Note to Proponents:

Form of Work-in-Kind Agreement (Land and Works)
This model Work-in-Kind Agreement (Land and Works) is intended to be used for proposals involving the transfer of land and the carrying out of Works 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 single 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 work-in-kind, 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 providing work-in-kind, the GLE will generally prefer to enter into separate Work-in-Kind Agreements with respect to each GAIC Liability.

Proposals involving the carrying out of Works without a separate transfer of non-Works Land should adopt this agreement, as amended by deleting the definitions and provisions relating to Transfer Land.

Proposals involving Works that are to be carried out on land owned by the State should adopt this agreement, as amended by deleting the definitions and provisions relating to the transfer of Works Land.

Proposals involving a transfer of land without the carrying out of any Works should adopt the agreement entitled “Work-in-Kind Agreement (Land Transfer)”.

Parties to the Work-in-Kind Agreement (Land and Works)
It is the Minister’s preference that Work-in-Kind Agreements be entered into only with the GLE. To the extent that the GLE intends to engage third parties such as subcontractors to carry out the Works, it is the GLE’s responsibility to manage those downstream entities to ensure that the Works are completed in accordance with this agreement, and that the GLE is provided with adequate protection in the event that the third party fails to deliver the GLE’s obligations under the WIK Agreement.

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 there is a Development Agreement in place between the developer and the landowner (the GLE) under which the developer will deliver ‘development services’ on behalf of the landowner (GLE). These may include the developer agreeing to perform the work-in-kind by which the GLE’s GAIC Liability will be discharged. 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.

Although the primary relationship under a Work-in-Kind Agreement is between the Government Entities and the GLE, in appropriate circumstances the Minister may require the GLE to procure that its Material Subcontractors enter into a Material Subcontractor Direct Deed with the Minister and the Receiving Agency, to manage the risk of the GLE defaulting in the delivery of the Works.
This model agreement can also be modified to provide for multiple GLEs to discharge their respective GAIC Liabilities by providing interfacing or connecting work-in-kind packages (for instance, different sections of a State road). Please refer to section 12 of 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 and/or the Works 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.

Where modifications to the model agreement are requested by the GLE, in order to take into account particular circumstances or arrangements the GLE may have in place with third parties, the Government Entities will consider an appropriate legal framework to accommodate this (subject to payment of the associated legal costs).
Model WIK Agreement (Land and Works)

Work-in-Kind Agreement (Land and Works)

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)
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Work-in-Kind Agreement

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 Act, trading as the Metropolitan Planning Authority

of Level 29, 35 Collins Street, Melbourne, Victoria 3000

GLE

[insert name of GAIC Liable 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:
   (a) transferring the Transfer Land to the Receiving Agency;
   (b) completing the Works and handing the completed Works over to the Receiving Agency; and
   (c) transferring the underlying Works 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:
   (1) transfer the Transfer Land to the Receiving Agency;
   (2) perform the Works; and
   (3) following completion of the Works, handover the Works and transfer the Works Land, to the Receiving Agency;
(b) the Receiving Agency agrees to accept:
   (1) the transfer of the Transfer Land; and
   (2) following completion of the Works, the handover of the Works and transfer of the Works 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
1 Definitions, interpretation and agreement components

1.1 Definitions

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

<table>
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<th>Term</th>
<th>Meaning</th>
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<tbody>
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<td><strong>Act</strong></td>
<td><em>Planning and Environment Act 1987 (Vic).</em></td>
</tr>
<tr>
<td><strong>Agreed Value</strong></td>
<td>the sum of:</td>
</tr>
<tr>
<td></td>
<td>1 the Value of Works;</td>
</tr>
<tr>
<td></td>
<td>2 the Value of Works Land; and</td>
</tr>
<tr>
<td></td>
<td>3 the Value of Transfer Land.</td>
</tr>
<tr>
<td><strong>Approval</strong></td>
<td>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) to perform the Works or in connection with the transfer or remediation of either or both the Transfer Land or the Works Land.</td>
</tr>
<tr>
<td><strong>Approving Party</strong></td>
<td>has the meaning given in clause 21.2(a).</td>
</tr>
<tr>
<td><strong>Authority</strong></td>
<td>1 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; or</td>
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<td></td>
<td>2 any other person having jurisdiction over, or ownership of, any Services which are to be constructed, modified or relocated by the GLE in accordance with this agreement.</td>
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<td><strong>Boundary Adjustment</strong></td>
<td>has the meaning given in clause 21.2(a).</td>
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<td><strong>Boundary Adjustment Area</strong></td>
<td>has the meaning given in clause 21.2(b)(2).</td>
</tr>
<tr>
<td><strong>Boundary Adjustment Percentage</strong></td>
<td>has the meaning given in clause 21.2(b)(2).</td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
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<td>---------------------------</td>
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<td><strong>Business Day</strong></td>
<td>a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday in that city.</td>
</tr>
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<td><strong>Certificate of Release</strong></td>
<td>a certificate issued by the Commissioner to the GLE under section 201SY of the Act.</td>
</tr>
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<td><strong>Change in Law</strong></td>
<td>either:</td>
</tr>
<tr>
<td></td>
<td>1 a change in Law that the GLE is required to comply with; or</td>
</tr>
<tr>
<td></td>
<td>2 the introduction of new Law that the GLE is required to comply with, which:</td>
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<td></td>
<td>3 relates to the Works;</td>
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<td></td>
<td>4 necessitates a change to the Works; and</td>
</tr>
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<td></td>
<td>5 has effect after the Commencement Date, but does not include:</td>
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<td>6 any Change in Law which is introduced or tabled in parliament, or planned to be introduced or tabled as a revision of an existing Law, prior to the date of this agreement;</td>
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<td></td>
<td>7 a change in Law which necessitates a change to, or affects the GLE’s business or facilities generally; or</td>
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<td></td>
<td>8 a change in the way any Law is interpreted or applied.</td>
</tr>
<tr>
<td><strong>Claim</strong></td>
<td>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.</td>
</tr>
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<td><strong>Commencement Date</strong></td>
<td>the date on which all of the conditions precedent in clause 3.1 have been satisfied or waived, as confirmed in writing by each party to the other parties.</td>
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<td><strong>Commissioner</strong></td>
<td>the Commissioner of State Revenue referred to in section 62 of the <em>Taxation Administration Act 1997 (Vic)</em>.</td>
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<td><strong>Completion</strong></td>
<td>when:</td>
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<td>1 the Works have been completed in accordance with this agreement, including the Plans and Specifications, except for Minor Defects; and</td>
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<td></td>
<td>2 the GLE has done everything which this agreement requires it to do as a condition precedent to completion of the Works, including</td>
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## Definitions, interpretation and agreement components

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<td>those things set out in Schedule 11, and, in respect of a Stage, when paragraphs 1 and 2 above have been satisfied in respect of the Works comprised in that Stage.</td>
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### Completion Costs

| 1 | the amount of costs the GLE will incur, as and from the date of the MPA's determination under clause 16.2(a)(2) that the Works have not achieved Completion by the Works Due Date, to bring the Works to Completion in accordance with the requirements of this agreement, including:  
|   |   any direct and reasonable costs the GLE will incur as a result of the delay; and  
|   |   the Variation Cost of any GLE Variation approved under clause 14.2 which remains to be carried out to achieve Completion; or  

| 2 | where the Works are being delivered in accordance with a Staging Plan, the amount of costs the GLE will incur, as and from the date of the MPA’s determination under clause 16.2(a)(2) that the Works comprised in a Stage have not achieved Completion by the Works Due Date for that Stage, to bring the Works comprised in that Stage and the Works comprised in all other Stages that remain to be performed under this agreement to Completion in accordance with the requirements of this agreement, including:  
|   |   any direct and reasonable costs the GLE will incur as a result of the delay; and  
|   |   the Variation Cost of any GLE Variation approved under clause 14.2 that remains to be carried out to achieve Completion of that Stage or to achieve Completion of any other Stage that remains to be performed under this agreement. |

### Construction Bond

|   | has the meaning given to it in clause 10.1(a). |

### Construction Program

|   | the program to be prepared and updated by the GLE in accordance with clause 9.5, which shall include:  
|   | 1 start and completion dates of design, reviews, audits, procurement, construction and testing for each activity or task;  
|   | 2 the timing of delivery of plant, materials and equipment to site;  
|   | 3 public holidays or holidays applicable to the Works;  
|   | 4 float for each activity or task;  
|   | 5 the overall progress of the Works and of each activity or task;  
|   | 6 the estimated time to completion of all started but not completed activities; and  
|   | 7 any other information reasonably required by the Project Steering Committee. |
### Term | Meaning
---|---
Consultant | an architect, engineer, quantity surveyor or other relevant expert appointed by a Government Entity for a purpose contemplated by this agreement.
Cure Period | has the meaning given in clause 27.1(b)(3).
Day 1 Clause | has the meaning given in clause 3.1.
Default Notice | has the meaning given in clause 27.1(a).
Default Rate | the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
Defect | any defect, omission or other fault in the design, materials or workmanship of the Works or Rectification Works (as the case may be) resulting in the Works not being generally in accordance with:
1. the requirements of this agreement, including the Plans and Specifications;
2. the conditions of any Approvals; or
3. relevant codes or recognised building practices at the date of this agreement.
Defects Liability Bond | has the meaning given in clause 10.1(b).
Defects Liability Period | 1. the period commencing on the Works and Works Land Transfer Date and ending [12] months after the Works and Works Land Transfer Date; and
2. in respect of a Stage, the period commencing on the Works and Works Land Transfer Date for that Stage and ending [12] months after the Works and Works Land Transfer Date for that Stage.

Note to Proponents: The standard position is that a 12 month defects liability period will be required, but this may need to be varied depending on the nature of the works. Where Works are to be delivered in non-discrete Stages that are not handed over to the Receiving Agency until the entire package of Works has achieved Completion, the Minister and the Receiving Agency may agree to amend the definition of the Defects Liability Period so that in respect of each non-discrete Stage, the Defects Liability Period applies from Completion of that Stage. This will be assessed on a case by case basis and will depend on a range of matters, including the Receiving Agency’s ability to access the Works comprised in a completed Stage for the purposes of identifying Defects and the amount of the Defects Liability Bond the GLE is prepared to offer to support its Defect rectification obligations.
<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferral Certificate</td>
<td>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.</td>
</tr>
<tr>
<td>Design Documentation</td>
<td>all design documentation (including design standards, design reports, durability reports, specifications, samples, models, calculations and drawings) in computer readable and written forms, or stored by other means, which the GLE or any person on behalf of the GLE creates in connection with the Works, including any design documentation approved by the Minister and the Receiving Agency prior to the date of this agreement, a copy of which comprises an exhibit to this agreement.</td>
</tr>
<tr>
<td>Dispute Notice</td>
<td>a notice specifying particulars of a dispute or difference between the parties and requiring the dispute to be determined under clause 35.</td>
</tr>
<tr>
<td>Document</td>
<td>has the meaning given in section 5 of the Freedom of Information Act 1982 (Vic).</td>
</tr>
<tr>
<td>Emergency Services</td>
<td>Victoria Police, the Metropolitan Fire and Emergency Services Board, the Country Fire Authority, the State Emergency Service, the Metropolitan Ambulance Service, the Rural Ambulance Service and any other State emergency service that may be required to attend to an Incident or other event on or near the Works, the Works Land or the Transfer Land.</td>
</tr>
<tr>
<td>Encumbrance</td>
<td>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.</td>
</tr>
<tr>
<td>Event of Default</td>
<td>has the meaning given in clause 27.1.</td>
</tr>
<tr>
<td>Expert</td>
<td>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.</td>
</tr>
<tr>
<td>Extension Event</td>
<td>each of the following events:</td>
</tr>
<tr>
<td></td>
<td>1 a breach by the Minister or the Receiving Agency of this agreement;</td>
</tr>
<tr>
<td></td>
<td>2 any act or omission of a Government Entity, other than any such act or omission which:</td>
</tr>
<tr>
<td></td>
<td>• is authorised or permitted under a WIK Document; or</td>
</tr>
</tbody>
</table>


1 Definitions, interpretation and agreement components

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• is caused by any act or omission of the GLE or a Subcontractor;</td>
</tr>
<tr>
<td>3 industrial action</td>
<td>but only to the extent that it directly affects the Works and the GLE can demonstrate that the action results directly from an act or omission of a Government Entity, but excluding any industrial action caused or motivated by opposition to infrastructure being delivered by way of work-in-kind agreements contemplated by Part 9B of the Act;</td>
</tr>
<tr>
<td>4 a State Risk Event</td>
<td>to the extent that such State Risk Event:</td>
</tr>
<tr>
<td></td>
<td>• prevents or delays the GLE from performing an obligation under this agreement; and</td>
</tr>
<tr>
<td></td>
<td>• has not been caused or contributed to by the GLE;</td>
</tr>
<tr>
<td>5 the GLE encounters</td>
<td>land conditions that could not have been reasonably foreseen by a skilled, prudent and competent contractor acting in accordance with good construction industry practice;</td>
</tr>
<tr>
<td>6 a Change in Law</td>
<td>and</td>
</tr>
<tr>
<td>7 a Force Majeure Event</td>
<td></td>
</tr>
</tbody>
</table>

**Force Majeure Event**

any of the following events occurring after the date of this agreement:

1 earthquake, cyclone, natural disaster, landslide, seismic activity or mudslide;

2 explosion, malicious damage, sabotage, riots or a “terrorist act” (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth) as at the date of this agreement);

3 a flood which might, at the date of this agreement, be expected to occur less frequently than once in every 100 years;

4 war, invasion, act of a foreign enemy, hostilities between nations (whether war is declared or not), civil war, rebellion, revolution or militarily or usurped power, martial law or confiscation by order of any Authority; or

5 ionising radiation by radioactivity from any nuclear waste or from combustion of nuclear fuel,

which is beyond the reasonable control of the GLE and the Subcontractors and which prevents or delays the GLE from performing an obligation under this agreement, where that event or the consequence of that event could not have been prevented or avoided by the GLE or the Subcontractors taking those steps which a prudent, experienced and competent contractor would have taken.

**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 19 and Schedule 13.
<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>GAIC Default Event</td>
<td>has the meaning given in clause 27.2.</td>
</tr>
<tr>
<td>GAIC Land</td>
<td>the land to which the GAIC Liability attaches, namely [insert whichever of A or B applies]&lt;br&gt;[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 &lt;br&gt;[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)].</td>
</tr>
<tr>
<td>GAIC Liability</td>
<td>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.</td>
</tr>
<tr>
<td>GLE Data</td>
<td>any information, data or other material provided by the GLE under or in connection with a WIK Document, including the Design Documentation.</td>
</tr>
<tr>
<td>GLE Intellectual Property Rights</td>
<td>has the meaning given in clause 22.1(a)(1).</td>
</tr>
<tr>
<td>GLE Variation</td>
<td>a Variation requested by the GLE under clause 14.1.</td>
</tr>
<tr>
<td>Government Entity</td>
<td>the Minister, the Receiving Agency or the MPA and Government Entities means all of them.</td>
</tr>
<tr>
<td>GST</td>
<td>any tax imposed under any GST Law and includes GST within the meaning of the GST Act, and includes any replacement or subsequent similar tax.</td>
</tr>
<tr>
<td>GST Act</td>
<td>the A New Tax System (Goods and Services Tax) Act 1999 (Cth).</td>
</tr>
<tr>
<td>GST Law</td>
<td>the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST.</td>
</tr>
<tr>
<td>Immediate Termination Event</td>
<td>has the meaning given in clause 28.2(a).</td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
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<tr>
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</tr>
<tr>
<td>Incident</td>
<td>means any event which:</td>
</tr>
<tr>
<td></td>
<td>1 poses a risk of immediate or potential threat to:</td>
</tr>
<tr>
<td></td>
<td>• health or safety on or relating to the Works, the Works Land or the Transfer Land; or</td>
</tr>
<tr>
<td></td>
<td>• the structural integrity or safety of any part of the Works;</td>
</tr>
<tr>
<td></td>
<td>2 requires an urgent response to:</td>
</tr>
<tr>
<td></td>
<td>• protect or repair the Works, other property or the public;</td>
</tr>
<tr>
<td></td>
<td>• provide access to Emergency Services; or</td>
</tr>
<tr>
<td></td>
<td>• prevent any occurrence which could:</td>
</tr>
<tr>
<td></td>
<td>– cause damage to or destruction of the Works, other property or personal injury to the public; or</td>
</tr>
<tr>
<td></td>
<td>– compromise the safety of any person or property; or</td>
</tr>
<tr>
<td></td>
<td>3 involves damage to or destruction of the Works or other property or personal injury.</td>
</tr>
<tr>
<td>Insolvency Event</td>
<td>in relation to a company, any of the following events:</td>
</tr>
<tr>
<td></td>
<td>1 a Controller (as defined in the Corporations Act 2001 (Cth)), manager, trustee, administrator or similar officer is appointed in respect of the company or any asset of the company;</td>
</tr>
<tr>
<td></td>
<td>2 a liquidator or provisional liquidator is appointed in respect of the company;</td>
</tr>
<tr>
<td></td>
<td>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:</td>
</tr>
<tr>
<td></td>
<td>• appointing a person referred to in paragraph 1 or 2;</td>
</tr>
<tr>
<td></td>
<td>• winding up the company; or</td>
</tr>
<tr>
<td></td>
<td>• proposing or implementing a scheme of arrangement in respect of the company;</td>
</tr>
<tr>
<td></td>
<td>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 creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days;</td>
</tr>
<tr>
<td></td>
<td>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;</td>
</tr>
<tr>
<td></td>
<td>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</td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
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<td>------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Definitions, interpretation and agreement components</td>
<td>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.</td>
</tr>
<tr>
<td>Land Transfer Date</td>
<td>1 the date on which the GLE complies with its obligations under clause 18.3(a) in respect of the Transfer Land; and.</td>
</tr>
<tr>
<td></td>
<td>2 in respect of a Stage, the date on which the GLE complies with its obligations under clause 18.3(a) in respect of the Transfer Land comprised in that Stage.</td>
</tr>
<tr>
<td>Land Transfer Due Date</td>
<td>1 [insert agreed date, or period following the Commencement Date by which the GLE is required to comply with its obligations under clause 18.3(a) in respect of the Transfer Land]; and</td>
</tr>
<tr>
<td></td>
<td>2 in respect of a Stage, the date by which the GLE is required to comply with its obligations under clause 18.3(a) with respect to the Transfer Land comprised in that Stage, as set out in with the Staging Plan.</td>
</tr>
<tr>
<td>Law</td>
<td>1 Commonwealth, Victorian or local government legislation, including regulations, by-laws and other subordinate legislation;</td>
</tr>
<tr>
<td></td>
<td>2 common law; and</td>
</tr>
<tr>
<td></td>
<td>3 binding requirements and Approvals (including any condition or requirement under them).</td>
</tr>
<tr>
<td>Loss</td>
<td>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).</td>
</tr>
<tr>
<td>Major Boundary Adjustment</td>
<td>has the meaning given in clause 21.4(a).</td>
</tr>
<tr>
<td>Material Subcontract</td>
<td>any contract between a Subcontractor and the GLE:</td>
</tr>
<tr>
<td></td>
<td>1 the value of the works under which exceeds $[insert]; or</td>
</tr>
<tr>
<td></td>
<td>2 which, when aggregated with the value of the works under each other contract entered into with that Subcontractor, will result in the total value of those contracts exceeding $[insert].</td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
</tr>
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<td>------------------------------------------------</td>
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</tr>
<tr>
<td>Material Subcontractor Direct Deed</td>
<td>a deed between the Minister, the Receiving Agency, the GLE and a Material Subcontractor, substantially in the form of Schedule 8.</td>
</tr>
<tr>
<td>Material Subcontractor</td>
<td>a Subcontractor engaged under a Material Subcontract.</td>
</tr>
<tr>
<td>Minister/Receiving Agency Data</td>
<td>any information, data or other material provided to the GLE by the Minister or the Receiving Agency under or in connection with a WIK Document.</td>
</tr>
<tr>
<td>Minor Boundary Adjustment</td>
<td>has the meaning given in clause 21.3(a).</td>
</tr>
<tr>
<td>Minor Defect</td>
<td>a Defect which does not prevent the Works from being fit for their intended purposes and which can be rectified after Completion without prejudicing the safe use of the Works for their intended purposes.</td>
</tr>
<tr>
<td>Net Cost Increase</td>
<td>the amount by which Net Incremental Costs exceed Savings when calculating the Variation Cost for a Receiving Agency Variation.</td>
</tr>
<tr>
<td>Net Cost Saving</td>
<td>the amount by which Savings exceed Net Incremental Costs when calculating the Variation Cost for a Receiving Agency Variation.</td>
</tr>
<tr>
<td>Net Incremental Costs</td>
<td>has the meaning given in clause 1 of Schedule 9.</td>
</tr>
<tr>
<td>New Area Value</td>
<td>has the meaning given in clause 21.3(d).</td>
</tr>
<tr>
<td>Notification to the Commissioner</td>
<td>any written notice from the MPA to the Commissioner setting out details of the MPA’s determination under clause 16.3(a), clause 16.4(a) (provided the Works Due Date has passed), clause 16.7(c), clause 16.7(e), clause 18.3(c), clause 18.3(e), or clause 30.2(c), including any determination as to the Value of Partially Completed Works.</td>
</tr>
<tr>
<td>OHS Legislation</td>
<td>means all statutes, regulations and other subordinate legislation in force or that come into force after the date of this agreement in the State of Victoria in respect of occupational health and safety including the Occupational Health and Safety Act 2004 (Vic) and the Occupational Health and Safety Regulations 2007 (Vic) and all other regulations made under the Occupational Health and Safety Act 2004 (Vic) and any occupational health and safety accreditation scheme established or to be established under the Building and Construction Industry Improvement Act 2005 (Cth).</td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
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<td>-----------------------------</td>
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</tr>
<tr>
<td>Performance Bond</td>
<td>a bank guarantee which:</td>
</tr>
<tr>
<td></td>
<td>1 is unconditional, irrevocable and payable on demand;</td>
</tr>
<tr>
<td></td>
<td>2 is issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority and has the Required Rating;</td>
</tr>
<tr>
<td></td>
<td>3 specifies a location within Melbourne where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day;</td>
</tr>
<tr>
<td></td>
<td>4 is a continuing liability without an expiry date; and</td>
</tr>
<tr>
<td></td>
<td>5 is in the form of the pro forma bond set out in Schedule 5, or such other type and form of security as is agreed in writing by the Receiving Agency.</td>
</tr>
<tr>
<td>Permitted Encumbrance</td>
<td>an Encumbrance set out in Schedule 12.</td>
</tr>
<tr>
<td>Plans and Specifications</td>
<td>the plans and specifications for the Works prepared to the Receiving Agency’s requirements and approved by the Minister and the Receiving Agency prior to the date of this agreement, a copy of which comprises an exhibit to this agreement, as may be amended under clauses 13 and 14.</td>
</tr>
<tr>
<td>Project Steering Committee</td>
<td>has the meaning given in clause 4.3(a).</td>
</tr>
<tr>
<td>Proposing Party</td>
<td>has the meaning given in clause 21.2(a).</td>
</tr>
<tr>
<td>Receiving Agency Variation</td>
<td>a Variation requested by the Receiving Agency under clause 13.</td>
</tr>
<tr>
<td>Rectification Works</td>
<td>any works carried out by the GLE to rectify any Defects in accordance with clause 17.</td>
</tr>
<tr>
<td>Required Rating</td>
<td>means a credit rating of at least A- (issued by Standard and Poor’s Australia) or A3 (in respect of Moody’s Investor Service), or the equivalent credit rating issued by another generally recognised international credit rating agency.</td>
</tr>
<tr>
<td>Risk Period</td>
<td>1 the period starting on the Commencement Date and ending on:</td>
</tr>
<tr>
<td></td>
<td>• in respect of the Works and the Works Land, the Works and Works Land Transfer Date; and</td>
</tr>
<tr>
<td></td>
<td>• in respect of the Transfer Land, the Land Transfer Date; and</td>
</tr>
</tbody>
</table>
### Definitions, interpretation and agreement components

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 in respect of a Stage, the period starting on the Commencement Date and ending on:</td>
<td></td>
</tr>
<tr>
<td>• in respect of the Works and the Works Land, the Works and Works Land Transfer Date for that Stage; and</td>
<td></td>
</tr>
<tr>
<td>• in respect of the Transfer Land, the Land Transfer Date for that Stage.</td>
<td></td>
</tr>
<tr>
<td><strong>Note to Proponents</strong>: where the Works are being delivered in accordance with a Staging Plan, it may be necessary to amend the date from which the Risk Period commences for each Stage (other than the first Stage), particularly where the Works Land is owned by the State. It is expected that the Risk Period for a Stage will commence from the date on which the GLE is entitled to access the relevant Works Land.</td>
<td></td>
</tr>
<tr>
<td><strong>Savings</strong></td>
<td>has the meaning given in clause 1 of Schedule 9.</td>
</tr>
<tr>
<td><strong>Service</strong></td>
<td>any service or item of infrastructure, including water, electricity, gas, fuel, telephone, drainage, sewerage, railway and electronic communications services.</td>
</tr>
<tr>
<td><strong>Stage</strong></td>
<td>each of the stages described in the Staging Plan.</td>
</tr>
<tr>
<td><strong>Staging Plan</strong></td>
<td>the plan in Schedule 4 which details the Transfer Land, the Works Land and the Works (as applicable) 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. &lt;br&gt;<strong>Note to Proponents</strong>: Where the Works are 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.</td>
</tr>
<tr>
<td><strong>State Risk Event</strong></td>
<td>any of the following events or circumstances: &lt;br&gt;1 where the Works Land is owned by the State: &lt;br&gt;• the GLE encounters land conditions (including those on, above, below or adjacent to the relevant land) that could not have been reasonably foreseen by a skilled, prudent and competent contractor acting in accordance with good construction industry practice; or</td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
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</tr>
<tr>
<td>• the State fails to provide the GLE with access to the Works Land for the purpose of performing the Works;</td>
<td></td>
</tr>
<tr>
<td>2 a direction, court order or other requirement of Law to suspend the Works or change the manner in which the Works are performed as a result of the existence of native title or aboriginal title or the presence of artefacts; or</td>
<td></td>
</tr>
<tr>
<td>3 inclement weather for a continuous period of [insert] number of days, or [insert] number of days in aggregate over a period of [insert] months.</td>
<td></td>
</tr>
<tr>
<td><strong>Note to Proponents:</strong> The applicable number of days for inclement weather will need to be agreed on a case by case basis.</td>
<td></td>
</tr>
<tr>
<td>Subcontract</td>
<td>a contract the GLE or a Subcontractor intends to, or does, enter into with a Subcontractor.</td>
</tr>
<tr>
<td>Subcontractor</td>
<td>any person to whom the GLE or another subcontractor of the GLE intends to, or does, subcontract any part of the Works, including a Material Subcontractor.</td>
</tr>
<tr>
<td>Substitute Cash Payment</td>
<td>a payment by the GLE, made in accordance with the Act, to discharge the amount of the GAIC Liability attributable to a Stage, in lieu of the GLE discharging that portion of the GAIC Liability by achieving Completion of the Works comprised in that Stage by the relevant Works Due Date.</td>
</tr>
<tr>
<td>Tax or Taxes</td>
<td>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.</td>
</tr>
<tr>
<td>Tax Invoice</td>
<td>has the same meaning as in the GST Act.</td>
</tr>
<tr>
<td>Transfer Condition</td>
<td>when:</td>
</tr>
<tr>
<td>1 the Transfer Land or Works Land (as applicable) is:</td>
<td></td>
</tr>
<tr>
<td>• able to be transferred in accordance with this agreement;</td>
<td></td>
</tr>
<tr>
<td>• fit for its intended uses; and</td>
<td></td>
</tr>
<tr>
<td>• 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 or the Value of Works Land (as applicable), subject to any changes in condition that have arisen as a result of the GLE complying with its obligations under this agreement; and</td>
<td></td>
</tr>
<tr>
<td>2 in respect of Works Land only:</td>
<td></td>
</tr>
<tr>
<td>• the Works on that land have been determined by the MPA as</td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
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<tr>
<td>having achieved Completion; and</td>
<td></td>
</tr>
<tr>
<td>• all Minor Defects listed in the MPA’s determination under clause 16.3(a) have been rectified.</td>
<td></td>
</tr>
<tr>
<td>Transfer Land</td>
<td>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]</td>
</tr>
<tr>
<td></td>
<td>[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</td>
</tr>
<tr>
<td></td>
<td>[B: lot(s) on proposed plan of subdivision] lots [insert no.] to [insert no.] (both inclusive) [or] lot [insert no.] on the plan</td>
</tr>
<tr>
<td></td>
<td>attached to Annexure A of this agreement being [amend the following if appropriate] part of the land in certificate(s) of title</td>
</tr>
<tr>
<td></td>
<td>volume [insert volume] folio [insert folio and additional volumes and folios if applicable representing the parent titles</td>
</tr>
<tr>
<td></td>
<td>to the lot(s)]; and</td>
</tr>
<tr>
<td></td>
<td>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</td>
</tr>
<tr>
<td></td>
<td>Date for that Stage, as set out in the Staging Plan.</td>
</tr>
<tr>
<td>Rectification Tasks</td>
<td>1 has the meaning given in clause 18.2(f)(1).</td>
</tr>
<tr>
<td>Valuation Impact</td>
<td>1 has the meaning given in clause 21.4(b).</td>
</tr>
<tr>
<td></td>
<td>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,</td>
</tr>
<tr>
<td></td>
<td>if applicable, in accordance with clause 21.3 or clause 21.4.</td>
</tr>
<tr>
<td>Value of Transfer Land</td>
<td>1 $[insert aggregate agreed value of the Transfer Land], as amended, if applicable, in accordance with clause 21.3 or clause 21.4; and</td>
</tr>
<tr>
<td></td>
<td>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,</td>
</tr>
<tr>
<td></td>
<td>if applicable, in accordance with clause 21.3 or clause 21.4.</td>
</tr>
<tr>
<td>Value of Partially</td>
<td>1 Value of Works less the Completion Costs; or</td>
</tr>
<tr>
<td>Completed Works</td>
<td>2 where the Works are being delivered in accordance with a Staging Plan, the sum of the Value of Works for all Stages less the</td>
</tr>
<tr>
<td></td>
<td>Completion Costs within the meaning of paragraph 2 of the definition of Completion Costs.</td>
</tr>
<tr>
<td>Value of Works</td>
<td>1 the agreed value of the Works, being $[insert], as reduced, if applicable, in accordance with clause 13.6(f)(2), clause 13.7(c)(4)(B)</td>
</tr>
<tr>
<td></td>
<td>or clause 13.7(g)(4)(B); and</td>
</tr>
<tr>
<td></td>
<td>2 in respect of a Stage, the agreed value of the Works comprised in that Stage as set out in the Staging Plan, as reduced, if</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Definitions, interpretation and agreement components</td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
</tr>
<tr>
<td>applicable, in accordance with clause 13.6(f)(2), clause 13.7(c)(4)(B) or clause 13.7(g)(4)(B).</td>
<td></td>
</tr>
<tr>
<td>Value of Works Land</td>
<td>1 the agreed value of the Works Land, being ${\text{insert}}$, as adjusted, if applicable, in accordance with clause 21.3 or clause 21.4; and 2 in respect of a Stage, the agreed value of the Works Land comprised in that Stage as set out in the Staging Plan, as adjusted, if applicable, in accordance with clause 21.3 or clause 21.4.</td>
</tr>
<tr>
<td>Valuer's Conference</td>
<td>a conference to determine the valuation of land chaired by the Valuer-General and convened in accordance with clause 35.6.</td>
</tr>
<tr>
<td>Valuer-General</td>
<td>the Valuer-General Victoria appointed under the <em>Valuation of Land Act 1960</em> (Vic).</td>
</tr>
<tr>
<td>Variation</td>
<td>any variation or change to the Works, including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.</td>
</tr>
<tr>
<td>Variation Cost</td>
<td>has the meaning given in clause 1 of Schedule 9.</td>
</tr>
<tr>
<td>Variation Notice</td>
<td>has the meaning given in clause 13.2(a).</td>
</tr>
<tr>
<td>WIK Documents</td>
<td>1 this agreement; 2 each Material Subcontractor Direct Deed; 3 any document or agreement entered into under, or for the purpose of supplementing, replacing, amending or novating, any document or agreement referred to in paragraph 1 or 2; and 4 any document or agreement agreed in writing by the parties to be a WIK Document for the purposes of this agreement.</td>
</tr>
<tr>
<td>Works</td>
<td>1 the physical works specified in the Plans and Specifications which the GLE must design, construct and complete under this agreement, as briefly described in Schedule 3; and 2 in respect of a Stage, the physical works specified in the Plans and Specifications which the GLE must design, construct and complete under this agreement for that Stage, as briefly described</td>
</tr>
</tbody>
</table>
## Definitions, interpretation and agreement components

The term 'Works' includes the physical works which are the subject of the initial Design Documentation, notwithstanding that the design of those works may have been completed prior to the date of this agreement.

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
</table>
| **Works and Works Land Transfer Date** | 1. the date on which the GLE:  
- hands over the Works to the Receiving Agency; and  
- complies with its other obligations under clause 16.7(a) in respect of the Works Land; and  
2. in respect of a Stage, the date on which the GLE:  
- hands over the Works comprised in that Stage to the Receiving Agency; and  
- complies with its other obligations under clause 16.7(a) in respect of the Works Land comprised in that Stage. |
| **Works Completion Date**     | 1. the date on which the Works achieve Completion; and  
2. in respect of a Stage, the date on which the Works comprised in that Stage achieve Completion.                                                                                                   |
| **Works Completion Tasks**    | has the meaning given in clause 16.4(a).                                                                                                                                                                 |
| **Works Due Date**            | 1. [insert date or period following the Commencement Date by which the Works must be completed], as adjusted (where applicable) in accordance with clause 13 or clause 15; and  
2. in respect of a Stage, the date by which the Works comprised in that Stage are required to achieve Completion as set out in the Staging Plan, as adjusted (where applicable) in accordance with clause 13 or clause 15. |
| **Works Infrastructure**      | all Services, means of access and other infrastructure necessary for the GLE to perform the Works.                                                                                                     |
| **Works Inspection Timetable**| the schedule of inspection times for the Receiving Agency and the MPA to inspect the Works, as set out in Schedule 10.                                                                                   |
| **Works Land**                | 1. the land on which the Works are to be performed pursuant to this agreement, namely [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 |
Term | Meaning
| --- | ---
| [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  
| 2 in respect of a Stage, the land identified in the Staging Plan as land on which the Works comprised in that Stage are to be performed pursuant to this agreement.

**Works Land Rectification Tasks** has the meaning given in clause 16.6(f).

**Works Transfer Due Date**

1 [insert agreed date, or period following the Works Due Date by which the GLE is required to comply with its obligations under clause 16.7(a) in respect of the Works Land], as adjusted (where applicable) in accordance with clause 13 or clause 15; and  

2 in respect of a Stage, the date by which the GLE is required to comply with its obligations under clause 16.7(a) in respect of the Works Land comprised in that Stage, in accordance with the Staging Plan, as adjusted (where applicable) in accordance with clause 13 or clause 15.

### 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);
   (3) the Plans and Specifications; and
   (4) 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 Conditions Precedent

3.1 Conditions Precedent

The rights and obligations of the parties under this agreement, other than this clause 3 and clauses 1, 2, 4.1, 8.2, [10 (but only to the extent that the provisions of that clause relate to the Construction Bond)], 24, 25, 26, 32, 33, 34, 35, 36, 37, 38, 39 and 40 (each a Day 1 Clause), are subject to satisfaction or waiver of the following conditions precedent:

(a) all Approvals being obtained by the GLE in accordance with clause 8.2;

(b) the GLE's obligation to pay the GAIC Liability being triggered pursuant to section 201SE of the Act;
(c) the insurance policies required by clause 24 being effected in a form of wording agreed between the parties and certificates of currency for those insurance policies being provided to the Minister and the Receiving Agency; and

(d) [the Performance Bond required by clause 10.1(a) being provided by the GLE to the Receiving Agency.]

**Note to Proponents**: other conditions precedent may be inserted as appropriate for the particular proposal involved. Also, references to clause 10 and the Performance Bond may be deleted if it is agreed that the provision of security is not required.

### 3.2 Notification, waiver and satisfaction

(a) The GLE must use all reasonable endeavours to satisfy the conditions precedent referred to in clauses 3.1(a), 3.1(c) and 3.1(d).

(b) The Minister may, in the Minister’s absolute discretion, waive the satisfaction of the condition precedent referred to in clause 3.1(b) by notice in writing to the GLE.

(c) The Minister may, subject to obtaining the prior written consent of the Receiving Agency, waive the satisfaction of any of the conditions precedent referred to in clause 3.1(c) [or clause 3.1(d)] by notice in writing to the GLE.

(d) The Minister must notify the other parties when all conditions precedent referred to in clause 3.1 have been satisfied or waived.

(e) Should the conditions precedent referred to in clause 3.1 not be satisfied or waived within [insert] Business Days from the date of this agreement (or such other date and time as is agreed by the parties), any party may end this agreement by notice in writing to the other parties.

**Note to Proponents**: The date for satisfaction of the conditions precedent will need to be agreed by the parties on a case by case basis. For example, the timeframe will need to reflect the type(s) and number of Approvals that must be obtained by the GLE. In exceptional circumstances, the conditions precedent may need to include the compulsory acquisition of land required to perform the Works. Please refer to the Guidelines for further information regarding the Government’s policy on compulsory acquisition in the context of the WIK Agreement.

(f) If this agreement is terminated under this clause 3.2, then no party will be entitled to bring any Claim against any other party arising out of or in connection with:

1. the failure of the conditions precedent to be satisfied; or
2. the termination of this agreement,

except for any Claim in relation to breach of a Day 1 Clause. For the avoidance of doubt, each party will bear its own costs incurred arising out of or in connection with the termination.
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 (including any claim for an extension of time) 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 (including any claim for an extension of time) 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 Project Steering Committee

(a) The parties will establish a committee consisting of:

1. one representative of the Minister notified by the Minister from time to time;
2. two representatives of the Receiving Agency notified by the Receiving Agency from time to time;
3. one representative of the MPA notified by the MPA from time to time;
4. two representatives of the GLE nominated in accordance with clause 4.2; and
5. such other members as the parties may agree from time to time, (together the Project Steering Committee).

(b) The functions of the Project Steering Committee will be to monitor and review the progress of the Works, including to:
(1) monitor the overall progress of the Works and compliance with this agreement, including compliance with the Construction Program;

(2) assist in the resolution of any special matters referred to the Project Steering Committee by a party;

(3) review all progress reports provided by the GLE; and

(4) address such other matters as the members of the Project Steering Committee may agree from time to time.

(c) The Project Steering Committee will meet:

(1) 20 Business Days prior to the Works Due Date; and

(2) at such other times as the parties agree in writing following a request by any party, provided that the meeting must be held no later than 15 Business Days following such request.

(d) Prior to each meeting of the Project Steering Committee, the GLE will provide all members of the Project Steering Committee with its current Construction Program.

(e) In order to undertake the functions in clause 4.3(b), there must be in attendance at Project Steering Committee meetings:

(1) the representative of the MPA;

(2) at least one representative of the Receiving Agency; and

(3) at least one representative of the GLE.

(f) The representative of the MPA will convene and chair meetings of the Project Steering Committee and will take the minutes of all meetings and distribute the minutes to members of the Project Steering Committee.

(g) The Minister and the Receiving Agency:

(1) have the right to have representatives of any Authority attend any meeting of the Project Steering Committee as observers; and

(2) may request the GLE to procure the attendance of representatives of any Subcontractor at any meeting of the Project Steering Committee and the GLE must comply with any such request.

(h) The Minister may elect to appoint the representative of the MPA as the Minister’s representative for the purposes of this clause 4.3, in which case the Project Steering Committee will only include one representative for both the Minister and the MPA.

(i) For the avoidance of doubt, each party will bear its own costs of complying with this clause 4.3.

4.4 Operation of the Wrongs Act

(a) To the extent permitted by Law, the operation of Part IVAA of the Wrongs Act 1958 (Vic) in relation to any Claim arising out of or in connection with this agreement is excluded.

(b) To the extent that the operation of Part IVAA of the Wrongs Act 1958 (Vic) cannot be excluded as contemplated by clause 4.4(a), the parties agree that, for the purposes of determining the extent of the GLE’s responsibility for loss or damage in accordance with Section 24AI of the Wrongs Act 1958 (Vic) and the liability of the GLE under Part IVAA of the Wrongs Act 1958 (Vic), the GLE:
(1) is solely responsible for; and
(2) assumes an obligation to prevent,
any of the Subcontractors (whether or not under the Minister’s or the Receiving Agency’s direction, supervision or control), failing to take reasonable care.

(c) To the extent that any Subcontractor fails to take reasonable care:
(1) the Subcontractor will be deemed to have acted as the agent of the GLE; and
(2) the GLE will be directly liable to the Minister and the Receiving Agency for any such failure to take reasonable care.

(d) The GLE must ensure that all Subcontracts contain provisions to the following effect:
(1) the Subcontractor acknowledges that, for the purposes of this agreement, the Subcontractor is, in carrying out the Works, acting as an agent of the GLE; and
(2) the Subcontractor must, at all times, exercise reasonable care in carrying out the Works.

4.5 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 Subcontracting

5.1 Engagement of Subcontractors
(a) The GLE may subcontract the performance of all or any of the GLE’s obligations under this agreement:
(1) to a pre-approved Subcontractor listed in Schedule 7 to this agreement; or
(2) to any other entity, with the prior written consent of the Receiving Agency.
(b) The engagement of any Subcontractor to perform all or any of the GLE’s obligations under this agreement will not limit or affect the GLE’s obligations or liability under this agreement.
(c) The GLE must:
(1) notify the Minister and the Receiving Agency of any proposed subcontracting by the GLE;
(2) if required by the Minister or the Receiving Agency, give the Minister or the Receiving Agency (as applicable) a copy of the Subcontract; and

(3) if required by the Minister or the Receiving Agency, procure that a Material Subcontractor enters into a Material Subcontractor Direct Deed at the same time as it enters into its Material Subcontract.

5.2 Requirements for Subcontracting

The GLE must not enter into any Subcontract unless the Subcontract contains provisions expressly recognising and permitting the exercise by the Minister and the Receiving Agency of their rights under clauses 4.3(g)(2), 5.1(c), 5.3(c) and 29 of this agreement and contains all relevant provisions prescribed by this agreement.

5.3 GLE to monitor and comply

The GLE must:

(a) monitor and ensure compliance by each Subcontractor with its Subcontract and any related Material Subcontractor Direct Deed;

(b) comply with its obligations under all Subcontracts and Material Subcontractor Direct Deeds; and

(c) not make any amendment to a Material Subcontract without obtaining the prior written approval of the Receiving Agency.

5.4 Security of Payment Act

If the Security of Payment Act applies to a Subcontract:

(a) the GLE must ensure that, within:

   (1) 2 Business Days after any notice under the Security of Payment Act is given to, or received by, the GLE from the relevant Subcontractor; or

   (2) 1 Business Day after notice of the Subcontractor’s intention to suspend work under the Subcontract pursuant to the Security of Payment Act is given to, or received by, the GLE from the Subcontractor,

   a copy of that notice is given to the Minister and the Receiving Agency; and

(b) if the Subcontractor becomes entitled to suspend work under the Subcontract pursuant to the Security of Payment Act because of a failure by the GLE to pay moneys due and payable to the Subcontractor, each of the Minister and the Receiving Agency is entitled (in his or its absolute discretion) to pay to the Subcontractor the amount owing to the Subcontractor in respect of that work, and any amount paid by that party will become a debt due and payable on demand by the GLE to that party.
6 GLE’s risks

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

(a) the actual cost of the Works being greater than the cost estimated;
(b) the time or period of performance of the Works being greater than estimated;
(c) land conditions (including those on, above, below or adjacent to the relevant land), including either or both the Transfer Land or the Works Land not being in the Transfer Condition;
(d) the Works not being fit for their intended purposes;
(e) any Law or Taxes (or change in Law or Taxes) affecting the GLE’s rights, obligations or liability under this agreement;
(f) industrial action;
(g) inclement weather;
(h) delay in, or refusal by, any Authority in granting an Approval or the conditions of an Approval;
(i) a legal challenge to an Approval;
(j) obtaining an Approval subject to conditions unsatisfactory to the GLE;
(k) gaining access to land required to carry out the Works and achieve Completion;
(l) investigating, protecting, relocating, modifying and providing for all Works Infrastructure necessary for it to comply with its obligations under this agreement; and
(m) ensuring that all Works Infrastructure necessary to achieve Completion is available and maintained so as to allow the Works to be commenced and to achieve Completion by the Works Due Date.

7 Land condition and environment

Note to Proponents: The risk allocation set out in this clause 7 will apply where the Transfer Land and the Works Land (as applicable) are not owned by the State. Please refer to the section on “Contamination” in Schedule 1 (Special Conditions) for a discussion of the changes to this risk allocation that may apply where the Works Land is owned by the State. Note also that contamination may constitute an Extension Event and could trigger a right for the GLE to seek a required Variation under clause 14.4.

7.1 Protection of environment

The GLE must at all times:

(a) carry out the Works in an environmentally responsible manner and in accordance with Law and good industry practice, so as to protect the environment; and
(b) in carrying out the Works, take all reasonable and practicable measures to prevent or minimise adverse impacts on the environment.
7.2 Contamination

The GLE bears the risk of all contamination in, on, over, under or emanating from any of the Transfer Land or the Works 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 and the Works Land (as applicable), 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 7.2(a) or clause 7.2(b) to the extent that such contamination:

(1) is disturbed by the carrying out the Works; or
(2) otherwise occurs or arises out of or in connection with the Works or any act or omission of the GLE.

8 Laws and Approvals

8.1 Compliance with Laws

The GLE must ensure that the Works comply with all applicable Laws, including any change in a Law after the date of this agreement.

8.2 Approvals

(a) The GLE must apply for and obtain all Approvals from each relevant Authority.
(b) Subject to clause 8.2(d), the GLE bears all risk associated with obtaining the Approvals it is required to obtain under clause 8.2(a).
(c) The GLE must, in performing the Works, comply with all Approvals.
(d) 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 40.16 or its statutory obligations, use reasonable endeavours to facilitate the process of the GLE obtaining the Approvals it is required to obtain under clause 8.2(a).
9 General obligations applying to the Works

9.1 Safety and emergency

The GLE must at all times while performing the Works:

(a) establish, maintain and comply with emergency safety and security procedures consistent with good industry practice;

(b) comply with, and ensure that the Subcontractors comply with, all OHS Legislation;

(c) do all things reasonably necessary to protect people and property;

(d) prevent nuisance and unreasonable noise and disturbance; and

(e) provide reasonable security measures in accordance with good industry practice, for the protection and security of the Transfer Land, the Works and the Works Land against theft, vandalism, unauthorised entry onto such land and any other unlawful acts.

9.2 Care of the Works and land

As between the Minister, the Receiving Agency and the GLE, the GLE is, for the Risk Period, solely liable for the care of:

(a) the Works, the Transfer Land and the Works Land; and

(b) all materials, construction plant, equipment, tools, instruments and other things brought onto the Works Land by or on behalf of the GLE for the purpose of carrying out the Works.

9.3 Access to the Works Land

(a) The GLE must permit the Government Entities and any person authorised by a Government Entity (including any Consultant) to have unfettered access to the Works and the Works Land for the purposes of:

(1) inspecting the Works (including the progress of the Works) and monitoring compliance by the GLE with its obligations under the WIK Documents; and

(2) exercising any right (including any step-in right) or performing any obligation the Government Entity has under a WIK Document or Part 9B of the Act,

which right of access may be exercised:

(3) at any time specified in the Works Inspection Timetable; and

(4) at any other reasonable time, provided that the GLE is given reasonable prior notice.

(b) When accessing the Works Land, the Government Entities must (and must use reasonable endeavours to ensure that any of their Consultants):

(1) comply with the reasonable directions of the GLE or its Subcontractors in relation to health and safety requirements; and

(2) use reasonable endeavours to minimise any disruption to the Works.
(c) The Government Entities may request the GLE to provide any relevant Document in order for the MPA to assess whether the Works are being constructed in accordance with the GLE’s obligations under this agreement, and the GLE must promptly comply with any such request.

(d) If the MPA identifies any non-compliances in relation to the Works or has any concerns regarding the progress of the Works:

(1) the MPA must inform the Project Steering Committee of its concerns at the next meeting of the Project Steering Committee following the inspection; and

(2) the GLE must comply with all reasonable requests and directions of the MPA which are directed at ensuring that the Works are progressed so as to achieve Completion in accordance with this agreement.

(e) None of the Government Entities owes any duty to the GLE to inspect the Works for errors, omissions or compliance with the requirements of this agreement.

(f) No inspection of the Works by a Government Entity will in any way lessen or otherwise affect:

(1) the GLE’s obligations or warranties under this agreement or otherwise according to Law; or

(2) the Government Entity’s rights against the GLE whether under this agreement or otherwise according to Law.

### 9.4 Principal Contractor

The GLE:

(a) accepts that it is responsible for the control and management of the Works Land during the Risk Period, for the purposes of undertaking the Works and discharging the duties imposed by the OHS Legislation;

(b) must accept (or, where applicable, ensure that the Material Subcontractor nominated by the Receiving Agency accepts) its appointment as ‘principal contractor’ under the OHS Legislation, for those parts of the Works Land where the Works are being carried out;

(c) must comply (or, where applicable, ensure that the Material Subcontractor referred to in clause 9.4(b) complies) with all the obligations of ‘principal contractor’ under the OHS Legislation, for those parts of the Works Land where the Works are being carried out; and

(d) must, where a Material Subcontractor is appointed ‘principal contractor’ under the OHS Legislation, authorise that Material Subcontractor to manage or control those parts of the Works Land where the Works are being carried out to the extent necessary to discharge the duties of ‘principal contractor’ under the OHS Legislation, or if the GLE becomes aware that it cannot authorise that Material Subcontractor sufficiently for those purposes, the GLE must immediately provide written notice to the Receiving Agency detailing the lack of authority.
9.5 Construction Program

(a) Within 20 Business Days after the Commencement Date, the GLE must prepare and submit to the Project Steering Committee the initial Construction Program for the Works.

(b) The GLE must review and update the Construction Program on a monthly basis to take into account changes to the GLE’s program for the Works and delays which may have occurred.

(c) Any review of, or comments upon, the Construction Program by the Project Steering Committee will not relieve the GLE from or alter its liabilities or obligations under this agreement.

10 Security for performance

**Note to Proponents:** The requirement for Performance Bonds to be provided by the GLE will be agreed prior to execution of this Agreement. This clause 10 may be deleted where the Minister and the Receiving Agency determine that the provision of security is not required.

Where the Receiving Agency does require the provision of Performance Bonds, it is intended that:

- following Completion of the Works, the Construction Bond will be replaced with a Defects Liability Bond for a smaller amount to reflect the reduced risk to the State during the Defects Liability Period; and
- where the Works are delivered in discrete Stages, the Construction Bond and Defects Liability Bond will be stepped down as each Stage is completed. The amount of each step down will be sized to reflect the agreed value of each Stage and the residual risk to the State of the remaining Stages. The drafting of this clause 10 will need to be amended to reflect this.

10.1 Performance Bonds

The GLE will procure the following Performance Bonds in favour of the Minister and the Beneficiaries:

(a) as a condition precedent to the commencement of the agreement under clause 3.1, a Performance Bond for an amount equal to [insert]% of the Agreed Value (the Construction Bond); and

(b) as a condition precedent to the achievement of Completion, a Performance Bond for an amount equal to [insert]% of the Agreed Value (the Defects Liability Bond).

10.2 Release of Performance Bonds

Subject to the rights of the Beneficiaries to have recourse to the Performance Bonds, the Receiving Agency must release:

(a) the Construction Bond within 20 Business Days after the Works and Works Land Transfer Date; and
10.3 Replacement of Performance Bonds

If, at any time, the issuer of a Performance Bond ceases to have the Required Rating or be the holder of a current licence issued by the Australian Prudential Regulation Authority, the GLE must:
(a) promptly notify the Beneficiaries of that circumstance; and
(b) within 10 Business Days of being requested to do so, procure a replacement Performance Bond in favour of the Beneficiaries issued by a financial institution which holds a current licence issued by the Australian Prudential Regulation Authority and has the Required Rating, on the same terms as, and for the face value of, the Performance Bond it is replacing.

10.4 Recourse to Performance Bonds

(a) Subject to clause 10.4(c), either Beneficiary may make a demand under a Performance Bond at any time.
(b) The GLE must not take any steps to injunct or otherwise restrain:
   (1) the issuer of a Performance Bond from paying a Beneficiary pursuant to the Performance Bond;
   (2) a Beneficiary from making a demand or receiving payment under a Performance Bond; or
   (3) a Beneficiary from using the proceeds of a Performance Bond.
(c) The Receiving Agency must seek the consent of the Minister prior to making a demand under a Performance Bond in circumstances where the demand is in relation to a GAIC Default Event.

10.5 Proceeds of Performance Bonds

(a) A Beneficiary may (without limiting clause 10.4(a)) use the proceeds of any Performance Bond to reimburse it for any Loss suffered or incurred in connection with a WIK Document and in payment of any other moneys owing by the GLE in connection with a WIK Document (including moneys owing under any indemnity).
(b) Any proceeds remaining will be repaid to the GLE in return for a replacement bond for the amount repaid which satisfies the requirements of a Performance Bond. The replacement bond will be regulated by this agreement as if it were the Performance Bond the Beneficiary made the demand on.

10.6 Interest

(a) Neither Beneficiary:
   (1) is obliged to pay the GLE interest on:
      (A) any Performance Bond; or
      (B) subject to clause 10.6(b), the proceeds of any Performance Bond if it is converted into cash; and
(b) If a Beneficiary makes a call upon a Performance Bond and retains cash as a consequence:

(1) the Beneficiary will pay simple interest to the GLE at the Default Rate on the amount of any cash obtained in excess of the sum to which that party was entitled at the time of such call; and

(2) the sum attracting interest pursuant to clause 10.6(b)(1) will be reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the GLE to that Beneficiary at the time such amounts become payable.

11 Design warranties

(a) The GLE warrants to each of the Minister and the Receiving Agency that:

(1) it has checked and carefully considered the Plans and Specifications;

(2) it has satisfied itself that there are no ambiguities or inconsistencies within the Plans and Specifications;

(3) it has satisfied itself that the Plans and Specifications are proper, adequate and fit for their intended purposes;

(4) it has taken into consideration and made due allowance for the risks and costs associated with carrying out the Works and with assuming the obligations and potential liabilities imposed on it under the WIK Documents;

(5) the Design Documentation:

(A) satisfies the requirements of the Plans and Specifications and the other requirements of this agreement; and

(B) is fit for its intended purposes; and

(6) construction in accordance with the Design Documentation will satisfy the requirements of the Plans and Specifications and the other requirements of this agreement.

(b) The GLE agrees that its obligations under, and the warranties given in, clause 11(a) will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Works notwithstanding:

(1) any Variation;

(2) any review of or comments on the Design Documentation by a Government Entity, including any comments given prior to the date of this agreement; or

(3) the provision of any Plans and Specifications to the GLE by a Government Entity for the purposes of carrying out the Works.
12 Construction

(a) The GLE must construct the Works in accordance with this agreement, including the Design Documentation and the Plans and Specifications.

(b) The GLE warrants to each of the Minister and the Receiving Agency that the Works will be constructed:

1. in accordance with the requirements of this agreement, including:
   (A) the Plans and Specifications;
   (B) the Design Documentation;
   (C) all Receiving Agency Variations the GLE is directed to proceed with in accordance with clause 13; and
   (D) all GLE Variations approved under clause 14.2;

2. with good workmanship and materials which are:
   (A) new (or, with the Receiving Agency’s prior written consent, reused) and free of Defects or other imperfections; and
   (B) of the quality specified in the Plans and Specifications; and

3. so that on Completion they are fit for their intended purposes.

(c) If there is any ambiguity, discrepancy or inconsistency between this agreement and the Design Documentation, then unless otherwise directed by the Receiving Agency, the requirements of this agreement will prevail.

13 Receiving Agency Variations

Note to Proponents:
It is the Minister’s and the Receiving Agency’s intention that:

(a) the Plans and Specifications agreed prior to entry into this agreement will incorporate any requirements of the Receiving Agency, including requirements affecting the ongoing management and maintenance of the Works following completion and handover to the Receiving Agency; and

(b) the GLE will have the ability to make changes to the Works that are within the scope of the Plans and Specifications without having to comply with the formal variations process set out in the following clauses.

This clause 13 is drafted to provide for Receiving Agency Variations that result in either:

(a) a Net Cost Increase (for example, due to an increase in the scope of Works); or

(b) a Net Cost Saving (for example, due to a decrease in the scope of Works).

Where a Receiving Agency Variation results in a Net Cost Increase, the GLE will be paid cash to carry out the increased scope of Works, either progressively as the Works are carried out or on some other basis agreed between the GLE and the Receiving Agency. The Value of Works (and hence the GAIC Credit) will not be adjusted in this case.

Prior to proposing a Receiving Agency Variation which will, or is likely to, result in a Net Cost Saving, the Receiving Agency must obtain the Minister’s consent. If the Minister gives preliminary consent to initiate the Variations process, the Receiving Agency may
issue a notice to the GLE under clause 13.1(a). If the GLE and the Receiving Agency are unable to agree the Net Cost Saving, the dispute will be referred for resolution in accordance with clause 35. An independent quantity surveyor will be the independent Expert for the purposes of these types of disputes. In all cases, the Minister has a final consent right in relation to the implementation of a proposed Receiving Agency Variation which would result in a Net Cost Saving. This consent right is set out in clause 13.8. If the Minister consents to the implementation of the proposed Receiving Agency Variation, the Value of Works (and hence the GAIC Credit) will be reduced by the amount of the Net Cost Saving agreed by the parties or determined by the independent quantity surveyor acting as independent expert.

The Government recognises that a Receiving Agency Variation may require an extension to a due date under the Staging Plan. It is Government policy that any reasonable extensions will be approved, and any change to the Staging Plan will be matched with an approval under section 201SR of the Act. Please refer to the Guidelines for more detail.

13.1 Variations requested by the Receiving Agency

(a) At any time before the Works Due Date, the Receiving Agency may give notice to the GLE that it proposes a Receiving Agency Variation, provided that:

(1) the Receiving Agency has first consulted with the Minister as to the likely impact of the proposed Receiving Agency Variation on the Works Due Date;

(2) in respect of a proposed Receiving Agency Variation that will, or is likely to, result in a Net Cost Saving, the Receiving Agency has first obtained the written consent of the Minister to initiate the process under this clause 13 with respect to that proposed Receiving Agency Variation; and

(3) the Receiving Agency has provided the GLE with details of the proposed Receiving Agency Variation and consulted with the GLE concerning the proposed Receiving Agency Variation at least 30 Business Days prior to issuing the notice to the GLE under this clause 13.1(a).

(b) Subject to the restrictions in this clause 13, a Receiving Agency Variation may increase or decrease the scope of Works described in the then current Plans and Specifications.

(c) The notice under clause 13.1(a) must include the following information:

(1) reasons for the proposed Receiving Agency Variation;

(2) the Receiving Agency’s requirements for the implementation of the proposed Receiving Agency Variation;

(3) specifications for the proposed Receiving Agency Variation which include sufficient detail for the GLE (acting reasonably) to understand the nature of the proposed Receiving Agency Variation and to enable the GLE to prepare a Variation Notice pursuant to clause 13.2; and

(4) if applicable, written confirmation that the Minister has consented to the initiation of the process under this clause 13 with respect to the proposed Receiving Agency Variation, as required by clause 13.1(a)(2).
13.2 Variation Notice

(a) Within 20 Business Days, or such other period as agreed by the parties, after receipt of a notice under clause 13.1(a), the GLE must provide the Receiving Agency with a notice (Variation Notice) setting out:

(1) the Variation Cost for the proposed Receiving Agency Variation;
(2) the effect the proposed Receiving Agency Variation will have on:
   (A) the workmanship, quality, appearance and durability of the Works;
   (B) following Completion, the use of the Works for their intended purposes;
   (C) the design, construction and commissioning of the Works, including, where applicable, the GLE’s estimate of the reasonable extension of time required to ensure that the Works will achieve Completion by the Works Due Date and the Works Land will be in the Transfer Condition by the Works Transfer Due Date; and
   (D) any Approvals held by the GLE, including the need for any new Approvals;
(3) where the GLE considers (acting reasonably) that the proposed Receiving Agency Variation is not technically or commercially feasible, a recommendation to the Receiving Agency that the proposed Receiving Agency Variation should not be implemented, together with supporting documentation; and
(4) any other information reasonably requested by the Receiving Agency, together with, where applicable, a copy of the Staging Plan amended to show the revised Works Due Date and revised Works Transfer Due Date.

(b) The Variation Notice must be prepared:

(1) so as to comply with the principles for calculating costs and savings set out in Schedule 9;
(2) so as to avoid, as far as practicable, the need for a new Approval or a change to an existing Approval for the implementation of the proposed Receiving Agency Variation;
(3) in a manner which is consistent with the requirements of the Receiving Agency for the implementation of the proposed Receiving Agency Variation;
(4) so as to minimise any delay in achieving Completion by the Works Due Date and in ensuring that the Works Land is in the Transfer Condition by the Works Due Date; and
(5) so as to minimise any adverse safety impacts of the Receiving Agency Variation.

13.3 Tender

(a) The Receiving Agency may require the GLE to conduct a tender process for all or part of the work which would be required to effect the proposed Receiving
Agency Variation, and the GLE must conduct such tender process consistently with:

(1) to the extent practicable, the principles of the Receiving Agency’s procurement policies in their form as at the date the Receiving Agency gives the notice under clause 13.1(a) (with the necessary changes to reflect that the GLE is a private company rather than the Receiving Agency); and

(2) the principles set out in clause 2 of Schedule 9.

(b) Where the GLE is required to conduct a tender process under this clause 13.3, the Receiving Agency will determine a revised time period for submission of the Variation Notice under clause 13.2, having regard to the principles and policies referred to in clause 13.3(a).

13.4 Election by Receiving Agency

(a) Subject to clause 13.4(b), as soon as reasonably practicable after receiving the Variation Notice under clause 13.2, as that notice may be amended to take account of the outcome of the tender process pursuant to clause 3 of Schedule 9 (where applicable), the Receiving Agency must determine whether to:

(1) accept the Variation Notice;

(2) reject the Variation Notice; or

(3) withdraw the proposed Receiving Agency Variation,

by notice to the GLE. If the Receiving Agency intends to accept the Variation Notice and clause 13.8 applies, the Receiving Agency must notify the GLE that implementation of the Receiving Agency Variation is subject to the Minister’s consent under clause 13.8.

(b) The GLE will not be obliged to carry out a Receiving Agency Variation if the Receiving Agency (acting reasonably) accepts the GLE’s recommendation that the Receiving Agency Variation should not be implemented on the grounds that it is not technically or commercially feasible.

13.5 Amendment of Staging Plan

(a) If:

(1) the Receiving Agency notifies the GLE under clause 13.4 that it accepts the Variation Notice; and

(2) the Variation Notice is accompanied by a Staging Plan which is amended to show a revised Works Due Date and revised Works Transfer Due Date,

the GLE must submit the amended Staging Plan to the Minister for approval under section 201SR of the Act.

(b) The Minister must provide written notice to the GLE (with a copy to the Receiving Agency, the MPA and the Commissioner) of its decision to approve or reject the amended Staging Plan submitted by the GLE pursuant to clause 13.5(a).

(c) The parties acknowledge and agree that if the Minister does not approve the amended Staging Plan in respect of a proposed Receiving Agency Variation,
the Receiving Agency cannot require the GLE to implement that Receiving Agency Variation.

13.6 Acceptance of Variation Notice

If:

(a) the Receiving Agency notifies the GLE under clause 13.4 that it accepts the Variation Notice; and

(b) where applicable, the Minister’s notice given under clause 13.5(b) indicates that the Minister has approved the amended Staging Plan,

then, subject to clause 13.8 (if applicable), the Receiving Agency may direct the GLE to proceed with the Receiving Agency Variation by issuing a written notice to the GLE do so, in which case:

(c) the GLE must proceed to implement the Receiving Agency Variation on the basis of the Variation Notice;

(d) the Plans and Specifications will be deemed to be amended to the extent set out in the Variation Notice;

(e) the Receiving Agency Variation will become part of the Works, and must be undertaken by the GLE in accordance with this agreement, including the amended Staging Plan; and

(f) if the Variation Notice provides for:

(1) a Net Cost Increase, the Receiving Agency must pay the GLE the amount of the Net Cost Increase set out in the Variation Notice progressively after each month in which the relevant work is undertaken, or at such other milestones as are agreed between the Receiving Agency and the GLE, in accordance with clause 13.10; or

(2) a Net Cost Saving, then the Value of Works will be reduced by the amount of the Net Cost Saving set out in the Variation Notice.

13.7 Rejection of Variation Notice

(a) If the Receiving Agency rejects the Variation Notice in accordance with clause 13.4, the Receiving Agency and the GLE must negotiate in good faith and use their best endeavours to agree on a mutually acceptable resolution to the matters set out in the Variation Notice and the amended Staging Plan (where applicable) which are in dispute.

(b) If the amended Staging Plan is in dispute and the Receiving Agency and the GLE subsequently reach agreement on the extension of time to be granted in respect of the Works Due Date and the Works Transfer Due Date, the GLE must further amend the Staging Plan to reflect the agreement reached with the Receiving Agency and must submit the amended Staging Plan to the Minister for approval under section 201SR of the Act. Clauses 13.5(b) and 13.5(c) will apply to the amended Staging Plan submitted by the GLE pursuant to this clause 13.7(b).

(c) If the Minister’s notice given under clause 13.5(b) in respect of an amended Staging Plan submitted by the GLE pursuant to clause 13.7(b) indicates that the Minister has approved the amended Staging Plan, then, subject to clause 13.8 (if applicable), the Receiving Agency may direct the GLE to proceed with the
Receiving Agency Variation by issuing a written notice to the GLE do so, in which case:

(1) the GLE must proceed to implement the Receiving Agency Variation on the terms agreed with the Receiving Agency;

(2) the Plans and Specifications will be deemed to be amended to the extent agreed with the Receiving Agency;

(3) the Receiving Agency Variation will become part of the Works, and must be undertaken by the GLE in accordance with this agreement, including the amended Staging Plan; and

(4) if the agreement with the Receiving Agency provides for:

(A) a Net Cost Increase, the Receiving Agency must pay the GLE the amount of the Net Cost Increase agreed between the GLE and the Receiving Agency progressively after each month in which the relevant work is undertaken, or at such other milestones as are agreed between the Receiving Agency and the GLE, in accordance with clause 13.10; or

(B) a Net Cost Saving, then the Value of Works will be reduced by the amount of the Net Cost Saving agreed between the GLE and the Receiving Agency.

(d) If the Receiving Agency and the GLE are unable to reach agreement on the disputed matters in the Variation Notice (and, where applicable, the amended Staging Plan) within 10 Business Days of the commencement of negotiations between those parties under clause 13.7(a), the Receiving Agency may refer the matter for dispute resolution in accordance with clause 35 and, in resolving the dispute under clause 35, the Receiving Agency and the GLE will direct the expert or arbitrator to:

(1) have regard to Schedule 9 to the extent relevant; and

(2) determine all matters required to enable the Receiving Agency Variation to be implemented, including any changes to this agreement.

(e) Following resolution of the dispute referred for resolution under clause 13.7(d), the Receiving Agency may elect to:

(1) require the GLE to proceed to implement the Receiving Agency Variation in accordance with the Variation Notice (and, where applicable, the amended Staging Plan), as varied by the resolution; or

(2) withdraw the proposed Receiving Agency Variation,

by notice to the GLE. If the Receiving Agency intends to require the GLE to implement the Receiving Agency Variation and clause 13.8 applies, the Receiving Agency must notify the GLE that implementation of the Receiving Agency Variation is subject to the Minister’s consent under clause 13.8.

(f) If:

(1) the Receiving Agency elects under clause 13.7(e) to require the GLE to proceed to implement the Receiving Agency Variation; and

(2) the Variation Notice is accompanied by a Staging Plan which is amended to show a revised Works Due Date and Works Transfer Due Date,
the GLE must further amend the Staging Plan to reflect the resolution of the dispute between the parties and must submit the amended Staging Plan to the Minister for approval under section 201SR of the Act. Clauses 13.5(b) and 13.5(c) will apply to the amended Staging Plan submitted by the GLE pursuant to this clause 13.7(f).

(g) If the Minister’s notice given under clause 13.5(b) in respect of an amended Staging Plan submitted by the GLE pursuant to clause 13.7(f) indicates that the Minister has approved the amended Staging Plan then, subject to clause 13.8 (if applicable), the Receiving Agency may direct the GLE to proceed with the Receiving Agency Variation on the terms of the Variation Notice (and, where applicable, the Staging Plan), as varied by the resolution, by issuing a written notice to the GLE, in which case:

(1) the GLE must proceed to implement the Receiving Agency Variation in accordance with the Receiving Agency’s direction under clause 13.7(g);

(2) the Plans and Specifications will be deemed to be amended to the extent set out in the Variation Notice, as varied by the resolution;

(3) the Receiving Agency Variation will become part of the Works, and must be undertaken by the GLE in accordance with this agreement, including the amended Staging Plan; and

(4) if the Variation Notice (as varied by the resolution) provides for:

(A) a Net Cost Increase, the Receiving Agency must pay the GLE the amount of the Net Cost Increase set out in the Variation Notice (as varied by the resolution) progressively after each month in which the relevant work is undertaken, or at such other milestones as are agreed between the Receiving Agency and the GLE, in accordance with clause 13.10; or

(B) a Net Cost Saving, then the Value of Works will be reduced by the amount of the Net Cost Saving set out in the Variation Notice (as varied by the resolution).

13.8 Minister’s consent to reduction in Value of Works

(a) Where a proposed Receiving Agency Variation will result in a reduction in the Value of Works as contemplated by clause 13.6(f)(2), clause 13.7(c)(4)(B) or clause 13.7(g)(4)(B) (as applicable), the implementation of that Receiving Agency Variation must be approved in writing by the Minister.

(b) The Receiving Agency cannot direct the GLE to proceed with a Receiving Agency Variation which results in a reduction in the Value of Works unless and until the Minister provides the written approval required under this clause 13.8.

13.9 Notification to the Minister and the MPA

The Receiving Agency must:

(a) notify the Minister and the MPA of any Receiving Agency Variation that the GLE is directed to proceed with in accordance with this clause 13; and

(b) provide the Minister and the MPA with a copy of the terms on which the Receiving Agency Variation is to be carried out by the GLE.
13.10 Invoicing and payment for Receiving Agency Variations

(a) This clause applies to Receiving Agency Variations for which an amount is payable to the GLE pursuant to clause 13.6(f)(1), clause 13.7(c)(4)(A) or clause 13.7(g)(4)(A) (as applicable).

(b) At:

1. the end of each month in which work to implement a Receiving Agency Variation is undertaken; or
2. such other milestones as are agreed between the Receiving Agency and the GLE,

the GLE must render an invoice to the Receiving Agency for the amount set out in the Variation Notice (as amended, if applicable, by the agreement of the parties under clause 13.7(b) or by the resolution referred to in clause 13.7(d)), which relates to the work progressed in the relevant month or the milestone agreed with the Receiving Agency (as applicable).

(c) Each invoice must:

1. be rendered as soon as practicable after the end of the month in which the relevant works are carried out or the relevant milestone is achieved (as applicable); 
2. be a Tax Invoice which complies with the requirements of the GST Law (but only where GST is payable in respect of the Receiving Agency Variation); and 
3. unless inconsistent with the GST Law (where applicable), specify:
   (A) the GLE’s Australian Business Number; 
   (B) the amount due to the GLE; 
   (C) the amount of any GST paid or payable by the GLE with respect to the amount due; 
   (D) the date of completion of that part of the Receiving Agency Variation to which the invoice relates; 
   (E) a description (including quantity) of the Receiving Agency Variation delivered; 
   (F) the GLE’s address for payment; and 
   (G) the name and date of this agreement.

(d) To the extent that an invoice complies with clauses 13.10(b) and 13.10(c), the Receiving Agency must, within 20 Business Days after receipt of the invoice (Due Date):

1. certify the invoice for payment; and 
2. pay the certified invoice (or the certified parts of the invoice).

(e) Subject to clause 13.10(f), if the Receiving Agency fails to pay a certified invoice (or the certified parts of an invoice) by the Due Date, it will be liable to the GLE for simple interest calculated on a daily basis at the Default Rate on any amount outstanding (Penalty Interest), from the Due Date until the date of payment.

(f) Penalty Interest is only payable under clause 13.10(e) if:
(1) the Victorian Government Fair Payments for Small Business Policy applies;
(2) the Building and Construction Industry Security of Payment Act 2002 (Vic) does not apply; and
(3) the total amount payable to the GLE in respect of the Receiving Agency Variation does not exceed $3,000,000.

If Penalty Interest applies and is payable, the GLE may claim Penalty Interest by delivering to the Receiving Agency a notice clearly headed “Fair Payments Policy – Penalty Interest Claim” and specifying the amount of Penalty Interest payable.

(h) Payment of an invoice is not:
(1) evidence or an admission that the Receiving Agency Variation has been performed in accordance with the requirements of this agreement;
(2) evidence of the value of the Receiving Agency Variation performed;
(3) evidence or an admission that the costs to implement the Receiving Agency Variation were properly incurred;
(4) an admission of liability; or
(5) acceptance or approval of the GLE’s performance, but must be taken only as payment on account.

13.11 Costs associated with a Receiving Agency Variation

The Receiving Agency must pay the GLE’s reasonable costs of preparing the Variation Notice and, where applicable, conducting the tender process contemplated by clause 13.3.

14 GLE Variations

Note to Proponents: The intention of this clause 14 is that the GLE will bear all risk (including the cost risk) of Variations it proposes. Accordingly, the GLE will not receive any cash payment or be entitled to any adjustment to the Value of Works (and hence the GAIC Credit) in respect of GLE Variations.

In addition, the GLE will not be entitled to propose a GLE Variation which reduces the scope of the Works.

14.1 Request by the GLE

(a) Subject to clauses 14.1(b) and 14.4, at any time before the Works Due Date, the GLE may give notice seeking the Receiving Agency's approval to carry out a Variation.

(b) The GLE may not, at any time, propose a Variation that would decrease the scope of Works as described in the then current Plans and Specifications.

(c) The GLE’s notice under clause 14.1(a) must include the following information to the reasonable satisfaction of the Receiving Agency:
(1) details of the proposed GLE Variation;
(2) reasons for the proposed GLE Variation;
(3) detailed drawings and specifications for the proposed GLE Variation;
(4) the Variation Cost for the proposed GLE Variation; and
(5) details of the effect the proposed GLE Variation will have on:
   (A) the workmanship, quality, appearance and durability of the Works;
   (B) following Completion, the use of the Works for their intended purposes;
   (C) any Approvals held by the GLE, including the need for any new Approvals; and
   (D) the design, construction and commissioning of the Works, including, where applicable, the GLE’s estimate of any delay to Completion likely to be caused by the proposed GLE Variation,

and must be prepared:
(6) so as to comply with the principles for calculating costs and savings set out in Schedule 9;
(7) so as to avoid, as far as practicable, the need for a new Approval or a change to an existing Approval for the implementation of the proposed GLE Variation;
(8) so as to minimise any delay in achieving Completion by the Works Due Date; and
(9) so as to minimise any adverse safety impacts of the GLE Variation.

(d) The GLE must provide to the Receiving Agency any other information and supporting documentation the Receiving Agency reasonably requests in respect of the proposed GLE Variation.

14.2 Approval of a GLE Variation

(a) The Receiving Agency must consider the proposed GLE Variation in good faith and, subject to clause 14.4, must determine in its absolute discretion whether to approve or refuse the proposed GLE Variation by notice in writing to the GLE.

(b) If the Receiving Agency approves a GLE Variation under clause 14.2(a), the Receiving Agency must direct the GLE (in writing) to implement that GLE Variation, in which case:
   (1) the GLE must proceed to implement the GLE Variation on the basis approved by the Receiving Agency;
   (2) the Plans and Specifications will be deemed to be amended to the extent set out in the GLE’s notice; and
   (3) the GLE Variation will become part of the Works, and must be undertaken by the GLE in accordance with this agreement.
14.3 Costs and risks associated with a GLE Variation

(a) Unless otherwise agreed in writing by the Receiving Agency, the GLE bears all costs and risks associated with:

1. proposing a GLE Variation and providing the details and information required by clauses 14.1(c) and 14.1(d), including the reasonable costs incurred by the Receiving Agency in assessing a proposed GLE Variation (including the reasonable costs of engaging Consultants to assist in such assessment); and

2. performing a GLE Variation that has been approved by the Receiving Agency in accordance with clause 14.2.

(b) The GLE must not undertake any Variation unless and until it has received a written direction from the Receiving Agency to do so.

14.4 Required Variations

(a) To the extent that:

1. a State Risk Event (other than an event within the meaning of paragraph (3) of that definition) or a Change in Law occurs after the Commencement Date; and

2. a Variation is required to:

   A. in the case of a State Risk Event, overcome or mitigate the effects of the State Risk Event; or

   B. in the case of a Change in Law, ensure that the Works continue to comply with all applicable Laws,

the GLE may give notice under clause 14.1 seeking the Receiving Agency’s approval to carry out a Variation.

(b) The Receiving Agency must consider the GLE Variation and direct the GLE in respect of the GLE Variation in accordance with clause 13 as if it were a Receiving Agency Variation, and clauses 13.4 to 13.10 will apply to the notice given by the GLE under clause 14.1(a) as if it were a Variation Notice.

14.5 Notification to the Minister and the MPA

The Receiving Agency must:

(a) notify the Minister and the MPA of any GLE Variation which the Receiving Agency has approved under clause 14.2; and

(b) provide the Minister and the MPA with a copy of the terms on which the GLE Variation is to be carried out by the GLE.

15 Time

15.1 Commencement

The GLE must promptly commence performance of the Works from the Commencement Date.
15.2 Dates for performance

The GLE must:
(a) regularly, expeditiously and diligently progress the Works;
(b) achieve Completion by the Works Due Date;
(c) ensure that the Works Land is in the Transfer Condition by the Works Transfer Due Date;
(d) ensure that the Transfer Land is in the Transfer Condition by the Land Transfer Due Date;
(e) handover the Works to the Receiving Agency and comply with its obligations under clause 16.7(a) in respect of the Works Land by the Works Transfer Due Date; and
(f) comply with its obligations under clause 18.3(a) in respect of the Transfer Land by the Land Transfer Due Date.

15.3 Extension Events

If the GLE is delayed by an Extension Event in a manner which will delay the GLE in achieving Completion by the Works Due Date, the GLE may claim an extension of time in accordance with this clause 15.

15.4 Notice

To claim an extension of time in respect of an Extension Event, the GLE must, within 15 Business Days from the date the GLE became aware, or ought reasonably to have become aware, of a delay caused by an Extension Event, submit a notice to the Receiving Agency which:
(a) sets out detailed particulars of the delay and the occurrence causing the delay;
(b) sets out the number of days of extension of time claimed, together with the basis of calculating that period, including evidence that it will be delayed in achieving Completion by the Works Due Date;
(c) describes the action the GLE has taken and proposes to take to avoid or minimise the consequences of the Extension Event;
(d) demonstrates that the conditions in clause 15.5 are satisfied;
(e) sets out the impact of the delay on the most recent Construction Program submitted to the Project Steering Committee; and
(f) attaches a copy of the Staging Plan amended to show the revised Works Due Date and Works Transfer Due Date.

15.5 Conditions precedent to extension

It is a condition precedent to the GLE’s entitlement to an extension of time for an Extension Event that:
(a) the GLE submits its notice in the manner required by clause 15.4;
(b) the cause of the delay was beyond the reasonable control of the GLE and the Subcontractors; and
(c) the GLE has actually been delayed by the Extension Event in a manner which will delay it from achieving Completion by the Works Due Date.

15.6 Determination of extension of time

Note to Proponents: This clause recognises the Minister’s statutory function under section 201SR(7). It is Government policy that any changes to a Staging Plan approved under this clause 15 will be matched with an approval under section 201SR of the Act. Please refer to the Guidelines for more detail.

(a) Subject to clause 15.8, if in the reasonable opinion of the Receiving Agency, the conditions precedent in clause 15.5 have been satisfied, the Receiving Agency must provide written notice to the GLE of the reasonable period by which it determines that the Works Due Date should be extended and the Works Transfer Due Date will be extended by the same number of days.

(b) If the Receiving Agency determines in accordance with clause 15.6(a) that the GLE is entitled to an extension of time, and the Works are being delivered pursuant to a Staging Plan, the GLE must amend the Staging Plan to show the revised Works Due Date and Works Transfer Due Date and submit the amended Staging Plan to the Minister for approval under section 201SR of the Act.

(c) Where the GLE has submitted a revised Staging Plan to the Minister under clause 15.6(b), the Minister must provide written notice to the GLE (with a copy to the Receiving Agency, the MPA and the Commissioner) that the amended Staging Plan submitted by the GLE is approved or rejected in accordance with section 201SR of the Act.

15.7 Effect of Ministerial rejection of extension of time

Notwithstanding any other provision of this agreement, if the Minister does not approve the amended Staging Plan submitted by the GLE pursuant to clause 15.6(b), the GLE will not be entitled to an extension of the Works Due Date or the Works Transfer Due Date and the GLE must continue to comply with its obligations under this agreement, including the Staging Plan (absent the proposed amendments to the Works Due Date and Works Transfer Due Date).

15.8 Reduction in extension of time

The Receiving Agency will reduce an extension to the Works Due Date that it would have otherwise notified to the GLE under clause 15.6(a) to the extent that the GLE or the Subcontractors:

(a) contributed to the delay; or

(b) failed to take all reasonable steps which a prudent, competent and experienced contractor in the circumstances would have taken, to both preclude the cause of the delay, and to avoid or minimise the consequences of the delay.

15.9 Concurrent delays

Where there are several causes of delay and at least one of those causes is not an Extension Event, then, to the extent the delays resulting from those causes are concurrent, the Receiving Agency will apportion the delays according to the various causes of the delay on the basis of their respective contribution to the delay.
15.10 Notification to the Minister and the MPA

The Receiving Agency must notify the Minister and the MPA of any extension to the Works Due Date and the Works Transfer Due Date made under clause 13 or this clause 15.

15.11 Minister’s power to extend time

(a) Subject to clause 15.11(b), the Minister may by notice to the GLE, extend the Works Due Date and the Works Transfer Due Date from time to time, whether or not the GLE has made, or is entitled to make, a claim for an extension of time in accordance with clause 15 or any other clause of this agreement.

(b) The Minister:

(1) is not required to exercise the Minister’s discretion under clause 15.11(a) for the benefit of the GLE; and

(2) must exercise the discretion in consultation with the Receiving Agency.

(c) The exercise or failure to exercise the Minister’s discretion in accordance with this clause 15.11 is not capable of being the subject of a Dispute in accordance with clause 35 or otherwise subject to review.

(d) If the Minister determines to extend the Works Due Date and the Works Transfer Due Date under this clause 15.11, and the Works are being delivered pursuant to a Staging Plan, then the GLE must also submit an amended Staging Plan showing the revised due dates to the Minister for approval under section 201SR of the Act.

16 Completion of the Works

Note to Proponents:

Non-discrete staged Works

Clause 16 has been drafted to apply to proposals involving Works that will be completed in non-discrete Stages that can only be put to use by the Receiving Agency when all Stages are complete. A simplified example of this type of proposal might involve a Complete Works package for a road grade separation project to create a rail underpass, comprising:

Stage 1: works to lower train lines
Stage 2: construction of new train platform
Stage 3: construction of new road
Stage 4: completion of traffic signalling works and any other actions or steps required to achieve Completion of the entire package of Works
Stage 5: transfer land and handover complete package of Works to the Receiving Agency

For these types of WIK proposals, each Stage in the Staging Plan in Schedule 4 will identify the Works to be completed in that Stage. The Staging Plan will identify the Works Land as a whole (rather than separate parcels of Works Land for each Stage). The penultimate stage will require both Completion of the last parcel of Works (in the example
above, the traffic signalling works) and any other works required to integrate the various Stages so that the MPA can make an assessment of the complete package of Works. The last stage will require handover of the complete package of Works and transfer of the underlying Works Land to the Receiving Agency.

Clause 16 reflects the following principles:
- The MPA will determine the extent to which each Stage of the Works has achieved Completion by the Works Due Date for that Stage (under clauses 16.1 - 16.4).
- Where the MPA determines that the Works comprised in a Stage have achieved Completion by the Works Due Date for that Stage, the GLE will be entitled to a GAIC Credit equal to the Value of Works comprised in that Stage. The GAIC Credit will apply when the MPA notifies the Commissioner that the Works in that Stage have achieved Completion.
- The GLE will not be required to handover the Works comprised in a Stage to the Receiving Agency until all Stages have achieved Completion.
- In the final stage, the MPA will determine whether the Works Land is in the Transfer Condition. If the Works Land is in the Transfer Condition, the GLE will be required to handover the Works and transfer the Works Land to the Receiving Agency (clauses 16.5 - 16.7).
- The GAIC Credit for the final Stage will be the Value of Works Land. It will apply when the MPA notifies the Commissioner that the GLE has handed over the Works and transferred the Works Land to the Receiving Agency by the Works Transfer Due Date. The GLE may apply for a Certificate of Release and release the land at this point in accordance with section 201SZG of the Act.
- If the due dates for any Stage are not met, the GLE will be in default, and the default provisions in clause 27 will apply to the extent set out in this clause 16.

Discrete staged Works
A WIK proposal may involve discrete Stages where the parcel of Works in each Stage can be put to use by the Receiving Agency upon Completion of that Stage. A simplified example of this type of proposal might involve the following Stages:

Stage 1: construction of a roundabout
Stage 2: handover of the roundabout
Stage 3: construction of rail car park
Stage 4: handover of the rail car park

For these types of WIK proposals, each Stage in the Staging Plan in Schedule 4 will:
- identify the Works to be completed in that Stage; and
- identify the underlying Works Land on which those Works will be constructed.

In each case, following Completion of the construction works for a Stage, there will be a subsequent Stage which will require the Works to be handed over to the Receiving Agency and the relevant Works Land to be transferred to the Receiving Agency.

For these types of proposals, clause 16 will apply in the following way:
- For Stages involving the Completion of Works, the MPA will determine (under clauses 16.1-16.4) the extent to which the Works comprised in a Stage have achieved Completion by the Works Due Date for that Stage.
Where the MPA determines that the Works comprised in a Stage have achieved Completion by the Works Due Date for that Stage, the GLE will be entitled to a GAIC Credit equal to the Value of Works comprised in that Stage. The GAIC Credit will apply when the MPA notifies the Commissioner that the Works comprised in that Stage are Complete.

For Stages involving the handover of Works and transfer of Works Land, the MPA will determine (under clauses 16.5 to 16.7) whether the underlying Works Land comprised in a Stage is in the Transfer Condition by the Works Transfer Due Date for that Stage. Where the MPA determines that the Works Land comprised in that Stage is in the Transfer Condition by the Works Transfer Due Date for that Stage, the GLE will then be required to handover the Works and transfer the Works Land to the Receiving Agency (under clause 16.7).

The GLE will be entitled to a GAIC Credit equal to the Value of Works Land identified in that Stage. The GAIC Credit will apply when the MPA notifies the Commissioner that the GLE has handed over the Works and transferred the Works Land to the Receiving Agency.

If the GLE fails to meet the due dates for a Stage, it will be in default and the default provisions in clause 27 will apply to the extent set out in this clause 16.

### 16.1 Notice in relation to Works

(a) The GLE must give the Government Entities written notice of the following:

1. the anticipated Works Completion Date (notice of which must be given at least 15 Business Days prior to the anticipated Works Completion Date); and
2. the date on which the GLE considers that it has achieved Completion (notice of which must be given without delay after the GLE considers that it has achieved Completion).

(b) If the GLE has not issued a notice under clause 16.1(a)(2) by the Works Due Date, the GLE must, on the Works Due Date, give notice to the Government Entities of the extent to which the Works have been performed as at the Works Due Date.

### 16.2 Inspection and determination in relation to Works

(a) As soon as reasonably practicable after receiving notice from the GLE under clause 16.1, the MPA must:

1. undertake a joint inspection of the Works with the GLE and the Receiving Agency; and
2. determine in writing pursuant to clause 16.3(a) or clause 16.4(a) (with copies to the Minister, the Receiving Agency and the GLE) whether Completion has been achieved by the Works Due Date.

(b) The MPA must use reasonable endeavours to ensure that any Consultant whose opinion or advice the MPA requires to make a determination under clause 16.2(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 16.2(a)(2), it will request that information from the GLE and the GLE must promptly furnish that information upon being requested to do so.
To avoid doubt, the MPA is required to determine whether the Works are complete as at the Works Due Date, whether it inspects the Works before or after the Works Due Date.

16.3 Where the MPA assesses that Completion has been achieved

(a) If, in respect of the Works, the MPA determines that Completion has been achieved on or before the Works Due Date, the MPA must, in the determination:
   (1) state the Works Completion Date;
   (2) state the Value of Works for the purposes of section 201SLM(1)(a) or section 201SLM(1)(b) of the Act (as applicable); and
   (3) list any Minor Defects that remain to be rectified.

(b) The parties acknowledge and agree that:
   (1) a determination referred to in clause 16.3(a) is a determination under section 201SLL(1)(a) of the Act;
   (2) the MPA will issue a Notification to the Commissioner without delay after making a determination referred to in clause 16.3(a);
   (3) once the MPA has made a determination under clause 16.3(a), the GLE is entitled to apply in accordance with section 201SX of the Act for a Certificate of Release in respect of the relevant part of the GAIC Liability to which the Works are attributable; and
   (4) the relevant portion of the GAIC Liability will be taken to have been paid by the GLE at the time the Commissioner receives the Notification to the Commissioner referred to in clause 16.3(b)(2) and interest charged under section 201ST of the Act will thereafter cease to accrue in relation to that portion of the GAIC Liability.

(c) Without limiting the GLE’s other obligations under this agreement (including in respect of Defects), upon receipt of the MPA’s determination referred to in clause 16.3(a) that Completion has been achieved, the GLE must expeditiously and diligently rectify all of the Minor Defects listed in the MPA’s determination.

16.4 Where the MPA assesses that Completion has not been achieved

(a) If, in respect of the Works, the MPA determines that Completion has not been achieved on or before the Works Due Date, the MPA must list in the determination the items of work (other than Minor Defects) that remain to be performed for the Works to achieve Completion (Works Completion Tasks).

(b) If the Works Due Date has not yet passed when the MPA makes a determination referred to in clause 16.4(a):
   (1) the parties acknowledge and agree that no GAIC Default Event has occurred as at the date of the MPA’s determination, and the MPA’s determination is not a determination under section 201SLL of the Act;
   (2) the GLE must expeditiously and diligently progress the Works Completion Tasks to achieve Completion by the Works Due Date;
   (3) the GLE must give the Government Entities written notice when it considers that the Works Completion Tasks have been completed; and
(4) clauses 16.1 to 16.4 will apply in respect of the GLE’s notice under clause 16.4(b)(3) in the same way as if it were the original notice given under clause 16.1.

(c) If the Works Due Date has passed when the MPA makes a determination referred to in clause 16.4(a):

(1) the parties acknowledge and agree that a GAIC Default Event has occurred and clause 27 will apply;

(2) the parties acknowledge and agree that the MPA’s determination is a determination under section 201SLL(1)(b) of the Act;

(3) the MPA’s determination must include the MPA’s assessment of the Value of Partially Completed Works for the purposes of section 201SLM(1)(c) of the Act; and

(4) the MPA will issue a Notification to the Commissioner without delay after making its determination.

(d) A determination of the MPA referred to in clause 16.4(c):

(1) is deemed to be a Default Notice given by the MPA for the purposes of clause 27.1; and

(2) must include a Cure Period, such Cure Period to be set in consultation with the Receiving Agency.

(e) Where clause 16.4(d) applies, the program to remedy the GAIC Default Event given by the GLE to the Receiving Agency under clause 27.1(d) must show how the Works Completion Tasks identified by the MPA in its determination will be completed within the Cure Period.

16.5 Notice in relation to Works Land

(a) The GLE must, without delay, give the Government Entities written notice when it considers that the Works Land is in the Transfer Condition.

(b) If the GLE has not issued a notice under clause 16.5(a) by the Works Transfer Due Date, the GLE must, on the Works Transfer Due Date, give notice to the Government Entities of the extent to which the Works Land is in the Transfer Condition as at the Works Transfer Due Date.

16.6 Inspection and determination in relation to Works Land

(a) As soon as reasonably practicable after receiving notice from the GLE under clause 16.5, the MPA must:

(1) undertake a joint inspection, with the GLE and the Receiving Agency, of the Works Land (including an assessment of the environmental condition of the Works Land); and

(2) determine in writing pursuant to clause 16.6(e) or clause 16.6(f) (with copies to the Minister, the Receiving Agency and the GLE) whether the Works Land is in the Transfer Condition by the Works 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 16.6(a)(2) attends the joint inspection.
If, after consulting with the Receiving Agency, the MPA decides that it needs further information to make a determination under clause 16.6(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.

To avoid doubt, the MPA is required to determine whether the Works Land is in the Transfer Condition as at the Works Transfer Due Date, whether it inspects the Works Land before or after the Works Transfer Due Date.

If, in respect of the Works Land, the MPA determines that the Works Land is in the Transfer Condition on or before the Works Transfer Due Date, the MPA must state in the determination the date on which the Works Land is in the Transfer Condition.

If, in respect of the Works Land, the MPA determines that the Works Land is not in the Transfer Condition on or before the Works Transfer Due Date:

(1) the MPA must list in the determination the remediation work and other tasks to be performed for the Works Land to be in the Transfer Condition (Works Land Rectification Tasks);

(2) the GLE must expeditiously and diligently progress the Works Land Rectification Tasks to put the Works Land in the Transfer Condition;

(3) the GLE must give the Government Entities written notice when it considers that the Works Land Rectification Tasks have been completed; and

(4) clauses 16.5 and 16.6(a) to 16.6(f) will apply in respect of the GLE’s notice under clause 16.6(f)(3) in the same way as if it were the original notice given under clause 16.5.

If the Works Transfer Due Date has not yet passed when the MPA makes a determination referred to in clause 16.6(f), the parties acknowledge and agree that no GAIC Default Event has occurred as at the date of the MPA’s determination.

If the Works Transfer Due Date has passed when the MPA makes a determination referred to in clause 16.6(f):

(1) the parties acknowledge and agree that a GAIC Default Event has occurred and clause 27 (other than clause 27.1) will apply; and

(2) the GLE must continue to comply with clause 16.6(f) notwithstanding that the Works Transfer Due Date has passed.

The parties acknowledge and agree that:

(1) a determination of the MPA under this clause 16.6 is not a determination under section 201SLL of the Act; and

(2) the MPA will make a section 201SLL determination with respect to the Works Land after the GLE has complied with its obligations under clause 16.7(a).

16.7 Handover of Works and transfer of Works Land

Note to Proponents: This clause 16.7 is not intended to require the GLE to remove Permitted Encumbrances that are intended to run with the land (for example, existing easements and restrictive covenants). For each proposal, any such Permitted Encumbrances affecting the relevant land will be identified and will be set out in Schedule 12.
(a) As soon as practicable after the MPA has determined under clause 16.6(a)(2) that the Works Land is in the Transfer Condition, the GLE must:

(1) handover the Works to the Receiving Agency; and

(2) do all things necessary to enable the Receiving Agency to become the registered proprietor of the Works Land, free from all Encumbrances, including by providing the Receiving Agency with the duplicate certificate of title for the Works Land and a transfer of land in registrable form in respect of the Works 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 16.7(a).

(c) Where the GLE complies with its obligations under clause 16.7(a) on or before the Works Transfer Due Date, the MPA must:

(1) make a determination under section 201SLL(1)(a) of the Act; and

(2) state in its determination the Value of Works 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 16.7(c).

(e) Where the GLE does not comply with its obligations under clause 16.7(a) until after the Works Transfer Due Date, then promptly upon receipt of a notice from the Receiving Agency under clause 16.7(b), the MPA must:

(1) make a determination under section 201SLL(1)(b) of the Act that a GAIC Default Event occurred on the Works Transfer Due Date;

(2) state in its determination the Value of Works 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 16.7(e).

(f) The MPA must not unreasonably delay undertaking any inspection required under clause 16.6(a)(1) or making any determination required under clause 16.6(a)(2).

16.8 Certificates

The GLE must obtain and deliver to the Receiving Agency all as-built documentation, including all necessary and relevant certificates and approvals, plans and specifications, keys and operating manuals relating to the Works, together with any other information and documentation relating to the Works that is reasonably requested by the Receiving Agency, on or before the Works and Works Land Transfer Date.

17 Rectification of Defects

Note to Proponents: In some cases, the GLE’s obligation to rectify Defects during the Defects Liability Period may be removed from this agreement and instead be included in a simple transition agreement between the GLE and the Receiving Agency. This may be appropriate in cases where, for example, it is important for the record of the WIK Agreement to be removed from the title of the relevant land as soon as the Works and
Works Land have been handed over to the Receiving Agency and the GAIC Credit has been given.

It is anticipated that any such transition agreement would also govern the terms and conditions on which the GLE would be entitled to access the completed infrastructure for the purpose of rectifying Defects and the terms and conditions for provision and release of the Defects Liability Bond.

(a) Without limiting the obligations of the GLE under clause 16 and this clause 17, the GLE must make good at no cost to the Receiving Agency any Defects arising between the Works Completion Date and the commencement of the Defects Liability Period, regardless of whether or not the Receiving Agency has notified the GLE of such Defects.

(b) If the Receiving Agency notifies the GLE of a Defect within the Defects Liability Period, the GLE must, within a reasonable time as specified by the Receiving Agency, make good the Defect at no cost to the Receiving Agency.

(c) If the Receiving Agency notifies the GLE of any Defect in the Rectification Works within 52 weeks after the completion of the Rectification Works, the GLE must, within a reasonable time as specified by the Receiving Agency, make good the Defect in the Rectification Works at no cost to the Receiving Agency.

(d) If the GLE fails to make good a Defect within the reasonable time specified by the Receiving Agency (as referred to in clause 17(a) or clause 17(c) (as applicable)), the Receiving Agency may carry out the make good work and may recover the cost of carrying out such work as a debt due and payable from the GLE.

18 Condition of Transfer Land

18.1 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 18.1(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.

18.2 Inspection and determination in relation to Transfer Land

(a) As soon as reasonably practicable after receiving notice from the GLE under clause 18.1, 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 18.2(e) or clause 18.2(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 18.2(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 18.2(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 18.1 and 18.2(a) to 18.2(f) will apply in respect of the GLE’s notice under clause 18.2(f)(3) in the same way as if it were the original notice given under clause 18.1.

(g) If the Land Transfer Due Date has not yet passed when the MPA makes a determination referred to in clause 18.2(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 18.2(f) then:

1. the parties acknowledge and agree that a GAIC Default Event has occurred and clause 27 (other than clause 27.1) will apply; and

2. the GLE must continue to comply with clause 18.2(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 18.2 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 18.3(a).
18.3 Transfer of Transfer Land

(a) As soon as practicable after the MPA has determined under clause 18.2(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 18.3(a).

(c) Where the GLE complies with its obligations under clause 18.3(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 18.3(c).

(e) Where the GLE does not comply with its obligations under clause 18.3(a) until after the Land Transfer Due Date, then promptly upon receipt of a notice from the Receiving Agency under clause 18.3(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 18.3(e).

(f) The MPA must not unreasonably delay undertaking any inspection required under clause 18.2(a)(1) or making any determination required under clause 18.2(a)(2).

19 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 13.

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).
20 Substitute Cash Payment

Note to Proponents: The Substitute Cash Payment mechanism set out in this clause 20 is intended to allow the GLE, in certain circumstances, to ‘decouple’ its obligation to discharge the GAIC Liability from its contractual obligations to complete the Works in respect of a Stage, so that a failure to complete the Works by the Works Due Date will not result in a GAIC Default Event (provided that the Substitute Cash Payment is made on time). However, a Substitute Cash Payment will not relieve the GLE of its obligations to continue to perform the Works and achieve Completion in accordance with this agreement. Once the GLE has completed the Works in respect of which the Substitute Cash Payment was made, it will be entitled to apply to the SRO for a refund of the overpaid GAIC Liability. The Substitute Cash Payment mechanism is not intended to apply where the Works only comprise a single Stage.

20.1 Request by the GLE

(a) If, at any time in respect of a Stage, the GLE considers (acting reasonably) that it will not achieve Completion of the Works comprised in that Stage by the relevant Works Due Date, the GLE may submit a notice to the Minister requesting the Minister’s consent to a Substitute Cash Payment in respect of that Stage. For the avoidance of doubt, the GLE may not request a Substitute Cash Payment where the Works are not being delivered in accordance with a Staging Plan.

(b) The GLE’s notice under clause 20.1(a) must include sufficient detail to demonstrate that the GLE has satisfied the conditions precedent to approval of a Substitute Cash Payment, as set out in clause 20.2.

20.2 Conditions precedent to Substitute Cash Payment

It is a condition precedent to the Minister approving a request from the GLE for a Substitute Cash Payment that the GLE has:

(a) complied with its general obligations applying to the Works under clause 9;
(b) satisfied the warranties provided under clauses 11 and 12; and
(c) regularly, expeditiously and diligently progressed the Works.

20.3 Minister’s consent to Substitute Cash Payment

(a) Subject to:

(1) the GLE’s notice complying with the requirements of clause 20.1;
(2) satisfaction of the conditions precedent in clause 20.2; and
(3) where applicable, satisfaction of the requirements of clause 20.3(b),

the Minister must consider the GLE’s request for a Substitute Cash Payment and must determine, in its absolute discretion, whether to approve or refuse the proposed Substitute Cash Payment by notice in writing to the GLE.

(b) The parties acknowledge and agree that:

(1) where the amount of the proposed Substitute Cash Payment is equal to or exceeds $2 million, the Minister must obtain the approval of the Treasurer prior to approving the Substitute Cash Payment; and
(2) the Minister must consult with, and have regard to the views of, the Receiving Agency in respect of the proposed Substitute Cash Payment, provided that such consultation will not fetter the Minister’s discretion under clause 20.3(a).

(c) The Minister may approve a Substitute Cash Payment subject to any conditions the Minister considers fit.

20.4 Approval of Substitute Cash Payment

If the Minister approves a Substitute Cash Payment under clause 20.3(a):

(a) the Minister must direct the GLE in writing to implement the Substitute Cash Payment (subject to satisfaction of any conditions imposed by the Minister under clause 20.3(c));

(b) the GLE must:

(1) satisfy any conditions imposed by the Minister under clause 20.3(c);

(2) pay the full amount of the GAIC Liability in respect of the relevant Stage prior to the Works Due Date for such payment under the Staging Plan; and

(3) notify the Government Entities that the Substitute Cash Payment has been made in accordance with clause 20 of this Agreement; and

(c) where the GLE has complied with clause 20.4(b), notwithstanding the fact that the Works for that Stage may not be completed by the relevant Works Due Date:

(1) the GLE will be deemed to have satisfied its obligations in respect of the GAIC Liability for that Stage under the Staging Plan; and

(2) the GLE will be entitled to apply in accordance with section 201SX of the Act for a Certificate of Release in respect of the relevant part of the GAIC Liability to which the Substitute Cash Payment relates.

20.5 Completion of Works

Notwithstanding the approval and implementation of a Substitute Cash Payment in accordance with clause 20.4 the GLE will remain liable for its obligations under this agreement, including to achieve Completion of the Works.

21 Land boundaries

21.1 Plans of subdivision

(a) If the Transfer Land and the Works Land are not in separate lots with their own certificates of title, then prior to the Land Transfer Due Date (in the case of the Transfer Land) and the Works Transfer Due Date (in the case of the Works Land), 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.
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 (in the case of the Transfer Land) and the Works Transfer Due Date (in the case of the Works Land); and

3. notify the Receiving Agency of the registration of the plans of subdivision as soon as practicable after registration.

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.

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.

21.2 Adjustment of boundaries

At any time prior to the Works Transfer Due Date (in the case of the Works Land) or the Land Transfer Due Date (in the case of the Transfer Land), any party (a Proposing Party) may propose an adjustment to the boundaries of the Works Land or the Transfer Land (Boundary Adjustment) by giving written notice of the proposed Boundary Adjustment to the other parties (each an Approving Party).

Written notice under clause 21.2(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 Works Land or Transfer Land affected by the Boundary Adjustment (the Boundary Adjustment Percentage); and

3. reasons for the proposed Boundary Adjustment.

21.3 Minor Boundary Adjustments

This clause 21.3 applies where the proposed Boundary Adjustment would result in a Boundary Adjustment Percentage of less than 5% (a Minor Boundary Adjustment).

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 Works Land or Value of Transfer Land (whichever is relevant) is to be adjusted by deducting or adding the New Area Value to the Value of Works Land or Value of Transfer Land.

(d) The New Area Value is calculated as follows:

\[ \text{New Area Value} = Y \times V, \]

where:

- \( Y \) is the Boundary Adjustment Area; and
- \( V \) is the value attributed to each square metre of the affected Works Land or Transfer Land, calculated as follows:

\[ V = \frac{A}{B} \]

where:

- \( A \) is the Value of Works Land or Value of Transfer Land; and
- \( B \) is the existing number of square metres of the affected Works Land or Transfer Land.

(e) To avoid doubt, where a Minor Boundary Adjustment is approved under this clause 21.3, the GAIC Credit determined under clause 19 and Schedule 13 will be calculated on the basis of the Value of Works Land or Value of Transfer Land as adjusted under clause 21.3(c).

21.4 Major Boundary Adjustments

(a) This clause 21.4 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 21.2(a) the Proposing Party’s assessment of the impact of the proposed Major Boundary Adjustment on that part of the Value of Works Land or 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 Works Land or Value of Transfer Land (whichever is relevant) is to be adjusted in accordance with the Valuation Impact; and
(2) to avoid doubt, the GAIC Credit determined under clause 19 and Schedule 13 will be calculated on the basis of the Value of Works Land or Value of Transfer Land as adjusted under clause 21.4(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 35. The parties acknowledge and agree that:

(1) the Value of Works Land or the Value of Transfer Land (whichever is relevant) will be adjusted in accordance with the Valuation Impact as determined pursuant to clause 35; and

(2) to avoid doubt, the GAIC Credit determined under clause 19 and Schedule 13 will be calculated on the basis of the Value of Works Land or Value of Transfer Land as adjusted under clause 21.4(e)(1).

21.5 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 Works Land or Value of Transfer Land (whichever is relevant) under clause 21.3(c), clause 21.4(d)(1) or clause 21.4(e)(1), whichever applies.

(b) If the Approving Parties approve a proposed Boundary Adjustment under clause 21.3(b) or clause 21.4(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 or the Works Land without the prior written consent of the other parties.

22 Intellectual property and Moral Rights

22.1 Intellectual Property

(a) For the purposes of this clause 22:

(1) “GLE Intellectual Property Rights” means all Intellectual Property Rights in the Design Documentation, the as-built documentation, project plans, operating manuals and any other documents produced or developed by or on behalf of the GLE in connection with the Works, including Intellectual Property Rights existing at the date of the agreement and those which come into existence after the date of the agreement; and

(2) “Intellectual Property Rights” means all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields and all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of
the foregoing, whether created before, on or after the date of this agreement and whether existing in Australia or otherwise.

(b) The GLE warrants to each of the Minister and the Receiving Agency that:

(1) it owns, or has the authority to grant the rights granted under this clause 22 in respect of, the GLE Intellectual Property Rights; and

(2) use or exercise of those rights by the Minister, the Receiving Agency or any person nominated or authorised by the Minister or the Receiving Agency (each a Licensed Person) will not give rise to any liability on the part of the Licensed Person.

(c) The GLE hereby grants to the Minister and the Receiving Agency a world-wide, irrevocable, non-exclusive, perpetual, transferable, royalty-free licence (including the right of sub-licence) to use and exercise all or any of the GLE Intellectual Property Rights for the purposes of:

(1) exercising their respective rights under this agreement; and

(2) in the case of the Receiving Agency only, the operation, maintenance, repair and alteration of the Works on and from the Works and Works Land Transfer Date.

22.2 Moral Rights

In relation to any documents or materials produced or developed by or on behalf of the GLE in connection with the Works in which the GLE or a Subcontractor has a moral right, the GLE consents, and will procure the consent of any Subcontractor, to the Receiving Agency and the Minister doing or omitting to do anything that, but for this consent, would constitute an infringement of those moral rights, including reproducing, publishing, performing, transmitting, exhibiting, adapting, altering or in any way changing or using the document or material in which the moral right subsists:

(a) with or without attribution of authorship;

(b) with or without any other materials comprising copyright;

(c) with or without any other text, data, sounds or images;

(d) with no title, the same title or any other title;

(e) in any medium or context,

in any way the Receiving Agency or the Minister sees fit.

23 Property damage

23.1 Reinstatement

(a) The GLE bears the risk of loss or damage to the Works, the Works Land and the Transfer Land during the Risk Period.

(b) Subject to clause 23.1(c), the GLE must, at its own cost, promptly make good any loss or damage which occurs to any part of the Works, the Works Land and the Transfer Land during the Risk Period.

(c) To the extent that any loss or damage referred to in clause 23.1(b) is caused or contributed to by a negligent act or omission of a Government Entity, that
Government Entity will reimburse the GLE for the cost of the deductible under the relevant insurance policy.

23.2 Damage to third party property

(a) In performing the Works, the GLE must avoid interference with, or obstruction or damage to, any property in the vicinity of the Works and the Works Land.

(b) Where any loss of or damage to real or personal property of third parties occurs which arises out of, or in connection with:

(1) any failure by the GLE to comply with its obligations under this agreement; or

(2) the Works,

the GLE must promptly repair any such loss or damage, or if the affected person agrees, reasonably compensate the affected person for that loss or damage.

24 Insurance

(a) The GLE must effect and maintain insurance in relation to the matters, and for the nominated amounts, parties and periods, specified in Schedule 6, and must forward a copy of the insurance policies to the Minister and the Receiving Agency if requested to do so.

(b) The GLE must effect and maintain (or cause to be effected and maintained) the insurances referred to in clause 24(a):

(1) with insurers:

(A) that are on the list of pre-approved insurers set out in Schedule 6; or

(B) which are listed on the Australian Prudential Regulating Authority register of authorised insurers, and approved by the Minister and the Receiving Agency;

(2) on terms and conditions agreed by the Minister and the Receiving Agency (or, failing agreement, on terms reasonably required by the Receiving Agency), without limitations, exclusions or terms and conditions that are unduly onerous to the insured and not commonly provided for in insurance contracts of a similar nature;

(3) on terms and conditions necessary to protect and preserve the ability of the GLE, the Minister, and the Receiving Agency (as relevant) and/or any other persons whose interests are insured under the policies or to whom their benefit extends, to make good that benefit; and

(4) on terms and conditions which require the insurer to notify the Minister and the Receiving Agency in writing if a notice of cancellation in respect of the policy is given to the GLE.

(c) The GLE must provide to the Minister and the Receiving Agency copies of the certificates of currency evidencing the GLE’s compliance with its obligations under this clause 24.
(d) The GLE must:

(1) punctually pay all premiums in respect of the insurance policies referred to in clause 24(a);

(2) not materially alter any insurance policy referred to in clause 24(a) throughout the term of this agreement, except with the prior written approval of the Minister and the Receiving Agency;

(3) not cancel or allow to lapse any insurance policy referred to in clause 24(a), except with the prior written approval of the Minister and the Receiving Agency; and

(4) comply at all times with the terms of each insurance policy referred to in clause 24(a).

(e) The GLE must effect and maintain such other insurances as are reasonably required by the Minister and the Receiving Agency from time to time throughout the term of this agreement, having regard to, among other things, the insurances that a prudent owner and contractor would effect and maintain for works similar to the Works. Clauses 24(b) to 24(d) will apply to insurances effected in accordance with this clause 24(e).

25 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 the Works Land and determined that it is suitable for transfer to the Receiving Agency under this agreement, and for the purposes contemplated by this agreement;

(2) that the GLE Data is accurate and complete in all material respects;

(3) that it has relied on its own investigations and enquiries in relation to the accuracy, completeness and suitability of the Minister/Receiving Agency Data; and

(4) 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 and the Works Land so as to enable it to fully comply with its obligations under clause 18.3(a) (with respect to the Transfer Land) and clause 16.7(a)(2) (with respect to the Works Land.

(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.
26 Indemnities

26.1 General indemnities

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:

(a) the Works or any Defect in the Works;
(b) the Works Land or the Transfer Land;
(c) any GLE Data;
(d) any breach or repudiation of this agreement or any other WIK Document by the GLE;
(e) whether directly or indirectly, a Claim by a third party that GLE Intellectual Property Rights licensed to the Minister or the Receiving Agency under or in accordance with clause 22, or any use of that GLE Intellectual Property Rights by the Minister or the Receiving Agency or any sub-licensee of the Minister or the Receiving Agency in accordance with this agreement and the terms of each relevant licence so provided, infringes any Intellectual Property Rights or other rights of a third party;
(f) the death of, or injury to, any person, or the loss of, or damage to, any property (including, loss of use of property which has not been specifically damaged or destroyed) and reasonably foreseeable economic loss incurred directly as a result of such property damage, to the extent it is:

(1) caused or contributed to by:

(A) the use or occupation of the Works Land by the GLE or any Subcontractor; or
(B) any circumstance, condition or activity or other cause on the Works Land which arises from the use or occupation of the Works Land by the GLE or any Subcontractor; or

(2) sustained in connection with or incidental to the performance of the Works by the GLE or any Subcontractor and notwithstanding that such death, injury, loss or damage has resulted from any act, failure to act or other thing which the GLE is authorised or obliged to do under the WIK Documents or that any time, waiver or other indulgence has been given to the GLE in respect of any of its obligations under any WIK Document.

26.2 Reduction of indemnity

The liability of the GLE to a Government Entity for any Claim, liability or Loss under the indemnities provided in clause 26.1 will be reduced to the extent that any such Claim, liability or Loss is a direct consequence of:

(a) a fraudulent, negligent or wilful act or omission of that Government Entity;
(b) any breach by that Government Entity of a WIK Document to which it is a party; or
(c) a Force Majeure Event.
27 Default

27.1 Events of Default

(a) Written notice to the GLE under clause 27.1(b) (a Default Notice) may be given:

(1) by the Receiving Agency if:

(A) the GLE defaults in the due observance and performance of any obligation under this agreement, other than where the default constitutes a GAIC Default Event;

(B) a representation or warranty given by the GLE under a WIK Document is found to be materially incorrect or misleading; or

(C) an Insolvency Event occurs in relation to a Material Subcontractor, whether or not the GLE is then in breach of this agreement; or

Note to Proponents: where applicable, this Event of Default will be extended to include an Insolvency Event in respect of the parent company guarantor of each Material Subcontractor.

(2) by the MPA, if a GAIC Default Event occurs, each of these events being an Event of Default.

(b) A Default Notice must:

(1) state that it is a Default Notice under this clause 27.1(b);

(2) give reasonable details of the nature of the Event of Default; and

(3) specify the reasonable period within which the GLE must remedy the Event of Default (or overcome its effects) (the Cure Period).

(c) The Minister may request the Receiving Agency to issue a Default Notice to the GLE under clause 27.1(b) (other than in respect of a GAIC Default Event), in which case the Receiving Agency must consult with the Minister in respect of the Minister’s request.

(d) As soon as practicable after receiving a Default Notice, the GLE must give the Receiving Agency a program to remedy the Event of Default (or overcome its effects) within the Cure Period. The program must specify, where applicable:

(1) steps to address the underlying cause of the Event of Default; and

(2) steps to avoid similar Events of Default in the future.

(e) The GLE and the Receiving Agency must consult in good faith to develop and settle the remedy program. If the GLE and the Receiving Agency cannot reach agreement in relation to the remedy program, either party may refer the matter for dispute resolution in accordance with clause 35.

(f) Following agreement or determination of the remedy program, the GLE must implement and comply with the remedy program and remedy the Event of Default within the Cure Period.

(g) If the GLE considers, in good faith, that the Cure Period specified in a Default Notice is not reasonable, it must immediately notify the Receiving Agency of
that belief, the reasons for that belief and the time which it believes is reasonably required to remedy the Event of Default (or overcome its effects).

(h) If the GLE gives a notice under clause 27.1(g) and the GLE is and has been diligently pursuing the remediation of the Event of Default (or the overcoming of its effects), then the Receiving Agency may (with the consent of the MPA in the case of an Event of Default which constitutes a GAIC Default Event) extend the Cure Period by such period as the Receiving Agency determines is reasonably required to enable the GLE to remedy the Event of Default (or overcome its effects), as notified to the GLE.

(i) The Receiving Agency must inspect and determine whether the GLE has complied with the remedy program and notify the MPA once it believes the Event of Default has been cured. The MPA may conduct any inspections or investigations it (acting reasonably) considers may be necessary to verify that the Event of Default has been cured, and the GLE has fully discharged all of its obligations under and in accordance with this agreement.

27.2 GAIC Default Event

(a) Each of the following is a GAIC Default Event by the GLE:

1. a failure to achieve Completion by the Works Due Date;
2. a failure to ensure that the Works Land is in the Transfer Condition by the Works Transfer Due Date;
3. a failure to ensure that the Transfer Land is in the Transfer Condition by the Land Transfer Due Date;
4. a failure to comply with its obligations under clause 18.3(a) in respect of the Transfer Land by the Land Transfer Due Date;
5. a failure to comply with its obligations under clause 16.7(a) in respect of the Works Land by the Works Transfer Due Date; and
6. a failure to comply with its obligations in respect of Substitute Cash Payments under clause 20.4, including a failure to satisfy any conditions imposed by the Minister under clause 20.3(c), other than where the Minister has approved a Substitute Cash Payment and this has been satisfied by the GLE in accordance with clause 20.4.

(b) The parties acknowledge and agree that the MPA’s determinations under clauses 16.4(c)(2), 16.6(h)(1), 16.7(e), 18.2(h)(1) and 18.3(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).

27.3 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 complete the Works and transfer the Works Land and any 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) Without limiting clause 27.1, 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 19 and Schedule 13.

(b) Notwithstanding clause 27.3(a), the GLE must continue to perform its obligations under and in accordance with this agreement.

28 Termination

28.1 Default termination

(a) If:

(1) the GLE:

(A) fails to comply with any of its obligations under clauses 16.6(h)(2) or 18.2(h)(2); or

(B) in respect of an Event of Default, fails (at any time) to diligently pursue the remediation of the Event of Default (or the overcoming of its effects); or

(C) fails to remedy (or overcome the effects of) an Event of Default within the Cure Period (as extended, if applicable, in accordance with clause 27.1(h)); and

(2) the Works Due Date, the Works Transfer Due Date and the Land Transfer Due Date have all passed; and

(3) the MPA has issued any Notification to the Commissioner, the Receiving Agency may, with the written consent of the Minister, 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 28.1(a) within 20 Business Days after receiving notice under clause 28.1(a), the Receiving Agency may, with the written consent of the Minister, terminate the agreement by notice in writing to the GLE. The agreement will be terminated effective from the date of the Receiving Agency’s notice.

(c) The Minister may request the Receiving Agency to give notice to the GLE under either clause 28.1(a) or clause 28.1(b), in which case the Receiving Agency must consult with the Minister in respect of the Minister’s request.

28.2 Immediate termination

(a) If:
29 Step-in

29.1 Right of Step-In

(a) For the purposes of this clause 29, each of the Minister and the Receiving Agency is a ‘Step-In Party’.

(b) If:

(1) an Incident is subsisting;

(2) a Step-In Party is required by Law to act to discharge a statutory power or duty;

(3) an Event of Default occurs; or

(4) an Immediate Termination Event occurs,

the Step-In Party may elect to:

(1) physical construction of the Works (or any Stage thereof) is not substantially commenced within [insert period] months after the Commencement Date or (where applicable) the commencement date for the relevant Stage as referred to in the Staging Plan;

(2) the GLE displays an intention to wholly or substantially abandon the Works or does permanently abandon the Works; or

(3) an Insolvency Event occurs in relation to the GLE, whether or not the GLE is then in breach of this agreement,

each of which is an Immediate Termination Event, the Receiving Agency may, subject to clause 28.2(b), give notice to the GLE that this agreement is terminated effective from the date of the Receiving Agency’s notice and without granting the GLE any cure period. The Minister may request the Receiving Agency to give notice under this clause 28.2(a), in which case the Receiving Agency must consult with the Minister in respect of the Minister’s request.

28.3 Payments on termination

Any termination of this agreement by the Receiving Agency under clause 28.1 or clause 28.2(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, including any costs that the Receiving Agency or its nominee will incur to bring the Works to Completion.
(5) temporarily assume total or partial management and control of the whole or any part of the Works;
(6) access the Works Land or the Transfer Land (as applicable); and
(7) take such other steps as are necessary in the reasonable opinion of the Step-In Party to perform the Works and minimise the effect of the Incident, the Event of Default or the Immediate Termination Event (as applicable).

29.2 Suspension of GLE’s obligations

Where a Step-In Party has exercised its step-in rights under clause 29.1, the GLE’s obligations under this agreement will be suspended for the affected period but only to the extent necessary to enable the Step-In Party to exercise those step-in rights.

29.3 Payments

Any Loss suffered or incurred by a Step-In Party arising out of or in connection with the exercise by the Step-In Party of its step-in rights under clause 29.1(b)(3) or clause 29.1(b)(4) will be a debt due and payable from the GLE to the Step-In Party.

29.4 GLE to assist Step-In Party

The GLE must provide each Step-In Party with all necessary assistance in a timely manner to enable it to exercise its step-in rights under clause 29.1 effectively and expeditiously.

29.5 Acknowledgments

The GLE acknowledges and agrees that:
(a) neither Step-In Party is obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in respect of which the Step-In Party exercises its step-in rights under clause 29.1;
(b) neither Step-In Party will have any liability to the GLE, and the GLE will not be entitled to make any Claim against a Step-In Party, arising out of or in connection with the exercise by the Step-In Party of its rights under clause 29.1 except where:
   (1) the Step-In Party has acted fraudulently or in bad faith; or
   (2) in the course of exercising its right under clause 29.1(b)(1) or clause 29.1(b)(2), the Step-In Party has acted with gross negligence;
(c) the exercise (or non-exercise) by a Step-In Party of its step-in rights will not limit any other right of the Step-In Party whether under this agreement or otherwise.

29.6 Power of attorney

The GLE irrevocably:
(a) appoints each Step-In Party, and the Step-In Party’s nominees from time to time, jointly and severally with respect to that Step-In Party, as the GLE’s attorney with full power and authority to exercise the Step-In Party’s rights under this clause 29; and
(b) agrees to ratify and confirm whatever action is taken by the attorney appointed by the GLE.

29.7 Cessation of step-in rights

(a) A Step-In Party may, at any time, cease to exercise its rights under this clause 29 on 5 Business Days' notice in writing to the GLE.

(b) Subject to clause 29.7(a), a Step-In Party must cease to exercise its rights under this clause 29 where the Step-In Party has exercised its rights under:

(1) clause 29.1(b)(1) or clause 29.1(b)(2) and the relevant event is remedied or ceases; or
(2) clause 29.1(b)(3) or clause 29.1(b)(4) and the Event of Default or Immediate Termination Event has been cured.

(c) Where a Step-In Party has ceased to exercise its step-in rights under this clause 29, the GLE must immediately recommence performing any obligations suspended due to the operation of clause 29.2.

30 Ending of agreement

30.1 Completion of obligations

(a) Unless this agreement is terminated under clause 28.1(b) or clause 28.2 or otherwise at law, this agreement will end on the later to occur of:

(1) the date on which the GLE has fully discharged all of its obligations under and in accordance with this agreement; and
(2) the date on which the Defects Liability Period expires.

Note to Proponents: This clause 30.1(a) will be amended to remove sub-paragraph (2) if the GLE’s obligations with respect to Defect rectification during the Defects Liability Period are removed from this agreement and instead included in a transition agreement between the GLE and the Receiving Agency. Please refer to the note to clause 17 for further detail as to when this may occur.

(b) To avoid doubt, where the Works are to be delivered by the GLE in accordance with a Staging Plan, the Defects Liability Period referred to in clause 30.1(a)(2) will be the Defects Liability Period applicable to the last Stage of Works to achieve Completion.

30.2 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 30.2(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 30.2(b), the MPA must undertake a joint inspection of the Works, the Works Land and the Transfer Land (including an assessment of the environmental condition of the Works Land and 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) Completion of all Stages of Works has been achieved;
(2) the Works Land is in the Transfer Condition;
(3) the Transfer Land is in the Transfer Condition;
(4) the GLE has complied with its obligations under clause 16.7(a) (in respect of the Works Land) and clause 18.3(a) (in respect of the Transfer Land); and
(5) where applicable, the Value of Partially Completed Works.

(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 30.2(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 30.2(c), the GLE must promptly furnish that information upon being requested to do so.

(f) If the MPA determines under clause 30.2(c) that any or all of the following apply:

(1) the Works Land is not in the Transfer Condition;
(2) the Transfer Land is not in the Transfer Condition; or
(3) the GLE has not complied with its obligations under clause 16.7(a) (in respect of the Works Land) or clause 18.3(a) (in respect of the Transfer Land),

then:

(4) the parties acknowledge and agree that the MPA’s determination is not a determination under section 201SLL of the Act; and
(5) the GLE must expeditiously and diligently progress all steps necessary to ensure that none of the matters referred to in clauses 30.2(f)(1) to 30.2(f)(3) 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 Works Land is in the Transfer Condition;
(2) the Transfer Land is in the Transfer Condition; and
the GLE has complied with its obligations under clause 16.7(a) (in respect of the Works Land) and clause 18.3(a) (in respect of the Transfer Land).

(h) Within 5 Business Days after the MPA makes any determination under section 201SLL of the Act, as contemplated by clause 30.2(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 30.2(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 19 and Schedule 13. 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).

### 31 Effect of termination or ending of this agreement

#### 31.1 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.

#### 31.2 Handover

Upon the termination or ending of this agreement:

(a) if it has not already done so, and if requested to do so by the Receiving Agency, the GLE must handover the Works to the Receiving Agency or its nominee and comply with its obligations under clause 16.7(a) (in respect of the Works Land) and clause 18.3(a) (in respect of the Transfer Land);

(b) the GLE must deliver to the Receiving Agency or its nominee all manuals, records, plans and other information under the control of the GLE which are relevant to the design, construction, operation, maintenance or repair of the Works;

(c) without limiting clause 22, the GLE must grant or procure the grant to the Receiving Agency or its nominee of such GLE Intellectual Property Rights as will enable the Receiving Agency or its nominee to be in a position to operate, maintain and repair the Works; and

(d) the GLE must pay to the Receiving Agency or its nominee any insurance proceeds from any insurance required to be effected and maintained under clause 24 for the reinstatement or replacement of the Works to the extent not already reinstated or replaced, and assign to the Receiving Agency any rights available to the GLE under those insurances.

#### 31.3 Completion

(a) if Completion has not been achieved, then in addition to the requirements set out in clause 31.2, the Receiving Agency may require the GLE to do any or all of the following:

(1) procure a novation to the Receiving Agency or its nominee of Material Subcontract and any other relevant Subcontract;

(2) give and require its Subcontractors to give to the Receiving Agency or its nominee possession of the plant, equipment, materials, temporary
work and tools being used in the Works and other things on or in the vicinity of the Works Land, in each case which are owned by the GLE or its Subcontractors and are reasonably required to facilitate completion of the Works;

(3) deliver, and require its Subcontractors to deliver to the Receiving Agency or its nominee true copies of the books of account and all other records relating to the Works; and

(4) do all other acts and things to enable the Receiving Agency or its nominee to undertake the Works.

(b) If the Receiving Agency or its nominee takes possession of the plant, equipment, materials, temporary work and tools in accordance with clause 31.3(a)(2), then the Receiving Agency must use reasonable endeavours to:

(1) procure the proper use and maintenance of them; and

(2) when the equivalent of Completion is achieved, procure the handover to the GLE of that plant, equipment, materials, temporary works and tools which have not been consumed or incorporated in the Works.

31.4 Assistance in securing continuity

The GLE must, before the expected end of the term of this agreement, do all things reasonably required by the Receiving Agency to ensure the smooth and orderly transmission of responsibility for the Works to the Receiving Agency or its nominee including:

(a) meeting with the Receiving Agency and such other persons notified by the Receiving Agency to discuss the operation, maintenance and repair of the Works;

(b) providing access to its operations for managers and supervisors of the Receiving Agency or its nominee for the purpose of familiarisation; and

(c) providing sufficient information to the Receiving Agency or its nominee to determine the status and condition of the Works and any works programs in place at the time.

31.5 Power of attorney

The GLE irrevocably appoints, with effect from the end of the term of this agreement, the Receiving Agency and such persons as are from time to time nominated by the Receiving Agency, jointly and severally, as its attorney with full power and authority to execute any agreement or novation contemplated by clause 31.3.

31.6 Survival of obligations

Without limiting clause 40.6(a), clauses 1.5, 1.7, 1.8, 4.1, 4.4, 10, 22.1, 23, 24, 26.1, 28.3, 30.2, 31, 35, 36, 37, 38, 39 and 40 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.
Representations and warranties

(a) In addition to, and without limiting, the warranties given under clauses 11, 12, 22.1 and 25, 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.
The GLE’s representations and warranties given under this agreement are unaffected by any Variation.

33 Assignment

33.1 Assignment by the GLE

(a) Subject to clauses 33.1(b) and 34, 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 34, 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 33.1 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.

33.2 Change in control of the GLE

(a) Subject to clause 33.2(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 33.2(a) does not apply where the GLE is a company listed on the Australian Securities Exchange.

33.3 Assignment by the Receiving Agency

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

33.4 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.
Restriction on dealing with land

(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 and 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.

34 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, the Works Land or the GAIC Land, unless such an action is required to give effect to this agreement.

(b) The GLE agrees that it cannot subdivide, or permit the subdivision of, the Works Land in a manner that would prevent the Works from being completed in accordance with this agreement.

(c) 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;

(2) employs or engages, or will employ or engage, persons or subcontractors having the appropriate qualifications, experience and technical competence to perform the GLE's obligations under this agreement; and

(3) 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.

(d) As soon as reasonably practicable after receiving the information required by clause 34(c), 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 had the GAIC Land continued to be owned by the GLE.

(e) Within 15 Business Days of the Minister and the Receiving Agency meeting in accordance with clause 34(d), 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.

(f) 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 34(e), with effect from the date on which the transfer of the GAIC Land takes effect.

(g) If:

(1) the Minister and the Receiving Agency consider (acting reasonably) that the proposed transferee does not satisfy the requirements set out in clause 34(c); or

(2) the proposed transferee does not agree to enter into a deed of novation in accordance with clause 34(f),

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

35 Disputes

35.1 Dispute

(a) Subject to clause 35.1(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 Works have achieved Completion;
   
   (B) whether the Works Land is in the Transfer Condition;
   
   (C) whether the Transfer Land is in the Transfer Condition;
   
   (D) the items of work (other than Minor Defects) that must be performed for the Works to achieve Completion;
   
   (E) the Works Completion Tasks, Transfer Land Rectification Tasks or the Works Land Rectification Tasks;
   
   (F) the Value of Partially Completed Works;
   
   (G) whether the GLE has complied with its obligations under clause 16.7(a) (in respect of the Works Land) and clause 18.3(a) (in respect of the Transfer Land);
   
   (H) whether a GAIC Default Event has occurred;
   
   (I) whether an Event of Default involving a GAIC Default Event has been remedied or its effects overcome; or
   
   (J) the amount of a GAIC Credit determined under clause 19 and Schedule 13;

(2) the Minister’s decision to approve or reject an amended Staging Plan;

(3) the Minister’s decision to approve or reject the implementation of a proposed Receiving Agency Variation that would result in a reduction in the Value of Works and the corresponding GAIC Credit;

(4) the Minister’s exercise or failure to exercise the Minister’s discretion to grant an extension of time under clause 15.11;
35.2 Procedure for resolving disputes

Unless a party has complied with the procedure to resolve a dispute by negotiation of the dispute under clauses 35.3 and 35.4, that party may not commence the dispute resolution proceedings under clause 35.5.

35.3 Appointment of negotiators

(a) If a Dispute Notice is given under clause 35.1(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.

35.4 Executive negotiation

If a Dispute Notice is given under clause 35.1(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 35.5.

35.5 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 35.4, 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) Notwithstanding any other provision of this clause 35.5, the parties agree to use the independent Experts set out in Schedule 14 for the types of disputes listed in that schedule.

(d) 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.

(e) The fees of the independent Expert (and any other consultants he or she may engage) are payable as directed by the independent Expert.

(f) 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.

(g) 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.

35.6 Valuer’s Conference

(a) Where a Dispute Notice relates to the valuation of Works Land or Transfer Land for the purposes of a Major Boundary Adjustment under clause 21.4 and the parties do not settle the dispute within 20 Business Days after the dispute is referred to Executive Negotiators pursuant to clause 35.4, any party may notify the other parties that it requires the dispute to be determined by a Valuer’s Conference pursuant to this clause 35.6.

(b) Within 15 Business Days of notice under clause 35.6(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 Works Land or 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 Works Land or 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 Works Land or Transfer Land certified by the Valuer-General in the report provided under clause 35.6(d) will be final and binding for the purposes of clause 21.

35.7 Bar on commencement of proceedings

(a) Subject to clause 35.7(b), where this clause 35 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 35 prejudices a party’s right to institute proceedings to seek injunctive or urgent declaratory relief in respect of a dispute under this clause 35 or any other matter arising under this agreement.

35.8 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 35.5.

35.9 Continuity

Despite the existence of a dispute, each party must continue to perform its obligations under this agreement (including, in the case of the GLE, continuing to carry out the Works), unless otherwise agreed.

36 Notices

36.1 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 15 (or any alternative details nominated to the sending party by Notice).
36.2 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.

<table>
<thead>
<tr>
<th>Method of giving Notice</th>
<th>When Notice is regarded as given and received</th>
</tr>
</thead>
<tbody>
<tr>
<td>By hand to the nominated address</td>
<td>When delivered to the nominated address</td>
</tr>
<tr>
<td>By pre-paid post to the nominated address</td>
<td>At 9.00am (addressee’s time) on the second Business Day after the date of posting</td>
</tr>
<tr>
<td>By fax to the nominated fax number</td>
<td>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.</td>
</tr>
<tr>
<td>By email to the nominated email address</td>
<td>When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf.</td>
</tr>
</tbody>
</table>

37 Costs

Unless otherwise agreed in writing, the GLE must pay:

(a) 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; and

(b) to the MPA, reasonable costs incurred by the MPA in determining the Value of Partially Completed Works.

38 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 38(b). To avoid doubt, this clause 38 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) Subject to clause 10.6, the amount specified in clause 38(b) will be a party’s sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

(d) This clause 38 does not apply to a failure to pay an amount to which clause 13.10(e) applies.

39 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 39 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.

40 General

40.1 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.

40.2 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.

40.3 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 40.3(a) does not apply where enforcement of the provision would materially affect the nature or effect of the parties’ obligations under this agreement.

40.4 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, the Transfer Land and the Works Land;

(b) replace the registration of this agreement with the registration of an amended agreement on the GAIC Land, the Transfer Land and the Works 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, the Transfer Land and the Works Land in accordance with section 201SLH(5)(b) of the Act, if this agreement is terminated in accordance with clause 28, ended in accordance with clause 30 or otherwise discharged as to part of the GAIC Land, the Transfer Land and the Works Land.

40.5 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.
40.6 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.

40.7 Commencement

This agreement is effective from the Commencement Date.

40.8 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 40.8 are set out below.

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>conduct</td>
<td>includes delay in the exercise of a right.</td>
</tr>
<tr>
<td>right</td>
<td>any right arising under or in connection with this agreement and includes the right to rely on this clause.</td>
</tr>
</tbody>
</table>
| waiver  | includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

40.9 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.

40.10 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.

40.11 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.
40.12 No reliance

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

40.13 Counterparts

This agreement may be executed in any number of counterparts.

40.14 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.

40.15 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.

40.16 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.

40.17 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.

40.18 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.
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