

Note to Proponents:

Form of Work-in-Kind Agreement (Land Transfer)

This model Work-in-Kind Agreement (Land Transfer) is intended to be used for proposals involving the transfer of land to discharge all or part of a GAIC Liability. It is structured to allow for multiple parcels of land to be applied to discharge a particular GAIC Liability. This model agreement can be modified to provide for the discharge of multiple GAIC Liabilities owed by a single GLE under the one agreement. However, where a GLE has multiple GAIC Liabilities that it wishes to discharge by providing multiple parcels of land, it may be preferable for the GLE to enter into separate agreements in respect of each GAIC Liability. Work-in-kind agreements are registered on the title to the land to which the GAIC Liability attaches, and may restrict dealings with the land while the agreement remains in place. If one agreement applies in relation to multiple GAIC Liabilities, it may result in delays in having the agreement removed from title and allowing the GLE to deal with the land. Further, if there is only one agreement in place in respect of multiple GAIC Liabilities, a default under the agreement will trigger statutory penalties in respect of all the GAIC Liabilities, increasing the default risk for the GLE. For these reasons, it is anticipated that where a GLE has multiple GAIC Liabilities which it wishes to discharge by transferring land, the GLE will generally prefer to enter into separate Work-in-Kind Agreements (Land Transfer) with respect to each GAIC Liability.

Parties to the Work-in-Kind Agreement (Land Transfer)

It is the Minister's preference that Work-in-Kind Agreements (Land Transfer) be entered into only with the GLE. However, in appropriate circumstances, the Minister will consider modifying the model agreement to include a third party (such as a developer) as a party to the agreement, as well as the GLE. For instance, there may be circumstances where a developer does not own the land to which the GAIC Liability is attached (and therefore does not have the GAIC Liability), but arrangements are in place between the developer and the landowner (GLE), under which the developer agrees to transfer other land to a Receiving Agency in order to discharge the GLE's GAIC Liability. The modifications that may be required to the model agreement will depend on the nature of the arrangements in place, and will be considered on a case by case basis.

This model agreement can also be modified to provide for multiple GLEs to discharge their respective GAIC Liabilities by providing interfacing or connecting parcels of land required for State infrastructure (for instance, each GLE may agree to provide different parcels of land required to construct a State road). Please refer to the Special Conditions in Schedule 1 of this Agreement for conditions relating to multiple GLEs.

To the extent that the GLE is not the owner of the Transfer Land, it is the GLE's responsibility to acquire sufficient title to, or rights in respect of, that land so as to comply with its obligations under this agreement.

model

Agreement

Model WIK Agreement (Land Transfer)

Work-in-Kind Agreement (Land Transfer)

Minister for Planning on behalf of the Crown in right of the State of Victoria
(**Minister**)

[Include title of Receiving State Department/Government Agency]
(**Receiving Agency**)

Metropolitan Planning Authority (**MPA**)

[Include name of GAIC Liable Entity] (**GLE**)

Contents

Table of contents

1	Definitions, interpretation and agreement components	6
1.1	Definitions	6
1.2	Interpretation	12
1.3	Interpretation of inclusive expressions.....	13
1.4	Business day.....	13
1.5	Relationship of the Government Entities and the GLE	13
1.6	Exhibits	13
1.7	Agreement components.....	13
1.8	Inconsistency with Part 9B of the Act	14
2	Effect of agreement	14
3	Term	14
4	Administration	14
4.1	Limitation of Government Entity obligations	14
4.2	GLE's representatives	14
4.3	Information and directions	15
5	GLE's risks	15
6	Land condition	15
7	Approvals	16
8	Time	16
9	Condition of Transfer Land	16
9.1	Notice in relation to Transfer Land.....	16
9.2	Inspection and determination in relation to Transfer Land	16
9.3	Transfer of Transfer Land	17
10	Discharge of GAIC Liability	18
11	Land boundaries	19
11.1	Plans of subdivision	19
11.2	Adjustment of boundaries	19
11.3	Minor Boundary Adjustments.....	20
11.4	Major Boundary Adjustments.....	20
11.5	Giving effect to Boundary Adjustments	21
12	Property damage	21
13	Warranties	21
14	Indemnities	22
15	Default	22
15.1	GAIC Default Event.....	22
15.2	Consequences of a GAIC Default Event	23
16	Termination	23
16.1	Default termination.....	23

Contents

16.2	Immediate termination	23
16.3	Payments on termination	24
17	Ending of agreement	24
17.1	Completion of obligations	24
17.2	Mutual agreement	24
18	Effect of termination or ending of this agreement	25
18.1	Waiver	25
18.2	Handover	25
18.3	Survival of obligations	25
19	Representations and warranties	26
20	Assignment	27
20.1	Assignment by the GLE	27
20.2	Change in control of the GLE	27
20.3	Assignment by the Receiving Agency	27
20.4	Transfer of functions of Government Entities	27
21	Restriction on dealing with land	28
22	Disputes	29
22.1	Dispute	29
22.2	Procedure for resolving disputes	29
22.3	Appointment of negotiators	29
22.4	Executive negotiation	29
22.5	Independent expert determination	30
22.6	Valuer's Conference	30
22.7	Bar on commencement of proceedings	31
22.8	Proportional liability	31
22.9	Continuity	31
23	Notices	32
23.1	Form of Notice	32
23.2	How Notice must be given and when Notice is received	32
24	Costs	32
25	Interest	33
26	Set off	33
27	General	33
27.1	Governing law and jurisdiction	33
27.2	Reading down and severability	34
27.3	Invalidity and enforceability	34
27.4	Registration	34
27.5	Agreement to operate as a restrictive covenant	34
27.6	Terms of indemnities	35
27.7	Commencement	35
27.8	Waiver	35
27.9	Amendment	35
27.10	Further action to be taken at each party's own expense	35
27.11	Entire agreement	35

Contents

27.12 No reliance.....	36
27.13 Counterparts	36
27.14 Relationship of the parties	36
27.15 Exercise of rights and giving or withholding of consents	36
27.16 No fettering of discretions	36
27.17 Stamp duty.....	36
27.18 Attorney.....	36

Schedules

1 Special Conditions	38
2 Deferral Certificate	42
3 Staging Plan	43
4 Permitted Encumbrances	48
5 Determination of GAIC Credit	49
6 Notice Details	51
Signing page	53

model WIK Agreement (Land Transfer)

Work-in-Kind Agreement (Land Transfer)

Date ►

Between the parties

Minister **Minister for Planning on behalf of the Crown in right of the State of Victoria**
of 1 Spring St, Melbourne, Victoria 3000

Receiving Agency **[insert name of Receiving Agency]**
of **[insert Receiving Agency address]**

MPA **Growth Areas Authority, being the body established under section 46AQ of the PE Act, trading as the Metropolitan Planning Authority**
of Level 29, 35 Collins Street, Melbourne, Victoria 3000

GLE **[insert name of GAIC Liabile Entity]**
ACN **[insert ACN]** of **[insert GLE address]**

Recitals

- 1 Pursuant to section 201SLB of the Act, the Minister may enter into an agreement with a person for the provision by that person of land or works or a combination of land and works to meet all or part of that person's liability or expected liability to pay a GAIC.
- 2 The GLE has a liability to pay the Commissioner a GAIC in respect of the GAIC Land pursuant to section 201SL of the Act.
- 3 The GLE has submitted a proposal to the Minister to meet all or part of its GAIC Liability by transferring the Transfer Land to the Receiving Agency.
- 4 The Minister has consulted with the Receiving Agency in relation to the GLE's proposal, and has approved that proposal for delivery pursuant to a work-in-kind agreement.
- 5 **[delete if not relevant]** Pursuant to section 201SLB(7)(b) of the Act, the Minister has obtained the approval of the Treasurer to enter into this agreement.
- 6 This agreement sets out the terms and conditions on which:
 - (a) the GLE agrees to transfer the Transfer Land to the

Receiving Agency;

- (b) the Receiving Agency agrees to accept the transfer of the Transfer Land; and
 - (c) the MPA agrees to determine, pursuant to section 201SLL of the Act, the extent to which the GLE has performed its obligations under this agreement so as to discharge all or part of its GAIC Liability.
- 7 **[delete if not relevant]** Prior to entry into this agreement, the GLE made an election to the Commissioner to defer payment of the GAIC Liability pursuant to section 201SM of the Act. The Commissioner has agreed to the deferral of the GAIC Liability and has provided the GLE and the Minister with a copy of the Deferral Certificate.
- 8 **[delete if not relevant]** Prior to entry into this agreement, the GLE requested approval from the Minister under section 201SR of the Act to discharge the GAIC Liability in stages pursuant to the Staging Plan. The Minister has agreed to the staged discharge of the GAIC Liability and has provided the GLE, the MPA and the Commissioner with an approved copy of the Staging Plan for the purposes of section 201SU of the Act.

The parties agree as follows

model WIK Agreement (Land Transfer)

1 Definitions, interpretation and agreement components

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Act	<i>Planning and Environment Act 1987 (Vic).</i>
Agreed Value	the Value of Transfer Land.
Approval	any licence, permit, consent, approval, determination, certificate or permission from any Authority or under any Law, or any requirement made under any Law which must be obtained or satisfied (as the case may be) in connection with the transfer or remediation of the Transfer Land.
Approving Party	has the meaning given in clause 11.2(a).
Authority	any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.
Boundary Adjustment	has the meaning given in clause 11.2(a).
Boundary Adjustment Area	has the meaning given in clause 11.2(b)(2).
Boundary Adjustment Percentage	has the meaning given in clause 11.2(b)(2).
Business Day	a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday in that city.
Certificate of Release	a certificate issued by the Commissioner to the GLE under section 201SY of the Act.

Term	Meaning
Claim	any Loss, claim, demand, proceeding or cause of action of any nature (including for damages), whether for money or otherwise, and regardless of the legal or other basis on which it may be put (including negligence), arising out of or in connection with the particular subject matter.
Commencement Date	the date on which the GLE's obligation to pay the GAIC Liability is triggered pursuant to section 201SE of the Act.
Commissioner	the Commissioner of State Revenue referred to in section 62 of the <i>Taxation Administration Act 1997 (Vic)</i> .
Consultant	an architect, engineer, quantity surveyor or other relevant expert appointed by a Government Entity for a purpose contemplated by this agreement.
Default Rate	the rate for the time being fixed under section 2 of the <i>Penalty Interest Rates Act 1983 (Vic)</i> .
Deferral Certificate	the certificate issued by the Commissioner under section 201SZ of the Act agreeing to the deferred payment of the GAIC Liability under section 201SM of the Act, a copy of which is set out in Schedule 2.
Dispute Notice	a notice specifying particulars of a dispute or difference between the parties and requiring the dispute to be determined under clause 0.
Document	has the meaning given in section 5 of the <i>Freedom of Information Act 1982 (Vic)</i> .
Encumbrance	any caveat, charge, bill of sale, mortgage, pledge, lien, option to acquire, lease, security, preferential interest, restriction or arrangement of any kind, whether registered or unregistered, and includes any agreement to grant or create any such encumbrance, excluding any Permitted Encumbrance.
Expert	a person who has tertiary qualifications and not less than 10 years' experience working in the area or field in which a dispute has arisen under this agreement.
GAIC	Growth Area Infrastructure Contribution.
GAIC Credit	the credit awarded to the GLE in discharge of all or part of its GAIC Liability, the amount of which is determined in accordance with clause

Term	Meaning
	10 and Schedule 5.
GAIC Default Event	has the meaning given in clause 15.1.
GAIC Land	<p>the land to which the GAIC Liability attaches, namely [insert whichever of A or B applies]</p> <p>[A: land wholly contained in one or more certificates of title] certificate(s) of title volume [insert volume] folio [insert folio and add additional volumes and folios if applicable] or</p> <p>[B: lot(s) on proposed plan of subdivision] lots [insert no.] to [insert no.] (both inclusive) [or] lot [insert no.] on the plan attached to Annexure A of this agreement being [amend the following if appropriate] part of the land in certificate(s) of title volume [insert volume] folio [insert folio and additional volumes and folios if applicable representing the parent titles to the lot(s)].</p>
GAIC Liability	the GAIC amount owed by the GLE to the Commissioner in respect of the GAIC Land, calculated in accordance with Part 9B of the Act.
Government Entity	the Minister, the Receiving Agency or the MPA and Government Entities means all of them.
Immediate Termination Event	has the meaning given in clause 16.2.
Insolvency Event	<p>in relation to a company, any of the following events:</p> <ol style="list-style-type: none"> 1 a Controller (as defined in the <i>Corporations Act 2001</i> (Cth)), manager, trustee, administrator or similar officer is appointed in respect of the company or any asset of the company; 2 a liquidator or provisional liquidator is appointed in respect of the company; 3 any application (not being an application withdrawn or dismissed within 20 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of: <ul style="list-style-type: none"> • appointing a person referred to in paragraph 1 or 2; • winding up the company; or • proposing or implementing a scheme of arrangement in respect of the company; 4 a moratorium of any debts of the company or an official assignment or a composition or an arrangement (formal or informal) with the company's creditors or any similar proceeding or arrangement by which the assets of the company are subjected conditionally or unconditionally to the control of the company's

Term	Meaning
	<p>creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days;</p> <p>5 the company becomes, admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts as and when they become due and payable;</p> <p>6 any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the company; or</p> <p>7 any act is done or event occurs which, under the laws from time to time of a country other than Australia, has an analogous or similar effect to any of the events in subparagraphs 1-6.</p>
Land Transfer Date	<p>1 the date on which the GLE complies with its obligations under clause 9.3(a) in respect of the Transfer Land; and</p> <p>2 in respect of a Stage, the date on which the GLE complies with its obligations under clause 9.3(a) in respect of the Transfer Land comprised in that Stage.</p>
Land Transfer Due Date	<p>1 [insert agreed date, or period following the Commencement Date by which the GLE is required to comply with its obligations under clause 9.3(a) in respect of the Transfer Land]; and</p> <p>2 in respect of a Stage, the date by which the GLE is required to comply with its obligations under clause 9.3(a) with respect to the Transfer Land comprised in that Stage, as set out in with the Staging Plan.</p>
Law	<p>1 Commonwealth, Victorian or local government legislation, including regulations, by-laws and other subordinate legislation;</p> <p>2 common law; and</p> <p>3 binding requirements and Approvals (including any condition or requirement under them).</p>
Loss	<p>includes any loss, cost, expense, damage or liability (including any fine or penalty) whether direct, indirect or consequential (including revenue loss and pure economic loss), present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of a WIK Document), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution).</p>
Major Boundary	<p>has the meaning given in clause 11.4(a).</p>

Term	Meaning
Adjustment	
Minor Boundary Adjustment	has the meaning given in clause 11.3(a).
New Area Value	has the meaning given in clause 11.3(d).
Notification to the Commissioner	any written notice from the MPA to the Commissioner setting out details of the MPA's determination under clause 9.3(c), clause 9.3(e), or clause 17.2(g).
Permitted Encumbrance	an Encumbrance set out in Schedule 4.
Proposing Party	has the meaning given in clause 11.2(a).
Risk Period	the period starting on the Commencement Date and ending on the Land Transfer Date, and in respect of a Stage, the period starting on the Commencement Date and ending on the Land Transfer Date for that Stage.
Stage	each of the stages described in the Staging Plan.
Staging Plan	<p>the plan in Schedule 3 which details the Transfer Land to be delivered by the relevant due dates for each Stage in discharge of the GLE's GAIC Liability, as amended from time to time in accordance with this agreement and as approved by the Minister in accordance with section 201SR of the Act.</p> <p>Note to Proponents: Where the Transfer Land is being delivered by the GLE in accordance with a Staging Plan, the Staging Plan may be considered to constitute a notice for the purposes of section 201SU of the Act. Please refer to the Guidelines for further information regarding the approval of the Staging Plan by the Minister under section 201SR of the Act.</p>
Tax or Taxes	any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in respect of, any of the foregoing.
Transfer Condition	<p>when the Transfer Land is:</p> <ol style="list-style-type: none"> 1 able to be transferred in accordance with this agreement; 2 fit for its intended uses; and

Term	Meaning
	<p>3 in no worse condition than it was in when it was valued prior to the date of this agreement for the purposes of determining the Value of Transfer Land, subject to any changes in condition that have arisen as a result of the GLE complying with its obligations under this agreement.</p>
Transfer Land	<p>1 the land which is to be transferred to the Receiving Agency on the Land Transfer Due Date, namely [insert whichever of A or B applies]</p> <p>[A: land wholly contained in one or more certificates of title] certificate(s) of title volume [insert volume] folio [insert folio and add additional volumes and folios if applicable] or</p> <p>[B: lot(s) on proposed plan of subdivision] lots [insert no.] to [insert no.] (both inclusive) [or] lot [insert no.] on the plan attached to Annexure A of this agreement being [amend the following if appropriate] part of the land in certificate(s) of title volume [insert volume] folio [insert folio and additional volumes and folios if applicable representing the parent titles to the lot(s)]; and</p> <p>2 in respect of a Stage, the land comprised in that Stage which is to be transferred to the Receiving Agency on the Land Transfer Due Date for that Stage, as set out in the Staging Plan.</p>
Transfer Land Rectification Tasks	has the meaning given in clause 9.2(f)(1).
Valuation Impact	has the meaning given in clause 11.4(b).
Value of Transfer Land	<p>1 [\$[insert aggregate agreed value of the Transfer Land], as amended, if applicable, in accordance with clause 11.3 or clause 11.4; and</p> <p>2 in respect of a Stage, the agreed value of the Transfer Land comprised in that Stage as set out in the Staging Plan, as amended, if applicable, in accordance with clause 11.3 or clause 11.4.</p>
Valuer's Conference	a conference to determine the valuation of land chaired by the Valuer-General and convened in accordance with clause 22.6.
Valuer-General	the Valuer-General Victoria appointed under the <i>Valuation of Land Act 1960</i> (Vic).
WIK Documents	<p>1 this agreement;</p> <p>2 any document or agreement entered into under, or for the purpose of supplementing, replacing, amending or novating, any document</p>

Term	Meaning
	<p>or agreement referred to in paragraph 1; and</p> <p>3 any document or agreement agreed in writing by the parties to be a WIK Document for the purposes of this agreement.</p>

1.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A reference to a related body corporate means a related body corporate as defined in the *Corporations Act 2001* (Cth).
- (k) Subject to clause 1.5(b), a promise on the part of 2 or more persons binds them jointly and severally.
- (l) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (n) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Interpretation of inclusive expressions

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next following Business Day.

1.5 Relationship of the Government Entities and the GLE

- (a) Nothing in, or contemplated by, the WIK Documents will be construed or interpreted as:
- (1) creating a partnership, joint venture, employer/employee, principal/agent or fiduciary relationship between any or all of the Minister, the Receiving Agency, the MPA and the GLE; or
 - (2) unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of a Government Entity to exercise any of its executive or statutory powers or functions under any Law.
- (b) Where this agreement confers a right or discretion on:
- (1) both the Minister and the Receiving Agency; or
 - (2) the Government Entities,
- each of those parties may exercise that right or discretion independently of the other(s).

1.6 Exhibits

Any document referred to as an exhibit has been shown to the parties at the time of their execution of this agreement and signed on their behalf by way of identification.

1.7 Agreement components

- (a) This agreement includes:
- (1) any schedule to this agreement; and
 - (2) any exhibit to this agreement.
- (b) If there is any ambiguity, discrepancy or inconsistency in the documents forming part of this agreement, the higher standard, quality or quantum will prevail.
- (c) If the ambiguity, discrepancy or inconsistency cannot be resolved in accordance with clause 1.7(b), the following order of precedence will apply:
- (1) the special conditions in Schedule 1;
 - (2) this agreement excluding the schedules (other than Schedule 1); and
 - (3) the other schedules to this agreement (other than Schedule 1).

1.8 Inconsistency with Part 9B of the Act

To the extent possible, this agreement will be read so as to avoid any inconsistency with Part 9B of the Act. If there is an inconsistency between this agreement and Part 9B of the Act, the Act will prevail and this agreement must be read down or severed accordingly.

2 Effect of agreement

The GLE acknowledges and agrees that neither entry into, nor commencement of, this agreement discharges the GAIC Liability or entitles the GLE to any GAIC Credit.

3 Term

This agreement commences on the Commencement Date.

4 Administration

4.1 Limitation of Government Entity obligations

- (a) Anything which a Government Entity does, fails to do or purports to do pursuant to its executive or statutory functions and powers will be deemed not to be an act or omission by the Government Entity under a WIK Document and will not entitle the GLE to make any Claim against the Government Entity under a WIK Document, subject only to clause 4.1(b).
- (b) A Government Entity is not relieved from any Claim that the GLE may have against that Government Entity if it exercises any of its executive or statutory functions or powers under any Law in a manner contrary to an express obligation of that Government Entity under a WIK Document. The existence of such obligations, and the existence and amount of such Claim, is to be assessed in accordance with the terms of the relevant WIK Document assuming clauses 4.1(a) and 1.5(a)(2) do not apply.
- (c) The GLE acknowledges and agrees to the matters stated in clauses 4.1(a) and 4.1(b).

4.2 GLE's representatives

- (a) The GLE must, within 5 Business Days of the Commencement Date, give notice in writing to the other parties in which it nominates the persons that will act as a representative of and be authorised to act on behalf of it in discharging its functions under this agreement.
- (b) The GLE may nominate more than one such person, and if so, it must in its written notice specify the functions which each person is authorised to discharge. The GLE may not nominate more than one person to discharge the same function under this agreement.

- (c) The GLE may, by written notice to the other parties, substitute a person appointed under this clause 4.2 with another person.

4.3 Information and directions

The Government Entities must provide:

- (a) subject to any restrictions on disclosure, all information that is in their possession that is reasonably required by the GLE to assist the GLE in the performance of its obligations under this agreement; and
- (b) directions or instructions to the GLE as may be reasonably required by the GLE to enable it to perform its obligations under this agreement or as are otherwise contemplated by this agreement,

in a timely manner.

5 GLE's risks

Except as otherwise expressly provided in this agreement, the GLE accepts all risks arising out of or in connection with the Transfer Land, including:

- (a) any Law or Taxes (or change in Law or Taxes) affecting the GLE's rights, obligations or liability under this agreement;
- (b) delay in, or refusal by, any Authority in granting an Approval or the conditions of an Approval;
- (c) a legal challenge to an Approval; and
- (d) obtaining an Approval subject to conditions unsatisfactory to the GLE.

6 Land condition

The GLE bears the risk of all contamination in, on, over, under or emanating from any of the Transfer Land which:

- (a) exists at the date of this agreement; or
- (b) otherwise occurs or arises after the date of this agreement,

and the GLE must:

- (c) dispose of, or otherwise deal with, such contamination in accordance with Law;
- (d) to the extent required by Law, remediate the Transfer Land to the extent it is in any way degraded by such contamination; and
- (e) indemnify each Government Entity from and against any Claim or Loss (including in respect of third party claims against the Government Entity) suffered or incurred by the Government Entity arising out of or in any way in connection with contamination referred to in clause 6(a) or clause 6(b) to the extent that such contamination occurs or arises out of or in connection with any act or omission of the GLE.

7 Approvals

- (a) The GLE must apply for and obtain all Approvals from each relevant Authority.
- (b) Subject to clause 7(c), the GLE bears all risk associated with obtaining the Approvals it is required to obtain under clause 7.
- (c) Except where the Minister or the Receiving Agency (as applicable) is also the issuing or approving Authority in relation to an Approval, each of the Minister and the Receiving Agency must, to the extent it is practicable for it to do so and without limiting clause 27.16 or its statutory obligations, use reasonable endeavours to facilitate the process of the GLE obtaining the Approvals it is required to obtain under clause 7.

8 Time

The GLE must:

- (a) ensure that the Transfer Land is in the Transfer Condition by the Land Transfer Due Date; and
- (b) comply with its obligations under clause 9.3(a) in respect of the Transfer Land by the Land Transfer Due Date.

9 Condition of Transfer Land

9.1 Notice in relation to Transfer Land

- (a) The GLE must, without delay, give the Government Entities written notice when it considers that the Transfer Land is in the Transfer Condition.
- (b) If the GLE has not issued a notice to the Government Entities under clause 9.1(a) by the Land Transfer Due Date, the GLE must, on the Land Transfer Due Date, give notice to the Government Entities of the extent to which the Transfer Land is in the Transfer Condition as at the Land Transfer Due Date.

9.2 Inspection and determination in relation to Transfer Land

- (a) As soon as reasonably practicable after receiving notice from the GLE under clause 9.1, the MPA must:
 - (1) undertake a joint inspection, with the GLE and the Receiving Agency, of the Transfer Land (including an assessment of the environmental condition of the Transfer Land); and
 - (2) determine in writing pursuant to clause 9.2(e) or clause 9.2(f) (with copies to the Minister, the Receiving Agency and the GLE) whether the Transfer Land is in the Transfer Condition by the Land Transfer Due Date.
- (b) The MPA must use reasonable endeavours to ensure that any Consultant whose opinion or advice the MPA requires to make the determination under clause 9.2(a)(2) attends the joint inspection.

- (c) If, after consulting with the Receiving Agency, the MPA decides that it needs further information to make a determination under clause 9.2(a)(2), the MPA will request that information from the GLE and the GLE must promptly furnish that information upon being requested to do so.
- (d) To avoid doubt, the MPA is required to determine whether the Transfer Land is in the Transfer Condition as at the Land Transfer Due Date, whether it inspects the Transfer Land before or after the Land Transfer Due Date.
- (e) If, in respect of the Transfer Land, the MPA determines that the Transfer Land is in the Transfer Condition on or before the Land Transfer Due Date, the MPA must state in the determination the date on which the Transfer Land is in the Transfer Condition.
- (f) If, in respect of the Transfer Land, the MPA determines that the Transfer Land is not in the Transfer Condition on or before the Land Transfer Due Date:
 - (1) the MPA must list in the determination the remediation work and other tasks to be performed for the Transfer Land to be in the Transfer Condition (**Transfer Land Rectification Tasks**);
 - (2) the GLE must expeditiously and diligently progress the Transfer Land Rectification Tasks to put the Transfer Land in the Transfer Condition;
 - (3) the GLE must give the Government Entities written notice when it considers that the Transfer Land Rectification Tasks have been completed; and
 - (4) clauses 9.1 and 9.2(a) to 9.2(f) will apply in respect of the GLE's notice under clause 9.2(f)(3) in the same way as if it were the original notice given under clause 9.1.
- (g) If the Land Transfer Due Date has not yet passed when the MPA makes a determination referred to in clause 9.2(f), the parties acknowledge and agree that no GAIC Default Event has occurred as at the date of the MPA's determination.
- (h) If the Land Transfer Due Date has passed when the MPA makes a determination referred to in clause 9.2(f) then:
 - (1) the parties acknowledge and agree that a GAIC Default Event has occurred and clause 15 will apply; and
 - (2) the GLE must continue to comply with clause 9.2(f), notwithstanding that the Land Transfer Due Date has passed.
- (i) The parties acknowledge and agree that:
 - (1) a determination of the MPA under this clause 9.2 is not a determination under section 201SLL of the Act; and
 - (2) the MPA will make a section 201SLL determination with respect to the Transfer Land after the GLE has complied with its obligations under clause 9.3(a).

9.3 Transfer of Transfer Land

- (a) As soon as practicable after the MPA has determined under clause 9.2(a)(2) that the Transfer Land is in the Transfer Condition, the GLE must do all things necessary to enable the Receiving Agency to become the registered proprietor of the Transfer Land, free from all Encumbrances, including by providing the Receiving Agency with the duplicate certificate of title for the Transfer Land and

- a transfer of land in registrable form in respect of the Transfer Land, executed by the GLE.
- (b) The Receiving Agency must notify the MPA without delay after the GLE has complied with its obligations under clause 9.3(a).
 - (c) Where the GLE complies with its obligations under clause 9.3(a) on or before the Land Transfer Due Date, the MPA must:
 - (1) make a determination pursuant to section 201SLL(1)(a) of the Act; and
 - (2) state in its determination the Value of Transfer Land for the purposes of section 201SLM(1)(a) or section 201SLM(1)(b) of the Act (as applicable).
 - (d) The MPA will issue a Notification to the Commissioner without delay after making a determination described in clause 9.3(c).
 - (e) Where the GLE does not comply with its obligations under clause 9.3(a) until after the Land Transfer Due Date, then promptly upon receipt of a notice from the Receiving Agency under clause 9.3(b), the MPA must:
 - (1) make a determination under section 201SLL(1)(b) that a GAIC Default Event occurred on the Land Transfer Due Date;
 - (2) state in its determination the Value of Transfer Land for the purposes of section 201SLM(1)(c) of the Act; and
 - (3) issue a Notification to the Commissioner without delay after making a determination under this clause 9.3(e).
 - (f) The MPA must not unreasonably delay undertaking any inspection required under clause 9.2(a)(1) or making any determination required under clause 9.2(a)(2).

10 Discharge of GAIC Liability

Upon receipt by the Commissioner of a Notification to the Commissioner issued by the MPA, the GLE will be taken to have paid to the Commissioner an amount of the GAIC Liability to the value of the GAIC Credit as determined in accordance with Schedule 5. To avoid doubt, if:

- (a) the amount of the GAIC Liability exceeds the amount of the GAIC Credit, the GLE will continue to be liable under Part 9B of the Act in respect of the excess; or
- (b) the amount of the GAIC Credit exceeds the amount of the GAIC Liability, the GLE will be entitled to a refund of the difference in accordance with the *Taxation Administration Act 1997* (Vic).

11 Land boundaries

11.1 Plans of subdivision

- (a) If the Transfer Land is not in separate lots with their own certificates of title, then prior to the Land Transfer Due Date the GLE must prepare the necessary plans of subdivision in registrable form creating such separate lots, and provide a copy of the proposed plans of subdivision to the Receiving Agency for its approval.
- (b) The GLE must make any changes to the plans of subdivision that the Receiving Agency reasonably requests.
- (c) When the Receiving Agency notifies the GLE that it approves the proposed plans of subdivision, the GLE must:
 - (1) use best endeavours to obtain the written consent of any third party whose consent is required in order to register the proposed plans of subdivision;
 - (2) use best endeavours to procure the registration of the proposed plans of subdivision prior to the Land Transfer Due Date; and
 - (3) notify the Receiving Agency of the registration of the plans of subdivision as soon as practicable after registration.
- (d) If the Registrar of Titles refuses to register the proposed plans of subdivision for any reason, the GLE must:
 - (1) immediately notify the Receiving Agency of the refusal and the reasons for the refusal;
 - (2) take all steps reasonably required by the Registrar of Titles to enable the proposed plans of subdivision to be registered; and
 - (3) diligently pursue registration of the proposed plans of subdivision with the Registrar of Titles.
- (e) If the Registrar of Titles requires the proposed plans of subdivision to be amended prior to registration, the GLE must obtain the prior written consent of the Receiving Agency before amending the proposed plans of subdivision, which consent must not be unreasonably withheld.

11.2 Adjustment of boundaries

- (a) At any time prior to the Land Transfer Due Date, any party (a **Proposing Party**) may propose an adjustment to the boundaries of the Transfer Land (**Boundary Adjustment**) by giving written notice of the proposed Boundary Adjustment to the other parties (each an **Approving Party**).
- (b) Written notice under clause 11.2(a) must include:
 - (1) details of the proposed Boundary Adjustment, including a precise identification of any land affected by the Boundary Adjustment;
 - (2) the magnitude of the Boundary Adjustment, expressed in square metres (the **Boundary Adjustment Area**) and as a percentage of the existing area of Transfer Land affected by the Boundary Adjustment (the **Boundary Adjustment Percentage**); and
 - (3) reasons for the proposed Boundary Adjustment.

11.3 Minor Boundary Adjustments

- (a) This clause 11.3 applies where the proposed Boundary Adjustment would result in a Boundary Adjustment Percentage of less than 5% (a **Minor Boundary Adjustment**).
- (b) The Approving Parties must consider a proposed Minor Boundary Adjustment in good faith and must determine, each in its own absolute discretion, whether to approve or refuse the proposed Minor Boundary Adjustment by notice in writing to the Proposing Party.
- (c) If the Approving Parties approve a Minor Boundary Adjustment, the Value of Transfer Land is to be adjusted by deducting or adding the New Area Value to the Value of Transfer Land.
- (d) The **New Area Value** is calculated as follows:
New Area Value = Y x V,
 where:
Y is the Boundary Adjustment Area; and
V is the value attributed to each square metre of the affected Transfer Land, calculated as follows:

$$V = \frac{A}{B}$$
 where:
A is the Value of Transfer Land; and
B is the existing number of square metres of the affected Transfer Land.
- (e) To avoid doubt, where a Minor Boundary Adjustment is approved under this clause 11.3, the GAIC Credit determined under clause 10 and will be calculated on the basis of the Value of Transfer Land as adjusted under clause 11.3(c).

11.4 Major Boundary Adjustments

- (a) This clause 11.4 applies where the proposed Boundary Adjustment would result in a Boundary Adjustment Percentage of 5% or more (a **Major Boundary Adjustment**).
- (b) Where a Major Boundary Adjustment is proposed, the Proposing Party must include in its notice given under clause 11.2(a) the Proposing Party's assessment of the impact of the proposed Major Boundary Adjustment on that part of the Value of Transfer Land to be affected by the proposed Major Boundary Adjustment (the **Valuation Impact**), including the basis for the Proposing Party's assessment of the Valuation Impact.
- (c) The Approving Parties must consider a proposed Major Boundary Adjustment in good faith and must determine, each in its own absolute discretion, whether to:
- (1) approve or refuse the proposed Major Boundary Adjustment; and
 - (2) accept or reject the Valuation Impact,
- by notice in writing to the Proposing Party.
- (d) If the Approving Parties approve the proposed Major Boundary Adjustment and accept the Valuation Impact:

- (1) the Value of Transfer Land is to be adjusted in accordance with the Valuation Impact; and
 - (2) to avoid doubt, the GAIC Credit determined under clause 10 and Schedule 5 will be calculated on the basis of the Value of Transfer Land as adjusted under clause 11.4(d)(1).
- (e) If the Approving Parties approve the proposed Major Boundary Adjustment but any one of them rejects the Valuation Impact, any party may refer the matter of the amount of the Valuation Impact for dispute resolution in accordance with clause 0. The parties acknowledge and agree that:
- (1) the Value of Transfer Land will be adjusted in accordance with the Valuation Impact as determined pursuant to clause 0; and
 - (2) to avoid doubt, the GAIC Credit determined under clause 10 and Schedule 5 will be calculated on the basis of the Transfer Land as adjusted under clause 11.4(e)(1).

11.5 Giving effect to Boundary Adjustments

- (a) Before any Boundary Adjustment can take effect, the Minister must give written approval of the associated adjustment to the Value of Transfer Land (whichever is relevant) under clause 11.3(c), clause 11.4(d)(1) or clause 11.4(e)(1), whichever applies.
- (b) If the Approving Parties approve a proposed Boundary Adjustment under clause 11.3(b) or clause 11.4(c), the Proposing Party must, with the assistance of the Approving Parties, take all necessary steps to give effect to the Boundary Adjustment.
- (c) To avoid doubt, no party may adjust, or permit the adjustment of, any of the boundaries of the Transfer Land without the prior written consent of the other parties.

12 Property damage

- (a) The GLE bears the risk of loss or damage to the Transfer Land during the Risk Period.
- (b) The GLE must, at its own cost, promptly make good any loss or damage which occurs to any part of the Transfer Land during the Risk Period.

13 Warranties

- (a) The GLE represents and warrants to each of the Minister and the Receiving Agency:
 - (1) that it has conducted a full and exhaustive due diligence of the Transfer Land and determined that it is suitable for transfer to the Receiving Agency under this agreement, and for the purposes contemplated by this agreement; and
 - (2) that it is (or, at all relevant times, will be) the owner of, or has (or, at all relevant times, will have) sufficient proprietary rights in relation to, the

Transfer Land so as to enable it to fully comply with its obligations under clause 9.3(a).

- (b) The GLE acknowledges and agrees that, except as expressly set out in the agreement, none of the Government Entities has made any, nor do they make any, representation, and give no warranty, in respect of this agreement, the matters contemplated under this agreement or any other matter relevant to the GLE's decision to enter into this agreement.

14 Indemnities

- (a) To the maximum extent permitted by Law, the GLE indemnifies and will keep indemnified on demand each Government Entity against any Claim (including any Claim made by, or liability to, a third party) which the Government Entity suffers or incurs arising out of or in connection with:
- (1) the Transfer Land; or
 - (2) any breach or repudiation of this agreement or any other WIK Document by the GLE.
- (b) The liability of the GLE to a Government Entity for any Claim, liability or Loss under the indemnities provided in clause 14(a) will be reduced to the extent that any such Claim, liability or Loss is a direct consequence of:
- (1) a fraudulent, negligent or wilful act or omission of that Government Entity; or
 - (2) any breach by that Government Entity of a WIK Document to which it is a party.

15 Default

15.1 GAIC Default Event

- (a) Each of the following is a **GAIC Default Event** by the GLE:
- (1) a failure to ensure that the Transfer Land is in the Transfer Condition by the Land Transfer Due Date; and
 - (2) a failure to comply with its obligations under clause 9.3(a) in respect of the Transfer Land by the Land Transfer Due Date.
- (b) The parties acknowledge and agree that the MPA's determinations under clauses 9.2(h)(1) and 9.3(e)(1) will be conclusive evidence of whether a GAIC Default Event has occurred with respect to the GLE.
- (c) The Minister and the GLE acknowledge and agree that if a GAIC Default Event occurs, the GLE will be in default of this agreement for the purposes of section 201SLN of the Act (where applicable).

15.2 Consequences of a GAIC Default Event

Note to Proponents: Where the GLE both pays the full amount of its GAIC Liability as required under section 201SLN of the Act and discharges its obligations under this Agreement to transfer the Transfer Land, the GLE will be entitled under section 201SLK of the Act to notify the MPA of its performance. Once this notice has been issued by the GLE, the process for the MPA determining performance and notifying the Commissioner will entitle the GLE to a GAIC Credit. As the GAIC Liability will have already been paid pursuant to the penalty provisions, there will be an overpayment of GAIC by the GLE, and the GLE will be entitled to apply for a refund of the overpayment under the *Tax Administration Act 1997* (Vic).

- (a) If a GAIC Default Event occurs, the GLE must, pursuant to section 201SLN of the Act (where applicable), immediately pay to the Commissioner the remainder of the GAIC Liability, together with any interest, penalty tax, indexation and other amounts it is required to pay under the Act and the *Taxation Administration Act 1997* (Vic) (as applicable), after deducting any GAIC Credit determined by the MPA under clause 10 and Schedule 5.
- (b) Notwithstanding clause 15.2(a), the GLE must continue to perform its obligations under and in accordance with this agreement.

16 Termination

16.1 Default termination

- (a) If:
 - (1) the GLE fails to comply with its obligations under clause 9.2(h)(2); and
 - (2) the Land Transfer Due Date has passed; and
 - (3) the MPA has issued any Notification to the Commissioner,
 the Minister may give the GLE 20 Business Days' notice of its intention to terminate this agreement.
- (b) If the GLE does not remedy (or overcome the effects of) the failure referred to in clause 16.1(a) within 20 Business Days after receiving notice under clause 16.1(a), the Minister may terminate the agreement by notice in writing to the GLE. The agreement will be terminated effective from the date of the Minister's notice.

16.2 Immediate termination

- (a) If an Insolvency Event occurs in relation to the GLE, whether or not the GLE is then in breach of this agreement (**Immediate Termination Event**), the Minister may, subject to clause 16.2(b), give notice to the GLE that this agreement is terminated effective from the date of the Minister's notice and without granting the GLE any cure period.
- (b) The Minister must not terminate the agreement under clause 16.2(a) without first giving the GLE 10 Business Days written notice of its intention to exercise its termination rights under this clause 16.2.

16.3 Payments on termination

Any termination of this agreement by the Minister under clause 16.1 or clause 16.2(b) will entitle each of the Minister and the Receiving Agency to recover from the GLE any Loss that the Minister or the Receiving Agency (as applicable) may suffer or incur arising out of or in connection with the termination of this agreement.

17 Ending of agreement

17.1 Completion of obligations

Unless this agreement is terminated under clause 16.1(b) or clause 16.2 or otherwise at law, this agreement will end on the date on which the GLE has fully discharged all of its obligations under and in accordance with this agreement.

17.2 Mutual agreement

- (a) The Minister may end this agreement with the agreement of all parties. The Minister must give notice to the other parties of the date on which the agreement will end, which date must be at least 20 Business Days from the date of the Minister's notice.
- (b) Upon receiving notice from the Minister under clause 17.2(a), the GLE must promptly provide written notice to the Government Entities of the extent to which the agreement has been performed as at the date of the Minister's notice.
- (c) Within 10 Business Days after receiving notice from the GLE under clause 17.2(b), the MPA must undertake a joint inspection of the Transfer Land (including an assessment of the environmental condition of the Transfer Land) with the GLE and the Receiving Agency and determine in writing (with copies to the Minister, the Receiving Agency and the GLE) the extent to which:
 - (1) the Transfer Land is in the Transfer Condition; and
 - (2) the GLE has complied with its obligations under clause 9.3(a).
- (d) The MPA must use reasonable endeavours to ensure that any Consultant whose opinion or advice the MPA requires to make the determination under clause 17.2(c) attends the joint inspection.
- (e) If, after consulting with the Receiving Agency, the MPA decides that it needs further information to make a determination under clause 17.2(c), the GLE must promptly furnish that information upon being requested to do so.
- (f) If the MPA determines under clause 17.2(c) that any or all of the following apply:
 - (1) the Transfer Land is not in the Transfer Condition; or
 - (2) the GLE has not complied with its obligations under clause 9.3(a),
 then:
 - (3) the parties acknowledge and agree that the MPA's determination is not a determination under section 201SLL of the Act; and

- (4) the GLE must expeditiously and diligently progress all steps necessary to ensure that none of the matters referred to in clauses 17.2(f)(1) to 17.2(f)(2) continues to apply.
- (g) The parties acknowledge and agree that the MPA will only make a determination under section 201SLL of the Act when:
 - (1) the Transfer Land is in the Transfer Condition; and
 - (2) the GLE has complied with its obligations under clause 9.3(a).
- (h) Within 5 Business Days after the MPA makes any determination under section 201SLL of the Act, as contemplated by clause 17.2(g), the MPA must provide a Notification to the Commissioner.
- (i) Upon receipt by the Commissioner of a Notification to the Commissioner issued by the MPA under clause 17.2(h), the GLE will be taken to have paid to the Commissioner an amount of the GAIC Liability to the value of the GAIC Credit as determined in accordance with clause 10 and Schedule 5. To avoid doubt, if:
 - (1) the amount of the GAIC Liability exceeds the amount of the GAIC Credit, the GLE will continue to be liable under Part 9B of the Act in respect of the excess; or
 - (2) the amount of the GAIC Credit exceeds the amount of the GAIC Liability, the GLE will be entitled to a refund of the difference in accordance with the *Taxation Administration Act 1997* (Vic).

18 Effect of termination or ending of this agreement

18.1 Waiver

If this agreement is terminated or ended for any reason, the GLE waives any rights it might otherwise have had to make any Claim against a Government Entity by reason or as a result of the termination or ending of the agreement, including any Claim for unjust enrichment.

18.2 Handover

Upon the termination or ending of this agreement if it has not already done so, and if requested to do so by the Receiving Agency, the GLE must comply with its obligations under clause 9.3(a).

18.3 Survival of obligations

Without limiting clause 27.6(a), clauses 1.5, 1.7, 1.8, 4.1, 12, 14, 16.3, 17.2, 18, 23, 24, 25, 26 and 27 and any other provision which expressly or by implication by its nature is intended to apply after this agreement has ended or is terminated will survive the ending, termination or rescission of this agreement.

19 Representations and warranties

- (a) In addition to, and without limiting, the warranties given under clauses 11.2 and 13, the GLE warrants to each of the Minister and the Receiving Agency that:
- (1) it has full legal capacity and power:
 - (A) to own its own property and assets and carry on its business as it is now being conducted; and
 - (B) to enter into WIK Documents and exercise its rights and perform its obligations under the WIK Documents;
 - (2) all requirements of any Law necessary to enable the GLE to lawfully enter into the WIK Documents and exercise its rights and perform its obligations under the WIK Documents have been fulfilled;
 - (3) the WIK Documents form valid and legally binding obligations, enforceable against it except to the extent limited by equitable principles and Law affecting creditors' rights generally;
 - (4) neither its execution of, nor the exercise of its rights and performance of its obligations under, the WIK Documents does or will:
 - (A) contravene any applicable Law to which it or any of its property is subject or any order of any Authority binding on it or any of its property;
 - (B) contravene any approval, undertaking or instrument binding on it or any of its property;
 - (C) contravene any provision of its constitution;
 - (D) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery; or
 - (E) cause any limitation on its power to incur financial indebtedness to be exceeded;
 - (5) no litigation, arbitration or administrative proceedings are taking place, pending or (to the knowledge of the GLE or any of its officers) threatened against it or any related body corporate or any of its property which, if adversely determined, could have, either separately or in aggregate, a material adverse effect on it or any related body corporate;
 - (6) it is not necessary to file or register with any Authority or to pay any taxes to ensure the WIK Documents' validity, legality, enforceability or admissibility into evidence; and
 - (7) in entering the WIK Documents it is not acting as trustee of any trust or settlement.
- (b) The GLE acknowledges that each of the Minister and the Receiving Agency has entered the WIK Documents in reliance on the GLE's representations and warranties given under this agreement.
- (c) The GLE must immediately notify the Minister and the Receiving Agency if a representation or warranty given under this agreement becomes untrue.

20 Assignment

20.1 Assignment by the GLE

- (a) Subject to clauses 20.1(b) and 21, the GLE may only assign its obligations, powers or rights under the WIK Documents with the prior written consent of the Minister and the Receiving Agency, which consent must not be unreasonably withheld but may be granted subject to conditions in the absolute discretion of the Minister and the Receiving Agency.
- (b) Subject to clause 21, the Minister and the Receiving Agency must not withhold their consent if the proposed assignment is to a related body corporate of the GLE and the GLE provides evidence to the reasonable satisfaction of the Minister and the Receiving Agency that the related body corporate has the capacity to perform the obligations of the GLE under the WIK Documents.
- (c) The GLE is not released from its obligations by an assignment under this clause 20.1 unless expressly released in writing.
- (d) The Minister may, in the Minister's absolute discretion, require any proposed assignee to enter into a deed or agreement with the other parties confirming its obligation to perform the assignor's future obligations under the WIK Documents. To avoid doubt, unless any such deed or agreement expressly states otherwise, the deed or agreement will not have the effect of releasing the GLE from its obligations under the WIK Documents.

20.2 Change in control of the GLE

- (a) Subject to clause 20.2(b), prior to the achievement of Completion of all of the Works, the GLE must not, without the prior written consent of the Minister and the Receiving Agency, allow:
 - (1) the beneficial ownership of the issued share capital of the GLE to be altered; or
 - (2) the composition of the GLE's board of directors to change.
- (b) Clause 20.2(a) does not apply where the GLE is a company listed on the Australian Securities Exchange.

20.3 Assignment by the Receiving Agency

The Receiving Agency may assign its rights under the WIK Documents at any time.

20.4 Transfer of functions of Government Entities

- (a) The GLE acknowledges that a Government Entity may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of the Government Entity may be transferred to or vested in another Authority.
- (b) If the Government Entity is reconstituted, renamed or replaced or if some or all of the Government Entity's powers, functions or responsibilities are transferred to or vested in another Authority, references in this agreement to the Minister, the Receiving Agency or the MPA (as the case may be) are deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that it has

assumed or has had transferred to it or vested in it those powers, functions or responsibilities.

21 Restriction on dealing with land

- (a) Except with the prior written consent of the Minister and the Receiving Agency, the GLE must not enter into any sale, transaction or arrangement, or obtain or grant any lease, licence or approval or make any improvements of a durable nature to the Transfer Land or the GAIC Land, unless such an action is required to give effect to this agreement.
- (b) In relation to a proposed sale of the GAIC Land, the GLE must give at least 20 Business Days prior written notice to the Minister and the Receiving Agency of the proposed sale, including details of the identity of the proposed transferee and any further information the Minister or the Receiving Agency may reasonably require to determine whether the proposed transferee:
- (1) has the legal capacity, power and authority to become a party to and perform the obligations of the GLE under this agreement; and
 - (2) otherwise has resources available to it (including committed financial resources) which are sufficient to enable it to perform the obligations of the GLE under this agreement.
- (c) As soon as reasonably practicable after receiving the information required by clause 21(b), the Minister and the Receiving Agency must meet to determine the changes (if any) required to this agreement to ensure that neither the Minister nor the Receiving Agency is in any worse position after the sale of the GAIC Land than it would have been in had the GAIC Land continued to be owned by the GLE.
- (d) Within 15 Business Days of the Minister and the Receiving Agency meeting in accordance with clause 21(c), the Minister must notify the GLE of any proposed changes to this agreement that the Minister and the Receiving Agency have determined are necessary to address the circumstances of the proposed sale of the GAIC Land, including any issues regarding the identity of the proposed transferee.
- (e) The GLE must use reasonable endeavours to ensure that the proposed transferee enters into a deed of novation agreeing to assume the rights and obligations of the GLE under this agreement, as amended by the Minister's notice under clause 21(d), with effect from the date on which the transfer of the GAIC Land takes effect.
- (f) If:
- (1) the Minister and the Receiving Agency consider (acting reasonably) that the proposed transferee does not satisfy the requirements set out in clause 21(b); or
 - (2) the proposed transferee does not agree to enter into a deed of novation in accordance with clause 21(e),

the Minister and the Receiving Agency may withhold their consent to the proposed sale of the GAIC Land.

22 Disputes

22.1 Dispute

- (a) Subject to clause 22.1(b), if a dispute or difference arises or the parties fail to agree in connection with any matter arising out of or relating to this agreement, any party may give a Dispute Notice to the other parties.
- (b) The GLE cannot issue a Dispute Notice in respect of any of the following matters:
 - (1) the MPA's determination as to:
 - (A) whether the Transfer Land is in the Transfer Condition;
 - (B) the Transfer Land Rectification Tasks;
 - (C) whether the GLE has complied with its obligations under clause 9.3(a);
 - (D) whether a GAIC Default Event has occurred; or
 - (E) the amount of a GAIC Credit determined under clause 10 and Schedule 5; or
 - (2) the Minister's decision to approve or reject an amended Staging Plan.

22.2 Procedure for resolving disputes

Unless a party has complied with the procedure to resolve a dispute by negotiation of the dispute under clauses 22.3 and 22.4, that party may not commence the dispute resolution proceedings under clause 22.5.

22.3 Appointment of negotiators

- (a) If a Dispute Notice is given under clause 22.1(a), each party to the dispute will appoint an Executive Negotiator to resolve the dispute and notify the other parties of this appointment within 5 Business Days after the Dispute Notice is given.
- (b) The **Executive Negotiators** will be:
 - (1) for the GLE – the managing director or equivalent officer;
 - (2) for the MPA – the chief executive or equivalent (or his or her nominee);
 - (3) for the Receiving Agency – the chief executive or equivalent (or his or her nominee);
 - (4) for the Minister – a senior representative appointed by the Minister, or the MPA's Executive Negotiator as appointed by the Minister; and
 - (5) for any other party – a person with authority to bind the party in relation to an agreed resolution of the dispute.

22.4 Executive negotiation

If a Dispute Notice is given under clause 22.1(a), the dispute will be referred to the Executive Negotiators who must, within:

- (a) 15 Business Days after the Dispute Notice is given; or
- (b) such longer period of time as the Executive Negotiators may agree in writing, meet and undertake genuine and good faith negotiations with a view to resolving the dispute and, if they cannot resolve the dispute, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation) before proceeding to independent expert determination pursuant to clause 22.5.

22.5 Independent expert determination

- (a) If the parties do not settle the dispute within 20 Business Days after the dispute is referred to the Executive Negotiators pursuant to clause 22.4, any party may require the dispute to be determined by an independent Expert in the relevant field agreed on and appointed jointly by the parties.
- (b) If the parties are unable to agree upon an independent Expert within 5 Business Days, then:
 - (1) if the dispute involves the legal interpretation of this agreement or if the parties are unable to agree upon whether the dispute involves legal interpretation of this agreement, any party may apply to the President of the Law Institute of Victoria or his or her nominee to appoint an independent Queen's or Senior Counsel to be the independent Expert to resolve the dispute or to determine whether the dispute involves legal interpretation of this agreement, as the case may be; and
 - (2) in any other case, any party may apply to the President for the time being of the Royal Australian Institute of Architects or his or her nominee to appoint an independent Expert in the relevant field who is prepared to determine the dispute.
- (c) The independent Expert:
 - (1) may engage other consultants to advise him or her if he or she considers it necessary; and
 - (2) must be required to provide his or her determination in respect of the Dispute within 30 Business Days of referral of the Dispute.
- (d) The fees of the independent Expert (and any other consultants he or she may engage) are payable as directed by the independent Expert.
- (e) The independent Expert acts as an expert and not as an arbitrator and the decision of the independent Expert is final and binding on the parties.
- (f) The parties acknowledge and agree that the independent Expert has no power to make any decision or determination in relation to the application of any statutory remedy, penalty or damages.

22.6 Valuer's Conference

- (a) Where a Dispute Notice relates to the valuation of Transfer Land for the purposes of a Major Boundary Adjustment under clause 11 and the parties do not settle the dispute within 20 Business Days after the dispute is referred to Executive Negotiators pursuant to clause 22.4, any party may notify the other parties that it requires the dispute to be determined by a Valuer's Conference pursuant to this clause 22.6.
- (b) Within 15 Business Days of notice under clause 22.6(a):

- (1) the Government Entities (through the Receiving Agency) must procure the Valuer General to obtain a land valuation; and
 - (2) the GLE must engage a land valuer to act on its behalf and must obtain a land valuation from that land valuer,
- in respect of the Transfer Land that will be affected by the Major Boundary Adjustment (each a **Land Valuation**) for the purposes of the Valuer's Conference;
- (3) each of the Government Entities (through the Receiving Agency) and the GLE must provide the other with a copy of its Land Valuation; and
 - (4) the Government Entities must request the Valuer-General to arrange and conduct a Valuer's Conference.
- (c) The Government Entities and the GLE must:
- (1) attend, and must procure that their respective Valuers attend, the Valuer's Conference at the times and venue required by the Valuer-General; and
 - (2) comply with, and must procure that their respective Valuers comply with, any other rules and procedures notified by the Valuer-General.
- (d) Following the Valuer's Conference, the Valuer-General will provide a written report to the Government Entities and the GLE which details the discussions at the Valuer's Conference and certifies the value of the Transfer Land to be affected by the Major Boundary Adjustment.
- (e) The fees of the Valuer-General are payable by the Proposing Party.
- (f) The parties agree that the valuation of the Transfer Land certified by the Valuer-General in the report provided under clause 22.6(d) will be final and binding for the purposes of clause 11.

22.7 Bar on commencement of proceedings

- (a) Subject to clause 22.7(b), where this clause 0 applies, no party may begin or maintain any action relating to a dispute or difference arising out of or in relation to this agreement until it has been referred and determined as provided in this clause.
- (b) Nothing in this clause 0 prejudices a party's right to institute proceedings to seek injunctive or urgent declaratory relief in respect of a dispute under this clause 0 or any other matter arising under this agreement.

22.8 Proportional liability

Notwithstanding anything else, to the extent permissible by Law, the independent Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to independent Expert determination pursuant to clause 22.5.

22.9 Continuity

Despite the existence of a dispute, each party must continue to perform its obligations under this agreement, unless otherwise agreed.

23 Notices

23.1 Form of Notice

A notice or other communication to a party under this agreement (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to that party in accordance with the details nominated in Schedule 6 (or any alternative details nominated to the sending party by Notice).

23.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By fax to the nominated fax number	At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety. However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included.
By email to the nominated email address	When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf.

24 Costs

Unless otherwise agreed in writing, the GLE must pay all reasonable costs and expenses of the Government Entities (including legal costs and expenses) of and incidental to the negotiation, preparation, stamping, registration and enforcement of the WIK Documents.

25 Interest

- (a) If a party fails to pay any amount payable by that party to another party within the time required under this agreement, then it must pay interest on that amount in accordance with clause 25(b). To avoid doubt, this clause 25 does not apply to any amounts that are payable in respect of or in connection with the GLE's GAIC Liability.
- (b) Interest is:
- (1) payable from the due date until payment is made;
 - (2) calculated on daily balances at the Default Rate; and
 - (3) capitalised monthly.
- (c) The amount specified in clause 25(b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

26 Set off

- (a) Each of the Minister and the Receiving Agency may setoff, withhold or deduct from any moneys due to the GLE:
- (1) any debt or other moneys due from the GLE to the Minister or the Receiving Agency (as applicable);
 - (2) any Claim to any money which the Minister or the Receiving Agency (as applicable) may have against the GLE under this agreement or otherwise at law relating to the GLE's obligations under this agreement; and
 - (3) any amount it is compelled by Law to deduct or withhold.
- to avoid doubt, this clause 26 does not apply to the GAIC Credit.
- (b) The GLE must make all payments to the Government Entities free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future tax, unless the GLE is compelled by Law to make such a deduction or withholding.
- (c) If a party is compelled by Law to make a deduction or withholding, it must:
- (1) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (2) provide to the other party all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

27 General

27.1 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in Victoria.

- (b) Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

27.2 Reading down and severability

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

27.3 Invalidity and enforceability

- (a) If any provision of this agreement is invalid under the law of Victoria the provision is enforceable to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 27.3(a) does not apply where enforcement of the provision would materially affect the nature or effect of the parties' obligations under this agreement.

27.4 Registration

The parties must do all things necessary to enable the Minister to apply to the Registrar of Titles to:

- (a) register this agreement in accordance with section 201SLH(1) of the Act on the GAIC Land and the Transfer Land;
- (b) replace the registration of this agreement with the registration of an amended agreement on the GAIC Land and the Transfer Land in accordance with section 201SLH(5)(a) of the Act, if an amendment is made to this agreement which necessitates replacement of its registration; and
- (c) remove the registration of this agreement in whole or in part (as applicable) from the GAIC Land and the Transfer Land in accordance with section 201SLH(5)(b) of the Act, if this agreement is terminated in accordance with clause 16 or ended in accordance with clause 17, or is otherwise discharged as to part of the GAIC Land and the Transfer Land.

27.5 Agreement to operate as a restrictive covenant

- (a) Without limiting any operation or effect which this agreement otherwise has, the parties acknowledge that this agreement is made under section 201SLB of the Act.
- (b) The parties acknowledge that in accordance with section 201SLH(4) of the Act:
 - (1) the burden of any covenant in the agreement runs with the land affected by that burden; and
 - (2) the Minister may enforce the covenant against any person deriving title from any person who entered into the covenant as if it were a restrictive covenant despite the fact that it may be positive in nature, or that it is not for the benefit of any land of the Crown.

27.6 Terms of indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this agreement.

27.7 Commencement

This agreement is effective from the Commencement Date.

27.8 Waiver

- (a) No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (b) The meanings of the terms used in this clause 27.8 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this agreement and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

27.9 Amendment

The Minister may, with the agreement of the GLE and all other parties to the agreement, amend the agreement to vary the terms of the agreement. Any amendment of this agreement must be in writing and be signed by or on behalf of each party.

27.10 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it and to ensure that this agreement is fully carried out.

27.11 Entire agreement

The WIK Documents state all the express terms of the agreement between the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings and agreements in respect of their subject matter.

27.12 No reliance

No party has relied on any statement by any other party not expressly included in this agreement.

27.13 Counterparts

This agreement may be executed in any number of counterparts.

27.14 Relationship of the parties

- (a) Except where expressly stated otherwise, nothing in this agreement gives a party authority to bind any other party in any way.
- (b) Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.

27.15 Exercise of rights and giving or withholding of consents

- (a) Unless otherwise expressly provided by the terms of this agreement, a party is required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this agreement.
- (b) A party may (acting reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.
- (c) To avoid doubt, where this agreement entitles a party to do something, or refrain from doing something, in his or its absolute discretion, that party is not required to act reasonably in exercising that discretion.

27.16 No fettering of discretions

The parties expressly acknowledge that any obligation imposed upon the Minister, the MPA or a Receiving Agency under this agreement does not fetter the future exercise of any statutory discretion or power by the Minister, the MPA or a Receiving Agency (as appropriate) and the provisions of this agreement must be read accordingly.

27.17 Stamp duty

The GLE must pay and irrevocably agrees to keep the Minister indemnified in relation to all stamp duty payable on or in relation to this agreement.

27.18 Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or otherwise of the power of attorney under the authority of which the attorney executes this agreement.

Schedules

Table of contents

Schedule 1 - Special Conditions	38
Schedule 2 - Deferral Certificate	42
Schedule 3 - Staging Plan	43
Schedule 4 - Permitted Encumbrances	48
Schedule 5 - Determination of GAIC Credit	49
Schedule 6 - Notice Details	51

model WIK Agreement (Land Transfer)

Schedule 1

Special Conditions

Note to Proponents: This Schedule 1 will set out any special conditions to apply to a particular proposal. The special conditions will be developed on a case by case basis and will include any specific requirements of the relevant Receiving Agency.

To the extent that there is any inconsistency between the special conditions and the general conditions under a particular agreement, the special conditions will prevail to the extent of that inconsistency.

The example clauses and principles set out in this Schedule 1 are not exhaustive of the types of special conditions that may be required for a particular proposal.

model WIK Agreement (Land T

1 Multiple GLEs

The general principles that will apply where there are multiple GLEs involved in the delivery of a particular proposal are as follows:

- (a) each GLE will bear the risks allocated to that GLE under the agreement in respect of the land it is responsible for transferring;
- (b) the GLEs will be responsible for coordinating and interfacing their activities so that each GLE is able to transfer its land by the due date for that land;
- (c) neither the Minister nor the Receiving Agency will be exposed to any interface risk in respect of the GLEs. In other words, no GLE will be able to bring any claim against the Minister or the Receiving Agency in respect of the acts or omissions of any other GLE; and
- (d) any disputes between multiple GLEs and the Minister or the Receiving Agency which involve common facts and circumstances will be joined and will be dealt with as a single dispute.

2 PPSA

The following are template PPSA clauses that, depending on the nature of the proposal, may be inserted into an agreement to protect the security interests of the Minister or the Receiving Agency.

The parties will need to review the applicability of the clauses and the drafting contained therein prior to inclusion in an agreement.

“1.1 “Definitions

In this clause [1]:

Amendment Demand has the meaning given to it under section 178 of the PPS Act.

Extinguishable Security Interest has the meaning given in clause [1.4(a)(3)(B)].

PPS Act means the Personal Property Securities Act 2009 (Cth).

PPS Law means:

- (a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time;
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a);
- (c) any provision of the PPS Act or regulations referred to in paragraph (a);
- (d) any amendment to any of the above, made at any time; or
- (e) any amendment made at any time to the Corporations Act 2001 (Cth) or any other legislation in connection with the implementation or as a consequence of the PPS Act.

PPS Register the register established under Section 147 of the PPS Act.

Security Interest has the meaning given to it in the PPS Law.

Transaction Document means:

- (a) this agreement;

- (b) *any guarantee by which any person guarantees the GLE's compliance with its obligations under any of the Transaction Documents;*
- (c) *any agreement which the Minister, the Receiving Agency and the GLE agree is a Transaction Document for the purposes of this agreement;*
- (d) *any agreement or instrument created under any of the above documents; and*
- (e) *each document entered into for the purpose of amending, novating, restating or replacing any of the above documents.*

1.2 Enforcement under PPS Act

The parties agree that paragraphs (a) to (r) inclusive of Section 115 of the PPS Act do not apply to this agreement or the transactions contemplated under this agreement.

1.3 Application of PPS Law

- (a) *If:*
 - (1) *the Minister or the Receiving Agency determine that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and*
 - (2) *in the reasonable opinion of the Minister or the Receiving Agency, the PPS Law:*
 - (A) *adversely affects or would or may adversely affect the Minister's or the Receiving Agency's security position or the rights or obligations of the Minister or the Receiving Agency under or in connection with the Transaction Documents or any of the transactions contemplated by them; or*
 - (B) *enables or would enable the Minister's or the Receiving Agency's security position to be improved without adversely affecting the GLE in a material respect,*

the Minister or the Receiving Agency may give notice to the GLE requiring the GLE to do anything (including amending any Transaction Document or executing any new Transaction Document) that in the Minister's or the Receiving Agency's reasonable opinion is necessary to ensure that, to the maximum possible extent, the Minister's and the Receiving Agency's security position, and rights and obligations, are not adversely affected as contemplated by clause [1.3(a)(2)(A)] (or that any such adverse effect is overcome), or that the Minister's and the Receiving Agency's security position is improved as contemplated by clause [1.3(a)(2)(B)].

- (b) *The GLE must comply with the requirements of a notice given by the Minister or the Receiving Agency under clause [1.3(a)] within the time stipulated in the notice.*
- (c) *If:*
 - (1) *the GLE determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and*
 - (2) *in the reasonable opinion of the GLE, the PPS Law:*
 - (A) *adversely affects or would or may adversely affect the GLE's security position or the rights or obligations of the GLE under or in connection with the Transaction Documents or any of the transactions contemplated by them; or*

- (B) *enables or would enable the GLE's security position to be improved without adversely affecting the Minister or the Receiving Agency in a material respect,*

the GLE may give notice to the Minister and the Receiving Agency requiring the Minister and the Receiving Agency to do anything (including amending any Transaction Document or executing any new Transaction Document) that in the GLE's reasonable opinion is necessary to ensure that, to the maximum possible extent, the GLE's security position, and rights and obligations, are not adversely affected as contemplated by clause [1.3(c)(2)(A)] (or that any such adverse effect is overcome), or that the GLE's security position is improved as contemplated by clause [1.3(a)(2)(B)].

- (d) *The Minister and the Receiving Agency must comply with the requirements of a notice given by the GLE under clause [1.3(c)] within the time stipulated in the notice.*
- (e) *For the avoidance of doubt, the Minister's and the Receiving Agency's rights in relation to clause [1.3(a)] take precedence in the event of any conflict or inconsistency between the Minister's or the Receiving Agency's and GLE's rights in this clause [1.3].*

1.4 General

The parties acknowledge that nothing in this clause [1] relieves either party of any obligation under this agreement."

Schedule 2

Deferral Certificate

(Recitals; Clause 1.1 'Deferral Certificate')

model WIK Agreement (Land Transfer)

Staging Plan

(Clause 1.1 'Staging Plan')

Note to Proponents:

Purpose of Staging Plan

This Staging Plan sets out the information that will be required in relation to proposals involving staged delivery of Transfer Land. The structure of the Staging Plan may require amendment to reflect the details of a particular proposal.

The overriding principle of the Staging Plan is that the value of each Stage reflected in the Staging Plan must be no less than the corresponding GAIC Liability in respect of that Stage, as approved by the Minister under section 201SR of the Act.

Further approvals may be required

Any change to the Land Transfer Due Date of any Stage specified in an approval given by the Minister under section 201SR of the Act will require the further approval of the Minister in accordance with section 201SR(7) of the Act.

Other considerations

If there is a failure to complete a Stage by its Land Transfer Due Date, the whole amount of the GAIC for which the GLE is liable will become payable in accordance with section 201SR5(f) of the Act. The GLE will still be liable to perform its remaining obligations under the WIK Agreement.

In accordance with section 201SR(5)(g) of the Act, the Staging Plan may be subject to any other condition that is agreed between the Minister and the GLE.

Form of notice of Minister's approval

In accordance with section 201SU(1) of the Act, if the Staging Plan is approved, the Minister will give the GLE a notice which:

- (a) states that the Minister has given the person the approval;
- (b) describes the whole of the land in respect of which the contribution is imposed;
- (c) describes the GAIC event in respect of which the contribution is imposed;

- (d) in the case of an approval relating to a plan of subdivision, describes the land relating to each Stage that is the subject of the approval;
- (e) states the Land Transfer Due Date and amount of the payment for any Stage specified in the approval;
- (f) contains the name and contact details of the person; and
- (g) contains any other information that the Minister thinks appropriate.

model WIK Agreement (Land Transfer)

Staging Plan Summary Information

Ministerial approval of Staging Plan under section 201SR of the Act Yes/No

Description of GAIC Land: [insert]

Description of GAIC trigger event: [insert]

Name and contact details of GLE: [insert]

Staging Plan Details

Transfer Land

Stage	Description of the Transfer Land (section 201SR(5)(a))	GAIC Credit available when Stage fully performed by the Land Transfer Due Date (section 201SR(5)(c)), being:		Land Transfer Due Date (section 201SR(5)(d))	Receiving Agency
1	Transfer Land for Stage 1, being: [insert whichever of A or B applies] [A: land wholly contained in one or more certificates of title] certificate(s) of title volume [insert volume] folio [insert folio and add additional volumes and folios if applicable] or [B: lot(s) on proposed plan of subdivision] lots [insert no.] to [insert no.] (both inclusive) [or] lot [insert no.] on the plan attached to Annexure A of this agreement being [amend the following if appropriate] part of the land in certificate(s) of title volume [insert volume] folio [insert folio and additional volumes and folios if applicable representing the parent titles to the lot(s)], to be in the Transfer Condition and the GLE to have performed its obligations under clause 9.3(a).	Value of Transfer Land for Stage 1 including, to avoid doubt, any adjustment in accordance with clause 11.3 or clause 11.4	\$[insert], as adjusted, if applicable, in accordance with clause 11.3 or clause 11.4		

Staging Plan

Stage	Description of the Transfer Land (section 201SR(5)(a))	GAIC Credit available when Stage fully performed by the Land Transfer Due Date (section 201SR(5)(c)), being:		Land Transfer Due Date (section 201SR(5)(d))	Receiving Agency
2	<p>Transfer Land for Stage 2 being: [insert whichever of A or B applies]</p> <p>[A: land wholly contained in one or more certificates of title] certificate(s) of title volume [insert volume] folio [insert folio and add additional volumes and folios if applicable] or</p> <p>[B: lot(s) on proposed plan of subdivision] lots [insert no.] to [insert no.] (both inclusive) [or] lot [insert no.] on the plan attached to Annexure A of this agreement being [amend the following if appropriate] part of the land in certificate(s) of title volume [insert volume] folio [insert folio and additional volumes and folios if applicable representing the parent titles to the lot(s)],</p> <p>to be in the Transfer Condition and the GLE to have performed its obligations under clause 9.3(a).</p>	Value of Transfer Land for Stage 2 including, to avoid doubt, any adjustment in accordance with clause 11.3 or clause 11.4	<p>[\$insert], as adjusted, if applicable, in accordance with clause 11.3 or clause 11.4</p>		

model WIK Agreement (Land Transfer)

Staging Plan

Stage	Description of the Transfer Land (section 201SR(5)(a))	GAIC Credit available when Stage fully performed by the Land Transfer Due Date (section 201SR(5)(c)), being:		Land Transfer Due Date (section 201SR(5)(d))	Receiving Agency
3	<p>Transfer Land for Stage 3 being: [insert whichever of A or B applies]</p> <p>[A: land wholly contained in one or more certificates of title] certificate(s) of title volume [insert volume] folio [insert folio and add additional volumes and folios if applicable] or</p> <p>[B: lot(s) on proposed plan of subdivision] lots [insert no.] to [insert no.] (both inclusive) [or] lot [insert no.] on the plan attached to Annexure A of this agreement being [amend the following if appropriate] part of the land in certificate(s) of title volume [insert volume] folio [insert folio and additional volumes and folios if applicable representing the parent titles to the lot(s)],</p> <p>to be in the Transfer Condition and the GLE to have performed its obligations under clause 9.3(a).</p>	Value of Transfer Land for Stage 3 including, to avoid doubt, any adjustment in accordance with clause 11.3 or clause 11.4	<p>[\$insert], as adjusted, if applicable, in accordance with clause 11.3 or clause 11.4</p>		
TOTAL GAIC CREDIT POTENTIALLY AVAILABLE (subject to adjustment, if applicable, in accordance with clause 11.3 or clause 11.4)				[\$insert]	

Schedule 4

Permitted Encumbrances

(Clause 1.1, 'Encumbrance' & 'Permitted Encumbrance')

Note to Proponents: This schedule will set out details of any encumbrances that attach to the land being transferred under the agreement (for example, existing easements and restrictive covenants).

model WIK Agreement (Land Transfer)

Determination of GAIC Credit

(Clause 10)

The amount of the GAIC Credit will be determined as follows:

Deliverable	Outcome	Amount of GAIC Credit		Clause reference for the MPA's s201SLL determination	Penalties
Transfer Land: Transfer Land to be in the Transfer Condition and GLE to have complied with its obligations under clause 9.3(a) by the Land Transfer Due Date	Transfer Land is in the Transfer Condition and GLE has complied with its obligations under clause 9.3(a) by the Land Transfer Due Date	Value of Transfer Land including, to avoid doubt, any adjustment in accordance with clause 11.3 or clause 11.4	\$[insert], as adjusted, if applicable, in accordance with clause 11.3 or clause 11.4	Clause 9.3(c)(1)	None
	Transfer Land is not in the Transfer Condition and/or GLE has not complied with its obligations under clause 9.3(a) by the Land Transfer Due Date	No GAIC Credit unless and until Transfer Land is in the Transfer Condition and GLE has complied with its obligations under clause 9.3(a), at which time the GAIC Credit will be Value of Transfer Land including, to avoid doubt, any adjustment in accordance with clause	No GAIC Credit unless and until Transfer Land is in the Transfer Condition and GLE has complied with its obligations under clause 9.3(a), at which time the GAIC Credit will be [insert], as adjusted, if	Clause 9.3(e)(1)	GAIC Default Event and clause 15 applies. Clause 9.3(f) continues to apply Legislative penalties

Schedule 5 Determination of GAIC Credit

Deliverable	Outcome	Amount of GAIC Credit		Clause reference for the MPA's s201SLL determination	Penalties
		11.3 or clause 11.4	applicable, in accordance with clause 11.3 or clause 11.4		

model WIK Agreement (Land Transfer)

Schedule 6

Notice Details

(Clause 23)

Minister

Address **[Insert Minister's postal address for service].**

Attention **[insert name and title of Minister's representative].**

Fax **[Insert Minister's facsimile number for service].**

Email **[Insert Minister's email address for service].**

Receiving Agency

Address **[Insert Receiving Agency's postal address for service].**

Attention **[insert name and title of Receiving Agency's representative].**

Fax **[Insert Receiving Agency's facsimile number for service].**

Email **[Insert Receiving Agency's email address for service].**

MPA

Address **[Insert MPA's postal address for service].**

Attention **[insert name and title of MPA's representative].**

Fax **[Insert MPA's facsimile number for service].**

Email **[Insert MPA's email address for service].**

GLE

Address **[Insert GLE's Australian Business Number] of [Insert GLE's postal address for service].**

Attention **[insert name and position of GLE representative].**

Fax **[Insert GLE's facsimile number for service].**

Email **[Insert GLE's email address for service].**

model WIK Agreement (Land Transfer)

Signing page

Executed as an agreement

model WIK Agreement (Land Transfer)