otherwise treat as previously treated the interior parts of the premises which have been previously painted or treated, with two coats of first quality paint or other treatment in a workmanlike manner and in the colour as directed in writing by the lessor; and
- (b) repair (if approved by the lessor) or replace all floor coverings and window treatments with replacements of an equal or better standard to that installed at the date the lessee or its predecessor in title took occupation of the premises.

### **11.4. Antecedent breach**

The ending of this lease does not affect any of the lessor's rights against the lessee on account of any antecedent breach by the lessee of a term of this lease.

### **11.5. Permissibility of signage**

The lessee agrees and acknowledges that the lessor is able to erect reasonable signs and signage on the premise the advertise the availability for rent within 6 months of the Termination Date in Schedule 1 Item 4.

## **12. Options to renew**

### **12.1. Exercise of option**

- (a) If the lessee punctually and properly performs its obligations under this lease, the lessee has the option, exercisable between 3 and 6 months prior to the expiry of the term, to renew this lease for the further term, (renewed term) specified in item

5, commencing on the day after the expiry date and continuing on the same terms as this lease, except that:

- i. rental will be reviewed in accordance with the method in item 11.2; and
- ii. this clause 12 has no further effect unless item 5 refers to more than one renewed term, in which case the lease is modified so that the number of renewed terms remaining is one fewer than specified in item 5.

#### **12.2. Option documentation**

- (a) The parties must execute a fresh lease or such extension documents, as the lessor considers appropriate, which are to be prepared and registered by the lessor's solicitors at the expense of the lessee.

### **13. General provisions**

#### **13.1. Consent**

- (a) Subject to anything in this lease to the contrary, any consent which the lessor is requested to provide under this lease may, at the absolute discretion of the lessor, be granted, refused, granted subject to conditions or withdrawn at any time.

#### **13.2. Waiver**

- (a) A waiver by either party of a term of this lease will only be effective if it is made in writing by that party. The waiver will not extend to, and act as, a waiver of a term generally.
- (b) If the lessee is in breach of this lease, the acceptance by the lessor of money from the lessee does not act as a waiver of the lessor's rights regarding that breach.
- (c) If the lessee is in breach of this lease, the acceptance by the lessor of money from the lessee does not act as a waiver of the lessor's rights regarding that breach.
- (d) A delay by the lessor to exercise its rights under this lease does not act as a waiver of those rights.

#### **13.3. Service of notices**

- (a) A notice required to be given by one party to another under this lease (including a notice from or on the guarantor) is effectively served, if it is in writing and:
  - i. served personally or left for the lessee at the premises, upon which the notice will be deemed to have been served immediately;
  - ii. sent by facsimile machine to the other party's facsimile machine, upon which the notice will be deemed to be served at the time the facsimile was transmitted from the sending machine, provided the receiving facsimile machine does not immediately indicate a malfunction in the transmission; or
  - iii. forwarded by registered post addressed to the party at the party's last known place of business or residence, or to the party's registered office if the party is a corporation, upon which the notice will be deemed to be given on the next weekday (other than a public holiday) after which it was posted.

- (b) A party must as soon as possible advise the other party of its new facsimile and address details, if these change from that listed in items 1, 2 or 11 (as applicable).

#### **13.4. Time of the essence**

Time is of the essence in respect of the parties' obligations under this lease.

#### **13.5. Effect of legislation**

Unless mandatory by law, any law (present or future) will not apply to this lease if it has the effect of prejudicially affecting any of the lessors rights under this lease or is inconsistent with the terms of this lease.

#### **13.6. Exclusion of legislation**

No covenant or power is implied in this lease by virtue of sections 84 or 85 of the Conveyancing Act 1919.

#### **13.7. Entire agreement**

- (a) The provisions of this lease, and any consents given under it, contain the entire agreement as concluded between the parties and no oral or collateral agreements are of any effect
- (b) No representation by the lessor regarding the premises will form an implied or other term of this lease. The lessee acknowledges that it has not been induced into this lease by any representation, made by the lessor or its agents, that is not included in this lease.

#### **13.8. Mortgagee's consent**

- (a) If the consent of any person or body (including a mortgagee) to this lease or to the extension of this lease is required, the lessee must immediately upon request by the lessor execute any documents necessary to facilitate the granting of this consent.

#### **13.9. Lessee's cost**

- (a) The lessee must perform all of its obligations under this lease at its own cost, unless otherwise specified in this lease.

#### **13.10. Electronic communication**

- (a) The lessee confirms it consents to receiving this lease and any notices or communications pursuant to this lease by electronic communication.

### **14. Governing Law**

It is the intention of the Parties to this lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of South Australia, without regard to the jurisdiction in which any action or special proceeding may be instituted.

**Executed** on 1<sup>st</sup> July 2021

**Executed** by LARK Investments Pty Ltd AFT LARK Superannuation Fund (ABN 80 859 812 852)  
in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....*K. Quinsey*.....

Signature of Trustee

.....Katherine Quinsey.....

Print Name of Trustee

.....*R.G. Quinsey*.....

Signature of Director/Secretary

.....Roger George Quinsey.....

Print Name of Director/Secretary

**Executed** by Adelaide Coachlines Ply Ltd (ACN 008 041 905):

.....

Signature of Director

.....

Print Name of Director

.....*R.G. Quinsey*.....

Signature of Director/Secretary

.....Roger George Quinsey.....

Print Name of Director/Secretary

Annexure to the lease

Landlord: LARK Investments Pty Ltd AFT LARK Superannuation Fund

Tenant: Adelaide Coachlines Pty Ltd

*\*Please attach the plan of premises here*

## SCHEDULE 1

- 1. Name and address of lessor**

LARK Investments Pty Ltd AFT LARK Superannuation Fund (ABN 80 859 812 852) of PO Box 1993, South Plympton, South Australia, 5038 (lessor)
- 2. Name and address of lessee**

Adelaide Coachlines Pty Ltd of 40-42 Dumbarton Ave, Edwardstown, South Australia, 5039
- 3. Address of premises**

The premises is located at 38 Dumbarton Ave, Edwardstown, South Australia, 5039, and described more particularly as follows:  
Lot 57 DP 2821 CT 5202/618
- 4. Term**

The term of this Lease shall begin on 1<sup>st</sup> July 2021 and shall terminate on 30<sup>th</sup> June 2023.
- 5. Options to renew**

1 x 24 months
- 6. Rental – fixed for term of lease**

\$10,400.00 inc GST per annum
- 7. Lessor's outgoing payable by lessee**
  - (a) Rates and taxes
  - (b) Increase in rates and taxes
  - (c) Electricity and gas
  - (d) Common area maintenance
  - (e) Gardening
  - (f) Management costs
  - (g) Lessor's insurance
  - (h) Waste charges
  - (i) Water charges
- 8. Lessee's proportion of lessor's outgoing**

100%
- 9. Insurances to be taken out by lessee**

Building and Contents



**10. Permitted use**

Storage and Carparking only

**11. Rental reviews**

**11.1. Term of lease**

24 months

**Rental review date**

Not applicable, fixed rate for full term

**Rental or review method**

Not applicable

**11.2. Renewed term**

24 months

**Rental review date**

30<sup>th</sup> June 2023

**Rental or review method**

Market review