

Lease

MELTON CITY COUNCIL
(ABN 22 862 073 889)

AIRSERVICES AUSTRALIA
(ABN 59 698 720 886)

Land at 231-319 Faulkners Road, Mount Cottrell



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Date	LEASE made under section 190 of the <i>Local Government Act 1989</i>
Parties	on 2016
1.	<p>MELTON CITY COUNCIL (ABN 22 862 073 889) of 232 High Street, Melton, Victoria, 3337 <i>(Council)</i></p>
2.	<p>AIRSERVICES AUSTRALIA (ABN 59 698 720 886) of 25 Constitution Avenue, Canberra, ACT, 2600 <i>(Tenant)</i></p>
Recitals	
A	The Council is the registered proprietor (or entitled to be so) of the Land.
B	The Tenant is a body corporate established under the <i>Air Services Act 1995</i> (Cth).
C	The Council has agreed to lease the Land to the Tenant on the terms and conditions contained within this lease.

It is agreed as follows.

1. Definitions

In this Lease unless the contrary intention appears –

Air Services Act means the *Air Services Act 1995* (Cth).

Annexure means the annexure to this Lease;

Business Day means any day that is not a Saturday, a Sunday or a gazetted public holiday in the State of Victoria;

Clause means a clause of this Lease and sub-clause has a corresponding meaning;

Commencement Date means the date specified in Item 5;

Council means the council specified in Item 1 and includes the council's successors and assigns and where it is consistent with the context includes the council's employees and agents;

CPI means the Consumer Price Index, Melbourne – All Groups published by the Australian Bureau of Statistics;

CPI Adjustment Date means the date specified in Item 14;

Further Term means the further term (if any) specified in Item 12;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

Item means an item in the Schedule;

Lease means this lease, the Schedule and the Annexure;

Land means the land specified in Item 3;

Market Rent means the market rent nominated by the Council in the notice to the Tenant, which is taken to be the rent obtainable in a free and open market between a willing landlord and a willing tenant in an arm's length transaction and which will be the Rent the Tenant must pay from the Market Rent Review Date;

Market Rent Review Date means the date specified in Item 13;

Percentage Rent Increase Date means the date specified in Item 15;

Permitted Use means the permitted use specified in Item 9;

Recipient has the meaning given in the GST Act.

Rent means the amount specified in Item 7 as reviewed, adjusted or increased pursuant to this Lease;

Schedule means the schedule to this Lease;

Security Deposit means the amount specified in Item 10;

Services means any water, gas, electricity, sewerage and drainage services, telecommunication and other communication services and installations now or hereafter installed on the Land, or land surrounding or adjacent to the Land and includes all wires, cables, pipes, ducts, conduits, tanks, cisterns, electrical and mechanical plant and all other parts, fittings and accessories whatever ancillary or incidental thereto or associated therewith.

Special Conditions means the special conditions referred to in Item 16;

Supplier has the meaning given in the GST Act.

Supply has the same meaning it does in Section 9-10 of the GST Act and excludes any "GST-free supplies" and "input taxed supplies" as those terms are defined in Section 195-1 of the GST Act.

Tenant means the tenant specified in Item 2 and includes the tenant's successors and assigns and where it is consistent with the context includes the tenant's employees and agents;

Term means the term specified in Item 4 and includes any extension or overholding; and

Works means the buildings including portable and relocatable buildings, security fencing, improvements, fixtures and fittings and facilities together with all earth works, laying of foundations, site preparation and site surcharging, reticulation, paving, landscaping and services, of any nature which are:

- (a) constructed, installed, altered, refurbished or undertaken by the Tenant on the Land after the Commencement Date; or
- (b) in existence on the Land at the Commencement Date.

2. Interpretation

In this Lease unless the contrary intention appears -

2.1 Legislation

Any reference to legislation includes any subordinate legislation made under that legislation and any later equivalent re-enactment or substitute legislation.

2.2 Joint and Several

If a party constitutes more than one person, this Lease binds them jointly and each of them severally.

2.3 Headings

Heading and sub-headings are for guidance only and do not affect the operation of this Lease.

2.4 Persons

2.4.1 A reference to a person includes a firm, partnership, association, corporation or other corporate body.

2.4.2 A reference to a person by way of that person's position with the Council includes a person –

2.4.2.1 authorised to carry out the powers, duties and functions of that person at the Council;

2.4.2.2 acting in that capacity; and

2.4.2.3 if that person in the Council ceases to exist, any person exercising any power, duty or function which was previously a power, duty or function of the previous position.

2.5 Governing Law

2.5.1 This Lease is governed by, and each party to this Lease submits to the jurisdiction of, the laws of the State of Victoria and the Commonwealth of Australia in respect of all matters arising under or relating to this Lease.

2.5.2 In the event of any direct inconsistency, the laws of the Commonwealth of Australia will prevail.

2.6 Reading Down and Severability

If a provision of this Lease is void, or voidable by a party, unenforceable or illegal, but would not be so if read down or severed from the Lease, it must be read down or severed accordingly.

2.7 General

2.7.1 The singular includes the plural and the plural includes the singular.

2.7.2 Any gender includes each other gender.

2.7.3 Where a word or phrase has a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning.

3. Lease

3.1 Grant of Lease

The Council leases to the Tenant and the Tenant leases from the Council the Land in accordance with the exceptions, reservations, covenants and conditions in this Lease.

3.2 Non derogation from grant

The Council will not derogate from its grant of this Lease to the Tenant and that obligation of the Council will not be excluded or in any way limited by any other term of this Lease.

4. Tenant's Covenants

4.1 Rent

The Tenant must pay the Rent to the Council in the manner specified in Item 8.

4.2 Permitted Use

The Tenant must use and occupy the Land for the use specified in Item 9.

4.3 Assignment and Subletting

The Tenant must not assign the Lease or sublet the Land without the Council's consent, which must not be unreasonably withheld.

4.4 Grant of Interest

The Tenant must not –

4.4.1 create any security over this Lease;

4.4.2 grant any licence or concession in respect of all or part of the Land; or

4.4.3 part with occupancy rights to all or part of the Land,

without the Council's consent, which must not be unreasonably withheld.

4.5 Maintenance

The Tenant must at all times –

4.5.1 keep and maintain the Land in a clean and tidy condition; and

4.5.2 make good any damage caused by the Tenant to the Land.

4.6 Failure to Maintain

If the Tenant does not carry out any maintenance or other works required under this Lease within 30 days of receiving notice from the Council, the Council may enter the Land to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The reasonable cost of all such repairs,

maintenance and works must be paid by the Tenant to the Council within 30 days of the Council providing a tax invoice to the Tenant.

4.7 Alterations and Works

4.7.1 Subject to clause 4.7.2, the Tenant must obtain the prior written consent of the Council (such consent not to be unreasonably withheld or delayed) before carrying out any alterations to or works on the Land. The Tenant must ensure that any alterations to or works on the Land are carried out -

4.7.1.1 in accordance with plans and specifications approved by the Council (acting reasonably);

4.7.1.2 in a proper and workmanlike manner;

4.7.1.3 by qualified tradespersons;

4.7.1.4 to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements; and

4.7.1.5 in accordance with the requirements of any authorities having jurisdiction over the Land.

4.7.2 The Tenant shall be entitled to erect, maintain and repair such buildings and structures on the Land as the Tenant reasonably requires in order to perform its functions under the *Air Services Act 1995* (Cth).

4.7.3 This clause 4.7 does not apply to works that the Tenant is required by statute or regulation to undertake.

4.8 Placing of Sign

The Tenant must obtain the prior written consent of the Council before placing any sign on the Land.

4.9 Notice of Damage

The Tenant must give the Council prompt notice of any material damage to the Land or anything likely to be a risk to the Land or any person in or near the Land.

4.10 Tenant Must Pay Security Deposit

4.10.1 The Tenant must pay the Security Deposit to the Council by way of bank cheque for the amount stated in Item 10 on or before the Commencement Date, which is security for the due, prompt and proper observance and performance by the Tenant of its obligations arising under the terms and conditions of this Lease.

4.10.2 The Council may use the Security Deposit to make good the cost of remedying any breaches of the Tenant's obligations under this Lease and the Tenant must

pay whatever further amount is necessary to bring the Security Deposit back to the required level.

- 4.10.3** After this Lease has ended and the Tenant has performed all of its obligations under this Lease and has vacated the Land, the Council must refund any unused part of the Security Deposit within 3 months.

4.11 Insurances to be Effected by the Tenant

4.11.1 The Tenant must maintain–

4.11.1.1 a public liability insurance policy which notes the Council's interest as owner of the Land for an amount of not less than \$20 million dollars in respect of one single event;

4.11.2 The Tenant must pay all insurance premiums on or before the due date for payment and provide to the Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

4.11.3 The Tenant must not do anything which may make any insurance effected by the Tenant or the Council invalid, capable of being cancelled or rendered ineffective, or which may increase the insurance premiums. If the insurance premium increases, the Tenant must pay that increase.

4.12 Rates and Taxes

4.12.1 The Tenant must pay to the relevant authority any –

4.12.1.1 local government rates and charges;

4.12.1.2 water rates and charges, including water usage charges;

4.12.1.3 sewerage and drainage rates and charges;

4.12.1.4 land tax (assessed on a single holding basis); and

4.12.1.5 other rates, charges and levies assessed in connection with the Land.

4.12.2 If any rates and taxes are not separately assessed in connection with the Land, the Tenant must pay to the Council within 30 days of receiving a valid tax invoice, the proportion of the rates and taxes that the area of the Land bears to the total area assessed.

4.12.3 The Tenant must provide to the Council a receipt for any rates and taxes paid by the Tenant within 30 days of request by the Council.

4.13 Services

The Tenant must pay for –

4.13.1 all services in connection with the Land including electricity, gas, water, sewerage and telephone services; and

4.13.2 the cost of installing separate check meters to assess the charges for the services where the Land is not separately metered.

4.14 Noxious or Illegal Activity

The Tenant must not carry on on the Land any noxious or offensive activity or use and occupy the Land for any illegal or immoral purpose.

4.15 Nuisance

The Tenant must not do anything in connection with the Land which may cause a nuisance or interfere with any other person.

4.16 Compliance with Laws

4.16.1 To the extent that the Tenant is not exempt under the Air Services Act, the Tenant must comply with all laws and any requirements of any authority in connection with the Land and the Tenant's use and occupation of the Land.

4.16.2 Nothing in this clause will require the Tenant to carry out any structural works unless structural works are required as a result of the Tenant's use and occupation of the Land or the negligent act or omission of the Tenant.

4.17 Security

4.17.1 The Tenant must keep the Land secure at all times when the Land is not being used and occupied by the Tenant.

4.17.2 The Tenant must take all reasonable precautions to ensure that anything placed on the Land does not cause an obstruction or inconvenience or danger or risk to the health, safety or wellbeing of any persons or their property (whether members of the public or not).

4.18 Licences and Permits

The Tenant must maintain all licences and permits required by law for the Tenant's use and occupation of the Land and obtain the Council's prior written consent before varying any licence or permit or applying for any new licence or permit.

5. Council's Covenants

5.1 Quiet Enjoyment

Subject to the Tenant's compliance with the terms and conditions of this Lease, the Tenant may peaceably possess and enjoy the Land during the Term without any

interruption or disturbance from the Council or any person claiming through or under the Council, except as provided for in this Lease.

5.2 Access to the Land

The Council must provide the Tenant with unfettered access to the Land 24 hours a day, seven days a week to enable the Tenant to use and occupy the Land for the Permitted Use.

5.3 Entry of Land by Council

5.3.1 Except as provided for in clause 4.6 and sub-clause 5.3.2, the Council may only enter the Land –

5.3.1.1 at reasonable times and with the prior consent of the Tenant (which must not be unreasonably withheld); and

5.3.1.2 subject to any conditions imposed by the Tenant, including without limitation, a condition that the Council must only enter the Land while accompanied by a person nominated by the Tenant.

5.3.2 The Council may enter the Land at any time without giving notice to the Tenant or without the prior consent of the Tenant during an emergency.

5.3.3 In exercising the Council's rights under this clause, the Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use and occupation of the Land.

5.4 Alterations to the Land

5.4.1 The Council must not carry out any works or refurbishment or make any alterations or additions to the Land that may in any way –

5.4.1.1 affect the Tenant's ability to access or use and occupy the Land;

5.4.1.2 increase the likelihood of any damage; or

5.4.1.3 knowingly or intentionally interrupt any Service,

without the Tenant's prior written consent, which must not be unreasonably withheld.

5.4.2 Except as provided for in sub-clause 5.5.1, the Council may carry out any works, refurbishment, alterations or additions (including, but not limited to, any works, refurbishment, alterations or additions which the Council is required to carry out by law or authority) of the Land at any reasonable time after giving the Tenant reasonable notice.

5.5 No Warranty

5.5.1 The Council does not warrant that the Land is suitable for any of the purposes or uses of the Tenant.

5.5.2 The Tenant must make its own enquiries as to the suitability of the Land for the Permitted Use.

5.6 Consent of the Council

Where the Council is required to give its consent under this Lease, it may do so subject to such terms and conditions as the Council may reasonably require.

6. Market Rent Review

6.1 Notice by Council

6.1.1 If a Market Rent Review Date is specified in Item 13, the Council may give notice to the Tenant not less than 60 days before the Market Rent Review Date of the Council's assessment of the Market Rent for the Land which is to apply on and from the Market Rent Review Date.

6.1.2 If the Council does not give notice to the Tenant specifying the Market Rent, the Tenant must continue to pay the Rent payable immediately prior to the Market Rent Review Date.

6.2 Tenant's Objection

The Tenant must give notice to the Council within 14 days of receipt of the notice from the Council objecting to the Market Rent specified in the notice from the Council. If the Tenant does not give the Council notice, the Tenant is deemed to have agreed to the Market Rent nominated by the Council.

6.3 Appointment of Valuer

If the Tenant objects to the Market Rent specified by the Council in the time and manner specified in clause 6.2 then a valuer to be appointed by both parties must determine the Market Rent, and where the parties cannot agree on a valuer within 14 days of the Council receiving the Tenant's notice objecting to the Market Rent, either party may request the President of the Australian Property Institute (Victorian Division) or its successor body, to appoint a valuer.

6.4 Determination by Valuer

6.4.1 The Tenant and the Council must instruct the valuer to –

6.4.1.1 determine the Market Rent for the Land to apply on and from the Market Rent Review Date;

6.4.1.2 act as an expert and to make a decision that is binding on the Tenant and the Council; and

6.4.1.3 conduct the proceedings in any manner they consider appropriate.

6.4.2 The Tenant and the Council must provide the valuer agreed upon or appointed to determine the Market Rent, with all assistance and documents as are required by the valuer to make the determination.

6.4.3 The Tenant and the Council must share the costs of the valuer equally.

6.5 Payment of Rent

If the Tenant has objected to the Market Rent, then (until the Market Rent has been agreed to between the Council and the Tenant or determined by the valuer), the Tenant must continue to pay to the Council the Rent payable immediately prior to the Market Rent Review Date. On the next due date for payment of the Rent, (following the Council and the Tenant agreeing on the Market Rent or the valuer determining the Market Rent pursuant to clause 6.4), the Tenant and the Council must make any necessary adjustments for the payment of the Rent.

7. CPI Adjustment of Rent

7.1 Calculation of Adjustment

If a CPI Adjustment Date is specified in Item 14, the Rent on the CPI Adjustment Date will be adjusted to an amount equal to the Rent payable immediately prior to the CPI Adjustment Date multiplied by the CPI index number which relates to the quarter ending immediately prior to the CPI Adjustment Date and divided by the CPI index number which relates to the quarter ending immediately prior to the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later date).

7.2 Notice by Council

7.2.1 The Council must give notice to the Tenant not less than 60 days before the CPI Adjustment Date of the adjusted Rent for the Land which is to apply on and from the CPI Adjustment Date.

7.2.2 If the Council does not give notice to the Tenant specifying the adjusted Rent, the Tenant must continue to pay the Rent payable immediately prior to the CPI Adjustment Date.

7.3 Payment of Adjusted Rent

The Tenant and the Council must make any necessary adjustments for the payment of the adjusted Rent to apply on and from the CPI Adjustment Date.

8. Percentage Rent Increase

8.1 Calculation of Adjustment

If a Percentage Rent Increase Date is specified in Item 15, the Rent on the Percentage Rent Increase Date is increased by the percentage specified in Item 15.

8.2 Payment of Increased Rent

The Tenant must pay to the Council the increased Rent on and from the Percentage Rent Increase Date regardless of whether the Council has given a notice specifying the increased Rent or not.

9. Payments

9.1 Legal Costs

The Tenant must pay the Council's reasonable legal costs and expenses (on a full indemnity basis as between Solicitor and own client) relating to the negotiation, preparation, finalisation and execution of this Lease.

9.2 No Deduction or Right of Set-off

The Tenant must pay all amounts due under this Lease to the Council without deduction or right of set-off.

9.3 Payment after Termination

The Tenant must make all payments due under this Lease and provide all information to the Council under this Lease as the Council may reasonably require to calculate any such payments, even if this Lease has ended.

9.4 Method of Payment

The Tenant must make all payments under this Lease in such manner as the Council may reasonably require.

10. Release and Indemnity

10.1 Release

The Tenant uses and occupies the Land at its own risk and releases the Council from and against all damage, loss, cost or liability incurred or suffered by any person, in connection with the Land, except to the extent that the loss or damage is caused or contributed by the negligent or unlawful act or omission or default of the Council.

10.2 Indemnity

The Tenant agrees to indemnify the Council and keep the Council indemnified from and against all damage, loss, cost or liability incurred or suffered by any person, to the

extent caused or contributed to by the Tenant's use and occupation of the Land, except to the extent that the loss or damage is caused or contributed by the negligent or unlawful act or omission or default of the Council.

11. Compensation and Liability

11.1 No Compensation

The Tenant acknowledges that the Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to –

11.1.1 any damage to the Land;

11.1.2 the interruption or damage to any services (including electricity, gas, water, sewerage or telephone services) to the Land except where the interruption or damage is caused or contributed to by the Landlord's negligent or unlawful act or omission; and

11.1.3 the overflow, leakage or flooding of water on the Land.

11.2 No Liability

The Tenant acknowledges and agrees that the Council will not be liable to the Tenant under this Lease for any act or omission of the Council undertaken in any capacity including, but not limited to, the exercise of any powers under the *Local Government Act 1989 (Vic)*, except that nothing in this clause releases the Council from any obligation owed to the Tenant under this Lease in its statutory capacity as the owner of the Land.

12. Obligations of Tenant on Termination of Lease

12.1 At the end or the earlier termination of this Lease, the Tenant –

12.1.1 may; or

12.1.2 must if directed by Council on the giving of one year's notice -

remove at its own cost all or any part of the Works from the Land.

12.2 If, pursuant to the provisions of this clause, the Tenant either elects to remove all or part of the Works, the Tenant must effect such removal as soon as reasonably practicable after the issue of all necessary consents or approvals from all relevant authorities and will use its reasonable endeavours to do as little damage as possible to the Land or any part of the Works not being removed.

12.3 If, pursuant to the provisions of this clause, the Tenant either elects to remove all or part of the Works or Council directs the Tenant to remove all or part of the Works, the Tenant may require up to 12 months after the expiry of this Lease to effect such

removal and will be entitled to continue to use the Premises for this purpose, at the same Rent that was payable in the last year of the Term.

12.4 Those Works not removed by the Tenant will become the property of the Council provided that either:

12.4.1 the Council has given the Tenant no less than 28 days' written notice after the expiration or earlier determination of the Term to remove and the Tenant has failed to comply with that notice; or

12.4.2 the Tenant has given the Council written notice that the Tenant does not propose to remove the Works.

12.5 Tenant's Property Left on Land

Anything left on the Land at the end of this Lease will become the property of the Council and may be removed by the Council at the Tenant's cost and at the Tenant's risk.

13. Determination of Lease

13.1 Default by the Tenant

13.1.1 The Tenant is in default under this Lease if:

13.1.1.1 any moneys owing to the Council under this Lease are unpaid by the due date and the Tenant fails to pay the outstanding amounts within 30 days of receiving notice of non-payment from the Council;

13.1.1.2 the Tenant is properly required by the Council by notice to carry out repairs or maintenance and the Tenant fails to commence them within a reasonable time (having regard to the nature of the repairs) after the receipt of that notice or to proceed diligently to complete them;

13.1.1.3 the Tenant neglects or fails to perform or observe any of the other covenants, conditions or agreements contained in this Lease on its part to be observed or performed and that neglect or failure continues for not less than 30 days after the Council gives written notice to the Tenant to remedy the neglect or failure.

The Council may terminate this Lease by not less than 30 days' notice to the Tenant if an event in clause 13.1 occurs and is not rectified within the time reasonably specified.

13.2 Damages Following Determination

If this Lease is determined by the Council, the Tenant must pay to the Council on demand all reasonable costs and expenses (including solicitors and other fees) which the Council may expend or incur in consequence of any default in the performance or observance of any of the Tenant's obligations under this Lease, including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term.

13.2 Acknowledgement

The Tenant acknowledges and agrees that the Lease will automatically end when the Term of the Lease ends in any way, including, without limitation, as a result of the surrender of the Lease or if the Lease is brought to an end because of repudiation or breach by the Tenant.

13.3 Essential Terms

The essential terms of this Lease are clauses 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.16. The breach of an essential term is a repudiation of this Lease.

14. Further Term and Overholding

14.1 Option for a Further Term

The Council may grant to the Tenant a new Lease for a Further Term if the Tenant –

- 14.1.1** gives the Council notice asking for a new Lease, not earlier than 6 months and later than 3 months, before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 11);
- 14.1.2** is not in breach of any of the terms or conditions of this Lease as at the date of giving the notice or at the end of the Term; and
- 14.1.3** has not defaulted under this Lease throughout the Term.

14.2 Terms of New Lease

14.2.1 The new Lease for the Further Term will commence on the day after this Lease ends and contain the same terms and conditions as this Lease except that the Schedule will be completed by insertion of the following details –

- 14.2.1.1** the Commencement Date of the new Lease will be the first day of the new Term;
- 14.2.1.2** the Term of the new Lease will be as specified in the Schedule; and
- 14.2.1.3** the number of available options for Further Terms in the Schedule must be reduced by one, and where the last option for a Further Term

has been exercised, clauses 14.1, 14.2 and 14.3 of this Lease must be deleted.

14.3 Execution of New Lease for Further Term

The Tenant and the Guarantor (if any) must execute the new Lease for the Further Term and return the Lease to the Council within 45 days of receipt from the Council.

14.4 Overholding

If the Tenant continues in occupation of the Land after the end of the Term, without objection by the Council -

14.4.1 the Tenant occupies the Land subject to the same terms and conditions as contained in this Lease, modified so as to apply to an annual tenancy;

14.4.2 the annual rent shall be the annual rent which the Tenant was paying immediately before the Term ended unless a different annual rent is agreed between the Council and the Tenant;

14.4.3 the Council or the Tenant may end this Lease during any period of overholding by giving one year's notice to the other party expiring at any time; and

14.4.4 the Council may increase the annual rent by CPI by giving the Tenant one year's notice.

15. Dispute Resolution

15.1 Dispute Resolution Mechanism

If a dispute or difference arises between the Tenant and the Council about the interpretation of this Lease or about anything else arising out of or in connection with this Lease, then the dispute may be referred to a person agreed to between the parties and, where the parties cannot agree, then to the President for the time being of the Institute of Arbitrators and Mediators Australia, to nominate an external and independent mediator.

15.2 Expert Resolution

The person agreed upon or appointed to determine the dispute or difference must –

15.2.1 determine the dispute or difference in circumstances where the decision must be final and binding on the parties;

15.2.2 have the power to investigate, make enquiries, call witnesses and obtain the advice of any consultant; and

15.2.3 conduct the proceedings in relation to the dispute or difference in any manner they consider appropriate.

15.3 Cooperation of Parties

The Tenant and the Council must provide the person agreed upon or appointed to determine the dispute or difference with all assistance and documents and may at any hearing conducted by that person appear personally or be legally represented or be represented by any consultant.

15.4 Costs of Expert

The Tenant and the Council will share the fees of the expert equally.

Nothing in this clause 15 shall preclude either party from commencing court proceedings.

16. General

16.1 Notices

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to -

16.1.1 the Tenant at its address set out in Item 2 of this Lease, the Tenant's registered office address, or any other address notified in writing to the Council by the Tenant; and

16.1.2 the Council at its address set out at the commencement of this Lease or any other address notified in writing to the Tenant by the Council,

and is conclusively regarded as having been served at the expiration of 48 hours from the time of posting, or if in the case of facsimile transmission or hand delivery, the date of successful facsimile transmission or hand delivery if delivered before 5 pm on a Business Day, otherwise on the next Business Day.

16.2 Entire Understanding

This Lease contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

16.3 Binding Agreement

The Tenant and the Council intend to be legally bound by the terms and conditions of this Lease.

16.4 Counterparts

This Lease may be executed in counterparts.

16.5 Confidentiality

The Tenant and the Council agree that the terms and conditions of this Lease are confidential and may not be disclosed to any other person except –

16.5.1 with the prior written consent of the other party;

16.5.2 to the parties' financial or legal advisers for the purposes of obtaining professional advice or assistance;

16.5.3 for the purposes of enforcing or otherwise of giving effect to the terms of this Lease; or

16.5.4 if required by law.

16.6 Waiver

If the Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of the Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of the Council's rights under this Lease.

16.7 Modification

No modification, variation or amendment to this Lease will be of any force unless the modification, variation or amendment is in writing and executed by each party.

16.8 Cooperation

Each party agrees to –

16.8.1 execute such further agreements, deeds and documents as are on reasonable terms; and

16.8.2 do such other acts, matters and things,

as are reasonably necessary to give effect to this Lease.

16.9 Special Conditions

This Lease is subject to the Special Conditions which override any inconsistent provisions in this Lease.

16.10 Minimum 30 day period for compliance

Any notice served by the Council in accordance with the terms of this Lease requiring the Tenant to pay any moneys or perform any act will allow a minimum period of 30 days (unless a longer period is expressly provided) for compliance.

16.11 Council must produce particulars and proof of payment

The Tenant will be under no obligation to pay any amounts except for rental, which the Tenant becomes liable to pay under this Lease until thirty (30) days after the Council has furnished the Tenant with reasonable particulars of the amounts claimed by the Council and reasonable proof of payment.

17. Destruction of or Damage to Land or Works

17.1 Abatement

If the Land or any part of it is substantially modified, destroyed or damaged so that the Tenant is unable to continue to carry on the Permitted Use in the same manner as prior to the modification, destruction or damage, and PROVIDED ALWAYS that the modification, destruction or damage is not as a result of the negligent act or omission of the Tenant then:

- (a) the Rent and any other moneys payable by the Tenant under this Lease shall cease and be suspended in whole or in part (proportionate to the degree of disruption of the Permitted Use) until the Land is fit for the Tenant to carry on the Permitted Use; and
- (b) the Tenant's obligation to repair and maintain the Land will cease and be suspended for so long as the Land is unfit to occupy and use for the Permitted Use or is otherwise inaccessible.

17.2 Disputes

Any dispute arising under this clause 17 as to the quantum of Rent or other moneys payable by the Tenant under this Lease to be abated is to be referred for binding determination as soon as practicable to a Qualified Valuer appointed at the request of either the Tenant or the Council by the President of the Australian Property Institute who must act as an expert and not an arbitrator and who must provide to the Parties the reasons for the determination and the evidence relied upon, and clause 15 shall not apply.

17.3 Reinstatement of Works

PROVIDED ALWAYS that the modification, destruction or damage is not as a result of the negligent act or omission of the Tenant then:

- (a) If the Works are destroyed or damaged so that the Tenant is unable to continue to carry out the Permitted Use on the Land in the same manner as prior to the destruction or damage, then the Tenant must within 180 days of the date of destruction or damage elect whether it shall:

- (i) reinstate the Works on the Land; or
 - (ii) terminate this Lease by notice in writing to the Council.
- (b) If the Tenant elects to terminate this Lease under clause 17.3, the Tenant and the Council will, if required by the Tenant, enter into negotiations in good faith as to re-establishment of the Tenant's facility on another site on the Land.

17.4 Termination

PROVIDED ALWAYS that the modification, destruction or damage is not as a result of the negligent act or omission of the Tenant then:

- (a) Notwithstanding clause 17.3, if the Land is not restored or replaced within 12 months of the date of the modification, destruction or damage:
- (i) the Tenant may by notice in writing to the Council; or
 - (ii) the Council may, provided it does not do so capriciously, by notice in writing to the Tenant,
- terminate this Lease at a date one month from the date of serving the notice.
- (b) If the Council terminates this Lease pursuant to clause 17.4(a)(ii) and the Tenant has elected to reinstate the Works in accordance with clause 17.3(a)(i), the Council must, unless the destruction or damage has been caused or contributed to by the Tenant, reimburse the Tenant for the reasonable cost of reinstating the Works within 30 days of receipt of a valid tax invoice.

17.5 Termination by Landlord

PROVIDED ALWAYS that the modification, destruction or damage is not as a result of the negligent act or omission of the Tenant then:

The Council may only terminate this Lease pursuant to this clause 17 where:

- (a) all of the Works have been destroyed or damaged;
- (b) the Tenant is required by the Council by written notice to carry out repairs; and
- (c) the Tenant fails to commence such repairs within one month of receipt of such notice or does not thereafter diligently proceed to complete such repairs.

17.6 Works

PROVIDED ALWAYS that the modification, destruction or damage is not as a result of the negligent act or omission of the Tenant then if either party elects to terminate this Lease in accordance with this clause 17, the Tenant shall have the right to remove the Works from the Land at any time within 3 months of the giving of the said notice.

17.7 No obligation to restore

Nothing in this clause 17 imposes an obligation on the Council to restore or reinstate the Land.

18. GST

18.1 Liability for GST

- (a) Unless otherwise stated, the consideration payable by the Recipient to the Supplier for, or in connection with a supply under this Lease which is subject to GST does not include any GST.
- (b) The Recipient must pay to the Supplier an additional amount on account of GST (**GST Amount**) equal to the consideration payable by the Recipient to the Supplier for the supply multiplied by the prevailing GST rate.

18.2 Time of GST payment

The GST Amount is payable no later than the time the consideration to which the GST Amount relates is payable by the Recipient under this Lease, provided the Supplier has issued a tax invoice to the Recipient.

18.3 Liabilities reduced by input tax credits

To the extent that the consideration for a supply consists of the reimbursement or indemnity for any liability (including costs and expenses) incurred by the Supplier, in this Lease:

- (a) the amount of that liability shall be reduced by the amount of any input tax credit to which the Supplier is entitled as a result of incurring the liability; and
- (b) the Recipient must also pay the GST Amount relating to the reimbursement or indemnity for that liability.

18.4 Adjustment event

If an adjustment event results in the GST on a taxable supply being different from the GST recovered by the Supplier, the Supplier must refund to the Recipient the excess and may recover from the Recipient the shortfall provided the Supplier has issued an adjustment note to the Recipient.

19. Security and safety

The Tenant shall be entitled to erect a security fence upon the Land and to take such security or safety precautions as may in the Tenant's opinion be necessary to ensure the security of the Land and the safety of the public during the continuance of this Lease.

EXECUTED AS A DEED

THE COMMON SEAL of the)
MELTON CITY COUNCIL (ABN 22 862 073)
889) was affixed this day of)
2016 in the presence of:)

Councillor

Chief Executive Officer

SIGNED SEALED and DELIVERED by

(insert full name) as Group A Attorney for
AIRSERVICES AUSTRALIA
ABN 59 698 720 886 under power of
attorney in the presence of on the
day of 2016::

Signature of Group A Attorney

Signature of witness

Title of Group A Attorney (select one)
(Chief Executive Officer / Chief Financial Officer /
General Counsel)

By executing this agreement the attorney states that
the attorney has received no notice of revocation of
the power of attorney

Full name of witness (print)

Occupation of witness (print)

SIGNED SEALED and DELIVERED by

(insert full name) as Group B Attorney for
AIRSERVICES AUSTRALIA
ABN 59 698 720 886 under power of
attorney in the presence of on the
day of 2016:

Signature of Group B Attorney

Signature of witness

Title of Group B Attorney (select one)
(Executive General Manager, Projects and
Engineering / National Property Manager)

By executing this agreement the attorney states that
the attorney has received no notice of revocation of
the power of attorney

Full name of witness (print)

Occupation of witness (print)

SCHEDULE

Item 1:	
COUNCIL	Melton City Council (ABN 22 862 073 889) of 232 High Street, Melton, Victoria, 3337
Item 2:	
TENANT	Airservices Australia (ABN 59 698 720 886) Address for service of notices: The Manager Property Management Airservices Australia Tower Road TULLAMARINE VIC 3043
Item 3:	
LAND	That part of the land shown as L1 on the plan attached in the Annexure, being part of the land described in Certificate of Title Volume 10988 Folio 454, being Lot 4 on Plan of Subdivision number 141929.
Item 4:	
TERM	Nine (9) years
Item 5:	
COMMENCEMENT DATE	1 January 2016
Item 6:	
EXPIRY DATE	31 December 2024
Item 7:	
RENT	\$28,000.00
Item 8:	
MANNER OF PAYMENT	By annual instalments in advance.
Item 9:	
PERMITTED USE	Any purpose consistent with the permitted functions, purposes and obligations of Airservices Australia under the <i>Air Services Act 1995</i> (Cth) (as amended from time to time) or any other purposes approved by the Council (such approval not to be unreasonably withheld).

Item 10:

SECURITY DEPOSIT Not applicable

Item 11:

**LAST DATE FOR
EXERCISING OPTION
FOR FURTHER TERM** 31 March 2024

Item 12:

FURTHER TERM One (1) term of ten (10) years

Item 13:

**MARKET RENT
REVIEW DATE** On the Commencement Date of the Further Term

Item 14:

**CPI ADJUSTMENT
DATE** On each anniversary of the Commencement Date during the Term and each Further Term except on the Commencement Date of the Further Term

Item 15:

**PERCENTAGE RENT
INCREASE DATE** Not applicable

Item 16:

SPECIAL CONDITIONS

The grant of this Lease includes the full and free right to the Tenant, its officers, employees, agents and contractors, to –

- (a) access the easement identified as E-1 on the Plan of the Land contained in the Annexure for carriageway purposes; and
- (b) to install, maintain, repair, replace and use within the easement identified as E-2 on the Plan of the Land contained in the Annexure, above or below ground, cabling to and from the Land save that in exercising its rights under this grant, the Tenant must -
 - (i) not cause any lasting material damage within the easement or material interference to the Council; and
 - (ii) restore the surface of the land within the easement as nearly as practicably possible to its state prior to the use by the Tenant, its sub-tenants and licensees to the Council's reasonable satisfaction.

Annexure

Annexure

