

Annexure D

**EXHIBIT D.4
BURNLEY OFFICE SITE LEASE**

**The Governor in Council for and on behalf of the Crown in right of the State of
Victoria**
(the "State")

CityLink Melbourne Limited (ACN 070 810 678)
(the "Lessee")

Deed of Lease of Burnley Office Site
(Burnley Office Site Lease)

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[Lease to be put into registrable form]

Deed made at Melbourne on

2002

Parties **The Governor in Council for and on behalf of the Crown in right of the State of Victoria (the "State")**

CityLink Melbourne Limited ACN 070 810 678 of Level 43, Rialto South Tower, 525 Collins Street, Melbourne (the "Lessee")

Recitals

- A. The Lessee has requested the State to grant a lease to the Lessee over the Land for the Permitted Use.
- B. The State has agreed to grant to the Lessee a lease of the Land in accordance with this Lease.

This Deed witnesses

1. Definitions and interpretations

1.1 Definitions

In this Lease unless the context indicates a contrary intention:

"**Building**" is the building to be constructed on the Land in accordance with this Lease.

"**Building Works**" are the works required to construct the Building in accordance with this Lease.

"**Burnley Office Site**" is the Land and the Building.

"**Clecco**" is City Link Extension Pty Ltd ACN 082 058 615.

"**Commencement**" in relation to the Building Works, is the date on which any work is commenced on the Land for the purposes of the Building Works and "Commence" and "Commencing" have corresponding meanings.

"**Commencement Date**" is *[date to be specified]*.

"**Completion**" is when:

- (a) the Building has been completed in accordance with this Lease, except for minor defects which do not prevent the Building from being occupied; and
- (b) a Certificate of Occupancy has been issued for the Building by the relevant Government Agency.

"**Concession Deed**" is the deed made with effect as at and from 20 October 1995 entitled "Concession Deed" made between the State, the Lessee, the Trustee and the Manager.

"**Concession Period**" has the same meaning as in the Concession Deed.

"**Deed of Charge**" has the same meaning as in the Concession Deed.

"**Default Rate**" has the same meaning as in the Concession Deed.

"**Environment Protection Act**" is the *Environment Protection Act 1970 (Vic)*.

"EPA" has the same meaning as in the Concession Deed.

"ESEP Deed" is the deed dated 22 April 1998 and headed the "Exhibition Street Extension Concession Deed" made between the State and Clepco a copy of which is set out in Schedule 6 to the *Melbourne City Link Act 1995* (Vic).

"ESEP Project" is the Exhibition Street Extension Project, as that term is defined in the ESEP Deed.

"Government Agency" has the same meaning as in the Concession Deed.

"Land" is, at any time, the land, interests in land and real property the subject of this Lease as described in Schedule 1.

"Law" has the same meaning as in the Concession Deed.

"Lessee's Associates" are the Lessee's employees, officers, consultants, agents, contractors, invitees, licensees and sub-tenants and anyone else at the Burnley Office Site in connection with the Lessee's use and occupation thereof.

"Master Security Deed" has the same meaning as in the Concession Deed.

"Material Default" has the meaning set out in clause 20.2.

"Permitted Use" means the construction and use in accordance with this Lease of the Building as an operations centre and offices for the purposes of the Project and the ESEP Project and such other purposes consented to by the State pursuant to clause 19.2.

"Plans and Specifications" are the plans and specifications attached in Schedule 3.

"Plant and Equipment" is all fixtures owned or leased by the Lessee or the Lessee's Associates from time to time situated on the Land.

"Project" has the same meaning as in the Concession Deed.

"Project Documents" has the same meaning as in the Concession Deed.

"Project Legislation" has the same meaning as in the Concession Deed.

"Rent" is the amount of \$100 per annum payable in advance on the Commencement Date and each anniversary of the Commencement Date.

"Security Interest" is a mortgage, charge, pledge, lien, encumbrance, trust arrangement or any other security agreement or arrangement.

"Services" has the same meaning as in the Concession Deed.

"Signs" has the same meaning as in the Concession Deed.

"Statute" is any statute now or hereafter in force of the Parliament of the Commonwealth of Australia or any State or Territory thereof and any rule, regulation, by-law, statutory instrument, order or notice now or hereafter made under such statute.

"Step In Rights" are the rights of the State under clause 9.11 of the Concession Deed, clause 4.7 of the Master Security Deed and clause 9.11 of the ESEP Deed.

"Sunset Date" is the date being 3 years after Commencement of the Building Works, as extended (if at all) under clause 8.4.

"Term" is the term of this Lease as set out in clause 3.2.

"Third Party Rights" are any rights that the State may grant to a third party over the Land in accordance with clause 4.1 and clause 14.

"Trustee" has the same meaning as in the Concession Deed.

"Utilities" has the same meaning as in the Concession Deed.

1.2 Interpretation

In this Lease unless the context indicates a contrary intention:

- (a) the expression "person" includes an individual, body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- (b) a reference to any party includes that party's executors, administrators, successors, permitted substitutes and assigns, including any person taking by way of novation;
- (c) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to that body; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the body which serves substantially the same purposes or object of that authority, institute, association or body;
- (d) a reference to this Lease or to any other deed, agreement, document or instrument includes, respectively, this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to any legislation or to any section or provision thereof includes any statutory modification or re-enactment or any statutory provision substituted therefor and all ordinances, by-laws, regulations and other statutory instruments issued thereunder;
- (f) words importing the singular shall include the plural (and vice versa) and words denoting a given gender shall include all other genders;
- (g) headings are for convenience only and shall not affect the interpretation of this Lease;
- (h) a reference to a clause or Schedule is a reference to a clause or Schedule to this Lease;
- (i) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning; and
- (j) a reference to "dollars" or "\$" is to Australian currency.

1.3 Inconsistency

If there is any conflict or inconsistency between:

- (a) this Lease and the Concession Deed, the provisions of the Concession Deed shall prevail; or
- (b) this Lease and the ESEP Deed, the provisions of the ESEP Deed shall prevail.

2. Statutes and terms of lease

2.1 Exclusion of Statutory Covenants

The provisions of section 144 of the *Property Law Act 1958* (Vic) will not apply to this Lease and are expressly excluded from this Lease.

2.2 Moratorium Legislation

To the full extent permitted by Law, the provisions of any Statute operating or which may operate directly or indirectly:

- (a) to lessen or otherwise to vary or affect in favour of the Lessee any obligation under this Lease; or
- (b) to delay or otherwise to prevent or prejudicially affect the exercise of rights or remedies conferred on the State by this Lease,

are negated and excluded from this Lease, and the Lessee covenants and agrees to waive and abandon the benefit of any claim which the Lessee may now or at any time have under any such Statute.

3. Grant and term of lease

3.1 Grant

The State grants a lease of the Land to the Lessee on the terms of this Lease, pursuant to clause 4.7A of the Concession Deed and section 60(1) of the *Melbourne City Link Act 1995* (Vic).

3.2 Term

This Lease shall commence on the Commencement Date and shall (subject to earlier termination under clause 12) be for a term expiring on the last day of the Concession Period.

3.3 Monthly Tenancy

If the State permits the Lessee to continue to occupy the Land beyond the expiration of the Term otherwise than pursuant to the grant of a further lease, the Lessee shall do so as a monthly tenant only at a monthly rental equal to one twelfth of the Rent. The tenancy so created is determinable at any time by either party giving notice in writing to the other party to expire on any date later than the expiration of 1 month after the date of the notice. Otherwise the tenancy shall continue on the same terms and conditions mutatis mutandis and so far as applicable to a monthly tenancy as are contained in this Lease. Such continuation shall be without prejudice to either party's pre-existing rights and liabilities.

3.4 Easements

This Lease is granted subject to the easements (if any) in respect of which the Land is burdened outlined in Schedule 2.

3.5 Crown Rights

As to the whole of the Land, this Lease is subject to the reservation to Her Majesty Queen Elizabeth II her heirs and successors of all minerals within the meaning of the *Mineral Resources Development Act* 1990 and petroleum within the meaning of the *Petroleum Act* 1958 (Vic).

4. Reservation of rights

4.1 Reservation of Rights

The State reserves:

- (a) to itself the right of access to the Burnley Office Site for the purpose of:
 - (i) access to any of the State's adjoining land;
 - (ii) exercising its rights under the Concession Deed, the ESEP Deed and Master Security Deed; or
 - (iii) monitoring compliance by the Lessee with its obligations under the Concession Deed, the ESEP Deed or this Lease;
- (b) to itself and any Government Agencies providing Services to the Burnley Office Site the right of access to the Burnley Office Site to install, relocate, alter and maintain Services subject to the Project Legislation whether for the purposes of the Project, the ESEP Project or otherwise provided that such right is exercised in the manner contemplated by clause 4.11 of the Concession Deed or clause 4.10 of the ESEP Deed, as the case may be;
- (c) to itself a right to authorise providers of Services not required for the Project, the ESEP Project or the Burnley Office Site to enter the Burnley Office Site to install, relocate, alter or maintain Services subject to the Project Legislation, provided that the work done to the Services does not materially interfere (other than on a temporary basis) with the construction, operation or maintenance of the Building and provided that such right is exercised in the manner contemplated by clause 4.11 of the Concession Deed or clause 4.10 of the ESEP Deed, as the case may be;
- (d) to itself, a right (as a separate and independent right from the right under paragraph (a)) to enter, use and occupy the Burnley Office Site to the extent reasonably incidental to the State exercising the Step In Rights in accordance with the procedures set out in clause 9.12 of the Concession Deed or clause 9.12 of the ESEP Deed, as the case may be; and
- (e) to itself, a right to grant easements and other rights over the Land provided that they do not materially interfere with the Lessee's use and occupation of the Burnley Office Site,

and this Lease is granted subject to those rights.

4.2 No Disturbance

- (a) Subject to paragraph (b), the State, in exercising its rights under clause 4.1(a), shall not cause unnecessary inconvenience to the Lessee in the carrying out by the Lessee of its obligations under the Concession Deed or the exercise by the Lessee of its rights under the Project Documents or the construction, operation or maintenance of the Building. The State shall use reasonable endeavours to ensure that reasonable notice of the exercise of rights under clause 4.1(a) is given to the Lessee.
- (b) Paragraph (a) does not apply in the context of an exercise of the Step In Rights.

4.3 Step In Rights

If the State exercises its right of entry under clause 4.1(d), in accordance with the procedures set out in clause 9.12 of the Concession Deed or clause 9.12 of the ESEP Deed, as the case may be then the Lessee must fully co-operate with the State and provide the State with every reasonable facility necessary for the exercise of that right or the exercise of the Step In Rights.

5. Rent

5.1 Rent

In consideration of the grant of this Lease by the State to the Lessee, the Lessee shall pay to the State the Rent without demand and free of all deductions, set offs or counterclaims whatsoever.

5.2 No Abatement

The Rent and outgoings shall not abate even if any part of the Building constructed on the Land is damaged or destroyed.

6. Other payments by Lessee

6.1 Payment for Services

The Lessee shall promptly pay directly to the supplier concerned all charges for the provision and use of all Services used in or charged against or in respect of the Lessee's use of the Burnley Office Site during the term of this Lease or any holding over, extension or renewal of this Lease.

6.2 Payment of Statutory Outgoings

The Lessee shall during the Term of this Lease or any holding over, extension or renewal thereof pay all local government rates, water and sewerage rates, land tax and all other rates, taxes, charges, assessments, duties, impositions, levies, surcharges and fees at any time or from time to time payable to any competent Government Agency in respect of or arising out of the ownership, occupation or use of the Burnley Office Site except to the extent that they arise solely in respect of or arise solely out of the use of the Burnley Office Site in exercise of the Third Party Rights.

7. Land use

7.1 Permitted Use

The Lessee shall not use or permit any other person to use the Land for any purpose other than for the Permitted Use.

7.2 General

The Lessee shall, throughout the Term of this Lease or any holding over, extension or renewal thereof (including the period of construction of the Building):

- (a) cause as little harm and inconvenience and do as little damage as possible to the Land and anything growing on the Land;
- (b) use reasonable endeavours to co-operate with the State (in its capacity as owner of the Land), or other owner or occupier of the Land;
- (c) install and maintain a reasonable system of security in respect of the Burnley Office Site and the Building Works;
- (d) not do anything on the Burnley Office Site that is, or is reasonably considered by the State to be, dangerous, annoying, offensive, immoral or illegal; and
- (e) not do anything that contaminates or pollutes the Land, the Building or the environment.

7.3 Public Safety and Interference

The Lessee shall take reasonable measures to prevent or restrict access by members of the public to the Burnley Office Site if the Lessee is aware or should reasonably be aware that there is a material risk to their health or safety.

7.4 Signs

The Lessee may not erect or display Signs on the Burnley Office Site without the State's written approval, which approval may not be unreasonably withheld or delayed in relation to Signs which identify the Lessee as the occupier of the Burnley Office Site.

8. Construction of Building

8.1 Construction of Building

The Lessee must clear the Land and construct the Building on the Land in accordance with:

- (a) the Plans and Specifications;
- (b) to the extent that they affect or relate to the development and use of the Land and the Building, all building and planning controls including, without limitation, the requirements of the *Building Act 1993 (Vic)*, the *Planning and Environment Act 1987 (Vic)* and any other Law;
- (c) any permits, licences or approvals granted pursuant to any Laws in relation to the use and development of the Land and the Building; and
- (d) the Building Code of Australia and all relevant standards of Standards Australia.

8.2 Construction

The Lessee shall:

- (a) before Commencing the Building Works satisfy the State that all insurance required by Law or by clause 18.1 is in place;
- (b) construct the Building with good workmanship and materials; and

- (c) carry out the Building Works in a safe manner and so as to minimise the risk of any damage being caused to any person or property.

8.3 Commencement, Progress and Completion of Building

The Lessee must:

- (a) Commence the Building Works by no later than 5 years after the Commencement Date;
- (b) after Commencement, regularly and diligently progress the Building Works; and
- (c) achieve Completion by the Sunset Date.

8.4 Extension of Sunset Date

The State may, in its absolute discretion and without being under an obligation to do so, at any time and from time to time by written notice to the Lessee, unilaterally extend the Sunset Date.

8.5 Alterations to Plans and Specifications

The Lessee shall not alter the Plans and Specifications without the State's written approval, which approval shall not be unreasonably withheld or delayed where:

- (a) the alterations are required by the local council, the Minister for Planning or a Government Agency;
- (b) the external dimensions of the Building are not, by such alterations, altered; or
- (c) the design and external appearance of the Building are not changed.

[The parties will consider the introduction of a materiality test when the "Plans and Specifications" are provided.]

8.6 Risk

The Lessee accepts the risk of delay in Government Agencies granting usual building permits and approvals for construction causing the incurring of delay, increased cost or decreased revenue and the Lessee shall not make any claim for damage, loss, cost, expense or seek to be indemnified for any liability from the State arising from any such risk having eventuated.

9. Repair and Maintenance

9.1 Repair

Subject to clause 11, the Lessee shall:

- (a) maintain and keep the Building in a good and tenantable state of repair; and
- (b) promptly repair and make good any damage to or defect in the Building,

in a condition consistent with the standards of finish, quality and conditions set out or referred to in the Plans and Specifications, fair wear and tear excepted. The requirement in sub-clause (b) shall not apply to the extent that it is a consequence of any negligence wilful or reckless act of the State, or any of its nominees or contractors engaged in the context of an exercise by the State of the Step In Rights or any of the Lessor's rights under clauses 14.2(a)-(c) or any Victorian Government Agency. This exception, however, does not apply insofar as its application would be inconsistent with the acceptance of risk provided for under or any representation warranty undertaking waiver or acknowledgement provided for in the

Concession Deed or the ESEP Deed.

9.2 Repairs and maintenance of a structural or capital nature

Notwithstanding clause 9.1, the Lessee shall not be required to effect any repairs and maintenance of a structural or capital nature for any period after a Removal Notice is given by the State under clause 12.1, except if a failure to do so would constitute a breach by the Lessee of clause 16.

9.3 Notification of Defects and Damage

The Lessee must inform the State in writing of:

- (a) defects in or damage to the Building; and
- (b) anything else,

likely to cause serious damage or become a risk or hazard to any property or person within the Burnley Office Site, as soon as practicable after becoming aware of it.

9.4 Lessee's Works

Following Completion of the Building the Lessee shall:

- (a) not carry out any further material structural works to the Burnley Office Site without the State's written approval, which may not be unreasonably withheld or delayed and may be given subject to reasonable conditions; and
- (b) comply with provisions of clause 8.2 as if the approved works under paragraph (a) were Building Works.

9.5 Failure of Services

The Lessor shall not be responsible to the Lessee and the Lessee shall have no claim against the Lessor for a failure of any Services to the Burnley Office Site.

10. Environmental Obligations

10.1 Lessee's Obligations

The Lessee shall:

- (a) comply with any clean up notice issued to the Lessee or the State under the Environment Protection Act or any similar notice in relation to the Land;
- (b) undertake any clean up of pollution required to effect the Building Works or otherwise to use the Burnley Office Site for the Permitted Use; and
- (c) clean up any pollution of the Land or any groundwater or adjoining or nearby land caused or contributed to by the Lessee or the Lessee's Associates before, during or after the term of this Lease.

10.2 Environmental Release and Indemnity

The Lessee unconditionally releases the State, its officers, employees and agents (to the extent permitted by Law) from and indemnifies and will keep them indemnified against all liabilities, damages, losses, penalties, demands, suits, costs, expenses and proceedings of any nature whatsoever in respect of:

- (a) any pollution in, on, under or emanating from the Land, whether or not known to the State or a Government Agency;
- (b) any breach by the Lessee of clause 7.2(e) or clause 10.1;
- (c) any direction, notice or order made by any Government Agency under any Law relating to the environment; and
- (d) any breach of Law relating to the environment,

except to the extent caused by:

- (e) the exercise of the Third Party Rights; or
- (f) the negligent or reckless or wilful act or omission of the State after the Commencement Date, of any of its nominees or contractors engaged in the context of an exercise by the State of the Step In Rights or any of the Lessor's rights under clauses 4.1, 4.3, 14.1, 14.2(a)-(c) or 14.3, or of any Victorian Government Agency. This exception shall not, however, apply insofar as its application would be inconsistent with the acceptance of risk provided for under or any representation warranty undertaking waiver or acknowledgement provided for in the Concession Deed or the ESEP Deed.

10.3 Pollution

For the purposes of this clause 10, pollution includes contamination.

11. Damage or Destruction

11.1 Notice of Election

If the Building is totally or partially damaged or destroyed by any cause whatsoever, the Lessee shall, within 90 days of such damage or destruction, give written notice to the State electing to either:

- (a) repair and reinstate the Building; or
- (b) reinstate the Land and terminate this Lease.

11.2 Reinstatement or Repair of Building

If the Lessee elects to repair and reinstate the Building it must promptly commence and regularly and diligently progress the required works and complete them within a reasonable time required by the State and, to the extent that they are not inconsistent with this clause, the provisions of clause 8 shall apply to the required works as if they were Building Works.

11.3 Reinstatement of Land

If the Lessee elects to reinstate the Land:

- (a) it must promptly commence and regularly and diligently progress the required works and complete them within a reasonable time required by the State; and

- (b) this Lease will terminate on the latter of:
 - (i) the date (if any) stated in the Lessee's notice under clause 11.1(b) as the date for termination of this Lease; and
 - (ii) the date when the Lessee has completed the reinstatement of the Land to the satisfaction of the State.

11.4 Failure to Make Election or to Reinstate and Repair

If the Lessee fails to:

- (a) make the election within the time specified in clause 11.1; or
- (b) promptly communicate or regularly and diligently progress or complete the required works in accordance with the requirements of clause 11.2 or 11.3 by the reasonable time required by the State under clause 11.2 or clause 11.3, then

the State may, at any time after the expiry of a further written notice of at least 14 days which the Lessee has not complied with, terminate this Lease by notice in writing to the Lessee.

12. Expiry or Termination

12.1 Removal Notice

At least 7 years before expiry of this Lease or within 3 months after a sooner termination of this Lease, the State may give to the Lessee written notice ("**Removal Notice**") requiring the Lessee to remove, from the Burnley Office Site, the Building and the Plant and Equipment:

- (a) in the case of expiry, by expiry of this Lease; and
- (b) in the case of sooner termination, within such reasonable time as is specified in the Removal Notice,

(unless the sooner termination is as a consequence of a default by the State under this Lease, in which case the State may not give a Removal Notice).

12.2 Removal

- (a) If the State gives a Removal Notice to the Lessee, the Lessee must remove the Building and the Plant and Equipment and must leave the Land clear of all improvements, but otherwise in the same condition as at the Commencement Date, within the period specified in the Removal Notice.
- (b) If the State has not then given a Removal Notice then, on or before the expiry or sooner termination of this Lease the State may, by written notice to the Lessee, require the Lessee to remove any Signs erected by or on behalf of the Lessee on the Burnley Office Site and in any event, the Lessee must remove from the Burnley Office Site all property, goods and chattels brought onto the Land by the Lessee (other than the Plant and Equipment) together with the Signs (if any) specified in the State's notice.
- (c) The Lessee must repair any damage caused by the Lessee in effecting any removal required by paragraph (b) and must reinstate the relevant part of the Building to the condition it would have been in prior to installation of the removed item.
- (d) Any property which the Lessee is required to remove under paragraphs (a) or (b) which is not so removed may be treated by the State as abandoned and the State

may deal with it in any way it sees fit at the expense of the Lessee. If required by the State, such abandoned property will become the absolute property of the State.

12.3 Yielding Up

Subject to clauses 11, 12.1 and 12.2, on the later of:

- (a) expiry or sooner termination of this Lease; and
- (b) expiry of a Removal Notice (if given) or earlier completion of the performance of the Lessee's obligation under paragraph 12.2(a) arising out of the Removal Notice,

the Lessee must peaceably surrender and yield up to the State free from any encumbrances:

- (a) the Land;
- (b) the Building and the Plant and Equipment (unless a Removal Notice has been given); and
- (c) the Signs (to the extent not required to be removed under clause 12.2(b)),

in a condition consistent with the provisions of this Lease.

13. State's covenants

The State covenants that for so long as the Lessee complies with the terms and conditions of this Lease, the Concession Deed and the ESEP Deed, the Lessee may peacefully hold and enjoy the Land for the Term without any interruption by the State, its officers, employees and agents or those deriving title under the State, save as:

- (a) expressly permitted in the Project Documents;
- (b) arises as a consequence of the exercise of rights or powers expressly acknowledged in the Project Documents; or
- (c) arises as a consequence of the exercise of rights or powers under Law.

14. State's Rights

14.1 State's Right to Rectify

The State, or a person authorized by the State, may, but is not obliged to, do anything which should have been done by the Lessee under this Lease which the Lessee has failed to do, and fully recover the costs it incurs in doing so, as a debt immediately due and payable from the Lessee.

14.2 State's Right to Enter

The State or any person authorized by the State may, on giving reasonable notice at reasonable times (except in the case of an emergency when no notice shall be required), enter the Land and the Building to:

- (a) inspect the Land, the Building or the Building Works;
- (b) abate an actual or potential hazard; or

- (c) exercise a right under this Lease,

PROVIDED THAT the State or any person authorised by the State must:

- (d) observe the reasonable rules or requirements of the Lessee as to safety or security on the Burnley Office Site;
- (e) not unreasonably delay the carrying out of the Building Works;
- (f) not damage the Building; and
- (g) if required by the Lessee and to the extent that the Lessee makes a representative available, except in the case of an emergency, be accompanied by a representative of the Lessee.

14.3 Access

The Lessee shall co-operate with the State, Government Agencies, Utilities and other persons in ensuring that they are given reasonable access to the Burnley Office Site to enable them to carry out repair and maintenance work of roadways and structures situated on below above or adjacent to the Land.

15. Condition of Land

15.1 Negation of Warranties

The State makes no express or implied warranty in favour of the Lessee:

- (a) as to the suitability, completeness or efficacy of any information or data supplied or made available by the State, any Government Agency or Utility, on or before the date of this Lease;
- (b) as to any other drawings, plans, design specifications, reports or other information or data which relate directly or indirectly to the Land or the Building Works;
- (c) that the Land or any other land is now or will remain suitable or adequate for all or any of the Permitted Uses;
- (d) as to the climatic and physical conditions and characteristics of the Land or any other land and the state of repair of the Land or any other land; and
- (e) in respect of:
 - (i) the condition or state of repair of any structure on the Land;
 - (ii) the location or availability of Services in respect of the Land; or
 - (iii) any matter accepted in clause 15.2,

and all warranties (if any) as to the matters referred to in paragraphs (a) to (e) implied by Law are, to the extent permitted by Law, hereby expressly negated.

15.2 Acceptance by Lessee

The Lessee accepts the Land and any structures on it:

- (a) in their condition and state of repair from time to time;
- (b) subject to all defects, including sub-surface soil conditions;

- (c) subject to any pollution or contamination whether or not known to the State or a Government Agency;
- (d) subject to all easements and rights of way in favour of Victorian Government Agencies or Utilities; and
- (e) subject to any third party claims or rights, in respect of historic sites or buildings or aboriginal sacred sites.

16. Compliance with statutes

The Lessee shall, subject to the terms of the Concession Deed, the ESEP Deed and this Lease, comply with all Statutes affecting or relating to the Land, the design and construction of the Building and the Lessee's use and occupation of the Burnley Office Site and with all the requirements of all Government Agencies having jurisdiction or authority over the Land or in respect of the Lessee's use of the Burnley Office Site, where such Statutes or requirements require compliance by the owner of the Land or the Lessee.

17. Risk and Indemnity

17.1 Occupation at Lessee's Risk

The Lessee accepts all risks relating to the Land, the design, construction, operation and maintenance of the Building or otherwise arising out of or in connection with this Lease, the Burnley Office Site, the Building Works or the Permitted Use and shall develop and occupy the Burnley Office Site at its own risk and unconditionally releases the State, its officers, employees and agents (to the extent permitted by Law) from all liabilities, damages, losses, penalties, demands, suits, costs, expenses and proceedings of any nature whatsoever in connection with:

- (a) loss of, destruction or damage to real or personal property or injury to or disease or death of persons occurring in or on the Burnley Office Site, or arising in connection with this Lease; and
- (b) the State doing anything it is permitted or obliged to do, or failing to do anything it is permitted to do under this Lease,

except to the extent:

- (c) caused by the exercise of the Third Party Rights; or
- (d) caused by the negligent or reckless or wilful act or omission of the State, of any of its nominees or contractors engaged in the context of an exercise by the State of the Step In Rights or any of the Lessor's rights under clauses 4.1, 4.3, 14.1, 14.2(a)-(c) or 14.3, or of any Victorian Government Agency. This exception shall not, however, apply insofar as its application would be inconsistent with the acceptance of risk provided for under or any representation warranty undertaking waiver or acknowledgement provided for in the Concession Deed or the ESEP Deed.

17.2 Indemnity

The Lessee shall indemnify and keep the State indemnified against any liabilities, damages, losses, penalties, demands, costs and expenses of any nature whatsoever in connection with:

- (a) loss of, destruction or damage to real or personal property or injury to or disease or death of persons, to the extent attributable to the State's ownership of the Land and resulting from the use and occupation of the Burnley Office Site, by the Lessee or the Lessee's Associates;
- (b) occupational, health and safety or occupiers liability Laws which may arise as a result of the State failing to exercise a right (but not an obligation) reserved to the Lessor pursuant to this Lease;
- (c) the Building Works;
- (d) the operation, maintenance or repair of the Burnley Office Site or any activities relating thereto; and
- (e) this Lease and the Lessee's default under this Lease,

except to the extent:

- (f) caused by the exercise of the Third Party Rights; or
- (g) caused by the negligent or reckless or wilful act or omission of the State, of any of its nominees or contractors engaged in the context of an exercise by the State of the Step In Rights or any of the Lessor's rights under clauses 4.1, 4.3, 14.1, 14.2(a)-(c) or 14.3, or of any Victorian Government Agency. This exception shall not, however, apply insofar as its application would be inconsistent with the acceptance of risk provided for under or any representation warranty undertaking waiver or acknowledgement provided for in the Concession Deed or the ESEP Deed.

18. Insurance

18.1 Insurances

The Lessee shall effect and maintain the following insurances:

- (a) public liability insurance covering all third party claims arising from any one occurrence in connection with:
 - (i) loss, destruction or damage to real or personal property and injury to, or disease or death of, persons, arising out of or in connection with the Building Works or the operation, repair or maintenance of the Building or the Burnley Office Site or any activities related thereto; and
 - (ii) anything listed in clause 17.2,for a minimum of \$10 million for any one occurrence (or such other amount as the State may reasonably require having regard to current market practice for leasing of commercial office buildings in Melbourne from time to time);
- (b) employer's liability and workers' compensation insurance and shall ensure that each of its contractors and consultants shall effect and maintain such insurance in respect of any period during which they provide services in relation to the Building Works, the Building or the Burnley Office Site.

18.2 Extent of Cover

The Lessee shall ensure that the insurances required to be effected under the above clauses extend so as to provide for loss, destruction, damage, injury, disease or death which results from or is attributable to the construction of the Building.

18.3 General Requirements

- (a) All insurances which the Lessee is required to effect under this Deed:
- (i) shall be effected with insurers approved by the State (such approval not to be unreasonably withheld or delayed);
 - (ii) in the case of insurances specified in clause 18.1(a), shall be in the joint names of the Lessee, the State and Victorian Government Agencies (to the extent possible) and identify their respective rights and interests;
 - (iii) shall be on terms approved by the State (such approval not to be unreasonably withheld or delayed);
 - (iv) shall not contain any exclusion, endorsement or alteration, unless it is first approved by the State (such approval not to be unreasonably withheld or delayed);
 - (v) shall contain a term which requires the insurer to give not less than 90 days prior notice to the State in writing (at the address for notices to the State under clause 24.1) whenever the insurer gives the Lessee a notice of cancellation or any other notice in respect of the policy;
 - (vi) shall contain a cross liability clause:
 - A. in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - B. for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
 - (vii) shall contain a "no cancellation" clause in respect of all other policies to the extent that such a clause can be obtained by the use of best endeavours;
 - (viii) shall contain a provision under which the insurer agrees that the failure of one insured to observe and fulfil the terms of the policy will not prejudice the policy with respect to the interests of the other insureds; and
 - (ix) have each policy endorsed to the effect that the State and the other insureds shall not be prejudiced by an unintended and/or inadvertent error, omission or misdescription of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement.

- (b) The Lessee shall give the State proof satisfactory to it of the currency and coverage of insurances referred to:
 - (i) prior to commencement of the Building Works; and
 - (ii) prior to Completion of the Building.
- (c) The Lessee shall punctually pay all premiums in respect of all insurance policies referred to in this clause 18 and give the State copies of receipts for payment of premiums if and when requested by the State.
- (d) During the period of construction of the Building Works, the Lessee may satisfy the requirements of clause 18.1 by procuring its contractors or consultants to effect the insurances, provided that the insurances comply, in all other respects with clauses 18.2 and 18.3.

19. Dealing with Land

19.1 Assignment etc.

The Lessee acknowledges that it has no right to deal with its interest in this Lease (including by way of assignment, granting a licence or parting with possession) except:

- (a) to the extent allowed under the Project Documents to which the State is a party; and
- (b) as provided in clauses 19.2 and 19.3.

19.2 Sub-Letting

- (a) Subject to paragraph (b), the Lessee must not sub-lease the Land or any part of it.
- (b) The Lessee may sub-lease part of the Land for a purpose that is not wholly or partly the purpose of managing a roadway and ancillary works constructed on the Land if:
 - (i) the Permitted Use remains the primary use of the Burnley Office Site;
 - (ii) the proposed sub-lease provides that:
 - A. it will automatically terminate if this Lease is terminated for any reason;
 - B. the sub-lessee will have no rights against the State if the sub-lease is terminated and, to the extent permitted by law, any statutory rights of the sub-lessee to relief against forfeiture against the State are expressly negated;
 - C. the sub-lessee will not do anything which would constitute a breach by the Lessee of this Lease; and
 - D. the sub-lessee may not use the Burnley Office Site for any purpose other than the specified purpose (being a purpose which complies with sub-clauses (b)(iii) and (iv));
 - (iii) the purpose is not inconsistent with the management of a roadway and ancillary works constructed on the Land; and
 - (iv) the purpose is approved by the Governor in Council on the recommendation of the Minister administering the *Melbourne City Link Act 1995* in consultation with the Minister administering Part IX of the

Land Act 1958.

- (c) If the Lessee enters into a sub-lease of part of the Land in compliance with clause 19.2, the Lessee must:
 - (i) provide a fully executed copy of the sub-lease document to the State within 2 business days of execution of the Lease by all parties; and
 - (ii) effect registration of the sub-lease as soon as practicable after execution.

19.3 Creation of Security Interest

The Lessee cannot create a Security Interest without the prior written consent of the State, except to the extent allowed under the Project Documents to which the State is a party. Notwithstanding that, the State:

- (a) acknowledges that the Lessee intends to create a Security Interest over the Lessee's interest in this Lease for or in connection with the financing of the Building Works;
- (b) agrees not to unreasonably withhold or delay its consent to the creation of that Security Interest if its creation or existence will not, in any way, compromise or detrimentally affect the State as owner of the Land, as a party to the Project Documents or otherwise; and
- (c) will, if consent is given and if required by the Lessee's financiers, negotiate in good faith a tripartite deed with the Lessee and the Lessee's financiers.

20. Termination

20.1 Termination

This Lease shall terminate on the earlier to occur of:

- (a) the expiration of the Term or the expiration of any holding over under this Lease or the expiration of extensions of this Lease;
- (b) the exercise by the State of its right to terminate this Lease under clause 11.4 or clause 20.3; or
- (c) the exercise by the Lessee of its right to terminate this Lease under clause 11.1,

but not otherwise and any common law or contractual rights of the State which may otherwise be implied by law into the terms of this Lease or accrue to the State to terminate or re-enter and take possession are expressly negated.

20.2 Material Default

The Lessee will commit a Material Default if:

- (a) it breaches clause 7.1 (Permitted Use) in such a way, in the reasonable opinion of the State, as to result in the Burnley Office Site being used for a purpose which is:
 - (i) different from the Permitted Use; or
 - (ii) inconsistent with the State's power to grant leases under clause 4.7A of the Concession Deed and Section 60(1) of the *Melbourne CityLink Act 1995 (Vic)*,

and fails to remedy such breach within 90 days of service of a written notice by the

State requiring the breach to be remedied;

- (b) it breaches clause 8.3 (Progress and Completion of Building) provided that, in the case of clause 8.3(b), a Material Default will only occur to the extent that it has not progressed the Building Works for a period of at least 90 days at any time following Commencement;
- (c) it breaches clause 8.1 (Construction of Building) to the extent that, in the opinion of the State, the Building is being constructed in a manner which differs from the Plans and Specifications (other than to the extent of an alteration approved under clause 8.5) and fails to remedy the breach within a reasonable time, having regard to the circumstances;

[The parties will consider the introduction of a materiality test when the "Plans and Specifications" are provided.]

- (d) it breaches clause 19 (Dealing with Land) and fails to remedy the breach within 90 days of service of a written notice by the State requiring the breach to be remedied; or
- (e) the Building is not Completed by the Sunset Date, and the Lessee fails to Complete the Building within the reasonable period set out in a written notice by the State requiring the Building to be Completed,

PROVIDED THAT the period specified in clause 20.2(b) and the Sunset Date shall be extended if:

- (f) the Lessee gives to the Lessor a written notice of an extension specifying the cause of the delay and the extension sought;
- (g) the extension is required by the Lessee due to delays caused by events beyond the control of the Lessee; and
- (h) the Lessee uses reasonable endeavours to minimise any delays.

20.3 Termination on Material Default

The State may, at any time after the Lessee commits a Material Default, give the Lessee a further written notice requiring that the Material Default be remedied within 14 days of the notice, and if the Lessee fails to remedy the Material Default within the time specified, the Lessor may terminate this Lease by written notice to the Lessee, effective immediately.

21. Damages and interest

21.1 Compensation

- (a) The Lessee covenants to compensate the State in respect of any breach of a term of this Lease and the State is entitled to recover damages from the Lessee in respect of such breaches. The State's entitlement under this clause is in addition to any other remedy or entitlement to which the State is entitled (including, where permitted by the terms of the Concession Deed or the ESEP Deed, to terminate the Concession Deed or the ESEP Deed so effecting the simultaneous termination of this Lease).
- (b) The State's entitlement to recover compensation shall not be affected or limited by any of the following:
 - (i) if the Lessee abandons or vacates the Land;
 - (ii) if this Lease is terminated under clause 20 or if this Lease simultaneously

terminates on the termination of the Concession Deed or the ESEP Deed;

- (iii) if the State accepts the Lessee's repudiation of this Lease; or
- (iv) if the parties' conduct constitutes a surrender by operation of law.

- (c) A breach of any term as referred to in clause 21.1 does not entitle the State to terminate this Lease unless that breach also constitutes a Material Default entitling the State to terminate this Lease under clause 20.

21.2 Interest on Amounts Overdue

If the Lessee does not pay any amount under this Lease by the date it is due, interest shall accrue on that amount at the Default Rate from the date due until the date of payment in full to the State. Clauses 12.2 and 12.3 of the Deed of Charge shall apply in relation to the calculation, capitalisation and payment of that interest.

21.3 States Rights Under Concession Deed and ESEP Deed

The rights of the State under clauses 20 and 21 are without prejudice to the rights of the State under the Concession Deed and the ESEP Deed.

22. Expenses and stamp duties

22.1 Expenses

Each party hereto shall bear its own costs, including professional costs and disbursements, associated with the preparation and execution of this Lease.

22.2 State's Costs

The Lessee shall pay, on demand, the State's proper costs, charges and expenses (including legal costs and disbursements on a full indemnity basis) in relation to:

- (a) the exercise or attempted exercise of any of the State's rights under this Lease (other than any right to grant Third Party Rights) or the Step In Rights;
- (b) obtaining consents or giving consents or approval and considering matters in connection with the Lessee's requests for consent or approval; and
- (c) the Lessee's dealings and proposals to deal with this Lease or the Burnley Office Site under clause 19.

22.3 Stamp Duty

Subject to clause 11.5 of the Concession Deed, the Lessee shall pay all stamp duty, registration and similar taxes including fines and penalties payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this Lease or any payment receipt or other transaction contemplated by it.

23. GST

23.1 GST Definitions

"GST" means GST within the meaning of the GST Act.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Expressions used in this clause 23 and in the GST Act have the same meanings as when used in the GST Act.

23.2 GST Liability

Except where this Lease states otherwise, each amount payable by a party under this Lease in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

23.3 Acquisition From a Third Party

An amount payable by the Lessee in respect of a creditable acquisition by the State from a third party must not exceed the sum of the value of the State's acquisition and the additional amount payable by the lessee under clause 23.2 on account of the State's GST liability.

23.4 Tax Invoice

A party is not obliged, under clause 23.2, to pay the GST on a taxable supply to it under this Lease, until given a valid tax invoice for the supply.

24. Miscellaneous

24.1 Notices

- (a) A notice, request, approval, consent or certificate given under this Lease (a "communication") shall be in writing and is deemed to be duly given to a party if it is:
 - (i) left at the party's address;
 - (ii) sent by prepaid post to the party's address with a request for confirmation of receipt to be provided by post; or
 - (iii) transmitted by facsimile to the party using the party's facsimile number, but only if the sender receives an "error free" transmission report for the correct facsimile number.
- (b) A communication given to a party is deemed to have been received by the party:
 - (i) if left at the party's address, when delivered;
 - (ii) if sent by prepaid post to that address with a request for confirmation of receipt to be provided by post, on the day evidenced by the receipt given by the postal service; and
 - (iii) if transmitted by facsimile using the facsimile number of the party, on the day of transmission, but only if the sender receives an "error free" transmission report for the correct facsimile number,

provided however that:

 - (iv) if a party would, but for this provision, be deemed to have received a communication after 4.00pm on a Business Day or on a day not being a Business Day, the party shall be deemed to have received the communication on the next Business Day; and
 - (v) in determining whether a requirement that there be a period of Business Days' notice in relation to a communication has been satisfied, the

relevant number of Business Days shall be calculated from, but excluding, the Business Day of deemed receipt.

- (c) The address and facsimile number of each party is that set out below or such other address or facsimile number which that party from time to time gives notice of to each other party:

STATE:

Address - care of Director, Melbourne City Link, Level 13, 80 Collins Street, Melbourne

Facsimile - 9655 6670

LESSEE:

Address - Level 43, Rialto South Tower, 525 Collins Street, Melbourne

Facsimile - 9649 7380

24.2 Variation

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

24.3 Governing Law

This Lease shall be governed by and construed in accordance with the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

24.4 Waiver

A failure to exercise or enforce or a delay in exercising or enforcing or a partial exercise or enforcement of any right, remedy, power, or privilege hereunder by either party shall not in any way preclude or operate as a waiver of any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy, power or privilege hereunder or provided by Law.

24.5 Further Assurance

Either party shall immediately on demand by the other perform all such acts and execute all such agreements, assurances and other documents and instruments as the other party reasonably requires to perfect the rights and powers afforded, created, or intended to be afforded or created, by this Lease.

24.6 Severability of Provisions

Any provision of this Lease which is illegal, void or unenforceable shall be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining terms of this Lease.

24.7 Indemnities

An indemnity given under this Lease survives the termination of this Lease to the extent that it is in respect of an act or omission or any fact, matter or thing arising out of or in connection with this Lease, the Building, the Building Works or the Burnley Office Site which occurred prior to the later of:

- (a) expiry or sooner termination of this Lease; and

- (b) the date on which the Lessee yields up the Burnley Office Site in accordance with clause 12.3.

24.8 Effective Time

For the purposes of determining the rights and obligations of the parties, this Lease will be construed as if executed on the Commencement Date.

Schedule 1

The Land

All of the land in Crown Allotment 1C of 39A, Parish of Jika Jika, City of Richmond.

Schedule 2

Easements Burdening Land

[To be completed]

Schedule 3

Plans and Specifications

[To be provided]

Executed as a deed.

The **Governor in Council** has caused this)
lease to be sealed at Melbourne with the Seal)
of Victoria which was affixed in the presence)
of the Clerk of the Executive Council on)

Signed, Sealed and Delivered for and on)
behalf of **CityLink Melbourne Limited**)
ACN 070 810 678 by its Attorney)
)
under a Power of Attorney dated)
and who declares that he has not received any)
notice of the revocation of such Power of)
Attorney in the presence of:)

.....

.....
Witness

.....
Name