

Early arrangement

Combination of a Financial Settlement Offset and Proponent-Driven Offset

Between the **Administering Agency**, the **Entity** and the **Offset Landowner**

Instructions to the Entity:

1. This agreement is for a combination of a **Proponent-Driven Offset** and a **Financial Settlement Offset** for an **Early Arrangement**.
2. Electronically complete 'Schedule 1 – Agreement details' on pages 1 and 2 of this agreement.
3. Print three copies of this agreement. If the **Entity** and/or **Offset Landowner** is more than one entity, print additional copies so that there are enough copies to distribute to each entity. For example, if the **Offset Landowner** consists of two entities, print four copies of the agreement.
4. Sign each copy on the Signing Pages on page 18 (and page 19 if there is more than one entity who is the **Entity**) in accordance with the Instructions to the **Entity** on pages 18 and 19.
5. Liaise with the **Offset Landowner** to have the **Offset Landowner** sign each copy on page 20 (and page 21 if there is more than one entity who is the **Offset Landowner**) in accordance with the Instructions to the **Offset Landowner** on pages 20 and 21.
6. Deliver all the signed copies of this agreement to the officer named at the top of the **Notice of Decision**.

Schedule 1 – Agreement details *(for the Entity to complete)*

Item 1 **Early Arrangement
Application Number**

Insert the environmental offset application number shown on the **Notice of Agreement**.

Item 2 **Entity**

Insert the name/s of the entity/entities. This is the entity that made the **Application** by way of being described in the 'contact details' panel of the **Application**. If the Entity comprises of more than one entity, each entity must be listed.

Item 3 **Entity's Notice
Details**

Insert the notice details of the **Entity/Entities**. For a corporation, this will be the corporation's registered office. For an individual, this will be the individual's residential street address. If the **Entity** comprises of more than one entity, each **Entity's** notice details must be listed.

Item 4 **Notice of Decision**

Insert the date of the notice of agreement given by the **Administering Agency** for the **Early Arrangement Application Number**.

Item 5 **Offset Landowner**

Insert the name/s of the offset landowner/s. This is the entity/entities that own the **Offset Land**. If the **Offset Landowner** comprises of more than one entity, each entity must be listed.

Item 6 **Offset Landowner's
Notice Details**

Insert the notice details of the **Offset Landowner/s**. For a corporation, this will be the corporation's registered office. For an individual, this will be the individual's residential street address. If the **Offset Landowner** comprises of more than one entity, each **Offset Landowner's** notice details must be listed.

Early arrangement

Details	5
Agreed terms	6
1. Defined terms & interpretation	6
1.1 Defined terms	6
1.2 Interpretation	8
1.3 Other expressions	9
2. Acknowledgments	9
2.1 Application of the EO Act	9
2.2 Authority attaching to the Land	9
2.3 Commencement	9
2.4 Future Offset Conditions	9
3. Obligations of the parties	10
3.1 Entity's obligations	10
3.2 Administering Agency's obligations	10
3.3 Offset Landowner's obligations	10
4. Delivery of the Proponent-Driven Offset	10
5. Consent to using Offset Land for the Agreed Proponent-Driven Offset	10
6. Dealing with advanced offsets	11
7. When obligation to deliver the Agreed Proponent-Driven Offset ceases	11
8. Payment of the Financial Settlement Offset Amount	11
9. Recalculation of the Financial Settlement Offset Amount	12
10. Assignment by Entity and novation of agreement	13
10.1 Restriction on assignment	13
10.2 Restriction on the right to refuse	13
10.3 Conditions of the consent	13

10.4	Entity to remain liable	13
11.	Assignment by Offset Landowner and novation of agreement	13
11.1	Restriction on the right to sell the Offset Land	13
11.2	Restriction on assignment	13
11.3	Restriction on the right to refuse	13
11.4	Conditions of the consent	14
12.	Default	14
12.1	Rights of the Administering Agency on default	14
13.	Mediation	14
13.1	Negotiation and good faith	14
13.2	Parties to mediate	14
14.	Service	14
14.1	Service by prepaid post	14
15.	Miscellaneous	14
15.1	Payment of costs	14
15.2	Time	14
15.3	Joint and severable liability	15
15.4	Waiver	15
15.5	Laches and delay	15
15.6	Severance	15
15.7	Warranty of authority	15
15.8	Counterparts	15
15.9	Further assurances	15
15.10	Force Majeure	15
15.11	Amendment of agreement	16
	Signing pages	17

Details

Date

If executed in counterparts, the date of this Agreement is the date of latest execution.

Parties

The parties to this agreement are the **Entity**, the **Administering Agency** and the **Offset Landowner**.

Notice details

- A The notice details of the **Entity** are the notice details in **Item 3 of Schedule 1**.
- B The notice details of the **Offset Landowner** are the notice details in **Item 6 of Schedule 1**.
- C Unless otherwise specified in this agreement, the notice details of the **Administering Agency** are as follows:

135 Bundall Road, Bundall Qld 4217
Attention: Chief Executive Officer

Background

- A The **Entity** has given the **Administering Agency** the **Application** which requests that an **Early Arrangement** be entered into and which includes the **Offset Delivery Plan**.
- B The **Administering Agency** has given the **Notice of Decision** to the **Entity** which gives notice that the **Administering Agency** agrees to enter into an **Early Arrangement** as described in the **Notice of Decision**.
- C Pursuant to the **Notice of Decision** part of the **Environmental Offset** is to be delivered on land owned by the **Offset Landowner**.
- D This is the **Early Arrangement**.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement:

Administering Agency means Council of the City of Gold Coast.

Agreed Proponent-Driven Offset means the **Proponent-Driven Offset** described in the **Notice of Decision**.

Application means the application made by the **Entity** to the **Administering Agency** requesting that an **Early Arrangement** be entered into, which includes:

- (a) Environmental Offsets Delivery Form 1 – Notice of Election and Advanced Offset Details;
- (b) Environmental Offsets Delivery Form 2 – Offset Delivery Plan Details;
- (c) Environmental Offsets Delivery Form 3 – Offset Area Details; and
- (d) Environmental Offsets Delivery Form 4 – Financial Settlement Details

which is specified in the **Notice of Decision**.

Assessable Development has the meaning given under **Planning Act**.

Assignee means the person being assigned the agreement pursuant to clause 10.

Authority has the meaning given under the **EO Act**.

Business Day has the meaning given in the *Acts Interpretation Act 1954* for the **Administering Agency's** local government area.

Chief Executive Officer means the Chief Executive Officer of the **Administering Agency** or delegate.

Combination means the delivery of the **Agreed Proponent-Driven Offset** and the payment of the **Financial Settlement Offset Amount** which is the way in which the **Entity** is to deliver the **Environmental Offset** pursuant to the **Notice of Decision**.

Commencement Date means the commencement of this agreement pursuant to clause 2.3.

CPI means the Consumer Price Index.

Development Application has the meaning given under **Planning Act**.

Development Permit has the meaning given under **Planning Act**.

Early Arrangement has the meaning given under the **EO Act**.

Early Arrangement Application Number is the number described in **Item 1** of **Schedule 1**.

Entity means the person described in **Item 2** of **Schedule 1**.

Environmental Offset has the meaning given under the **EO Act**.

EO Act means the *Environmental Offsets Act 2014*.

Financial Settlement Offset has the meaning given by the **EO Act**.

Financial Settlement Offset Amount means the amount recorded in 'Part A – Offset Calculator Results' as the total financial offset requirement rounded to the nearest dollar on 'Environmental Offsets Delivery Form 4 – Financial Settlement Details' in the **Notice of Election**, subject to any requirement in the **Notice of Decision** for the **Environmental Offset** to be delivered in a different way, which is part of the **Combination**.

Force Majeure means an event:

- (a) being a decree of the Commonwealth Government or the State Government, an act of God, industrial disturbance, act of public enemy, war, international blockade, public riot, lightning, flood, earthquake, fire, storm or other event whether of a kind herein specified or otherwise; and
- (b) which is not within the control of the party claiming Force Majeure; and
- (c) which could not have been prevented by the exercise by that person of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances.

Identified Impact Area means the impact area identified in the **Application**, subject to any variation by the **Notice of Decision**.

Identified Prescribed Environmental Matter means the **Prescribed Environmental Matter** identified in the **Application** for the **Identified Impact Area**, subject to any variation by the **Notice of Decision**.

Land means the land specified in the 'Property description' and 'Property location' in the **Notice of Decision**.

Material Change of Use has the meaning given under **Planning Act**.

Notice of Decision means the notice given by the **Administering Agency** to the **Entity** which states that:

- (a) the **Administering Agency** agrees to entering into an **Early Arrangement**; and
- (b) the way in which the **Entity** is required to deliver the **Environmental Offset** for the **Identified Prescribed Environmental Matter** is by way of a combination of a **Financial Settlement Offset** and a **Proponent-Driven Offset**

which is identified in **Item 4** of **Schedule 1**.

Offset Condition has the meaning given in the **EO Act**.

Offset Delivery Plan means the offset delivery plan specified in the **Notice of Decision**, subject to any requirements in the **Notice of Decision**.

Offset Land means the land specified in the 'Offset land description' and 'Offset land address' in the **Notice of Decision**.

Offset Landowner means the entity that owns the **Offset Land**.

Operational Work has the meaning given under **Planning Act**.

Owner has the meaning given under **Planning Act**.

Planning Act means the *Planning Act 2016*.

Prescribed Activity has the meaning given by the **EO Act**.

Prescribed Environmental Matter has the meaning given by the **EO Act**.

Proponent-Driven Offset has the meaning given by the **EO Act**.

Proposed Recalculated Financial Settlement Offset Amount means the amount identified in the standard form 'Application to recalculate/refund/credit Financial Settlement Offset Amount'.

Recalculated Financial Settlement Offset Amount means the value of the recalculated financial settlement offset amount (rounded to the nearest dollar) identified in a notice given by the **Administering Agency** to the **Entity** pursuant to clause 9(b)(ii) confirming that the **Administering Agency** agrees that the **Proposed Recalculated Financial Settlement Offset Amount** has been correctly calculated.

Reconfiguring a Lot has the meaning given under **Planning Act**.

Significant Residual Impact has the meaning given in the **EO Act**.

Sell includes transfer, lease, licence, part with possession, dispose of, or alienate and "Sale" has the corresponding meaning.

1.2 Interpretation

In this agreement, unless a contrary intention appears, reference to:

- (a) A clause is to a clause in this agreement.
- (b) The singular includes the plural and vice versa.
- (c) Any gender includes all other genders.
- (d) A person includes a firm, a corporation, an association and a body, whether incorporated or not and a government or statutory body or authority.
- (e) Legislation (including subordinate legislation) includes:
 - (i) statutory instruments under the legislation; and
 - (ii) consolidations, amendments, re-enactments or replacements of the legislation; and
 - (iii) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmission; and
 - (iv) this or any other agreement includes the agreement as varied or replaced and is not affected by any change in the identity of the parties; and
 - (v) a day is to a business day.
- (f) The clause headings appearing in this agreement are inserted for convenience of reference and do not affect the construction of this agreement.
- (g) If any words are italicised or otherwise printed differently, this has been done for convenience only and does not affect the construction of this agreement.
- (h) Whenever more persons than one constitute a party all the covenants, agreements, conditions, restrictions and provisos on the part of that party contained or implied in this agreement bind those persons jointly and each of them severally.
- (i) This agreement is in all respects to be interpreted in accordance with the laws of the State of Queensland, and the parties irrevocably and unconditionally submit to the non-exclusive

jurisdiction of the courts of that state and any courts which have jurisdiction to hear appeals from them, and waive any right to object to proceedings being brought in those courts.

- (j) Nothing contained in this agreement affects, prejudices or derogates from the requirements of any statute or from the rights, powers and authorities of the **Administering Agency** under the provisions of any statute or under any declared policy of the **Administering Agency**.
- (k) An inclusive definition, or an example or particularisation of a provision, does not limit but may extend that definition or provision.
- (l) Where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have a corresponding definition.
- (m) All schedules to this agreement form part of this agreement and a reference to an item is a reference to an item in the **schedule**.

1.3 Other expressions

If a term is not defined in this agreement it shall unless the context otherwise requires, have the meaning given to it by:

- (a) the **EO Act**; or
- (b) the Macquarie Dictionary in the absence of a definition in the **EO Act**.

2. Acknowledgments

2.1 Application of the EO Act

This agreement is intended to constitute an **Early Arrangement** under section 19(5) of the **EO Act**.

2.2 Authority attaching to the Land

- (a) The parties acknowledge that this agreement gives effect to an agreement reached between the **Administering Agency** and the **Entity** about the delivery of an **Environmental Offset** for the **Identified Prescribed Environmental Matter**.
- (b) Upon an **Authority** being given, the parties acknowledge that the **Authority** will attach to the **Land** and will be binding on the **Owner** of the **Land** and the successors in title of the **Owner** of the **Land** and any occupier of the **Land** pursuant to section 73 of **Planning Act**.

2.3 Commencement

This agreement commences on the date the last party executes this agreement.

2.4 Future Offset Conditions

The parties acknowledge and agree that:

- (a) the **Combination** is in respect of the **Identified Impact Area**; and
- (b) in the event that an **Authority** is granted that includes an **Offset Condition** for the **Identified Prescribed Environmental Matter** to which there is a change to the impact on the **Identified Prescribed Environmental Matter** (including a change to the **Identified Impact Area**), then the **Administering Agency** may issue a notice under section 19A(3) of the **EO Act**.

2.5 Not a Development Permit or Authority

The parties acknowledge and agree that this agreement:

- (a) is not a **Development Permit for Assessable Development** and does not approve a **Prescribed Activity**; and
- (b) does not fetter the **Administering Agency's** decision in respect of any application made for an **Authority** that will impact the **Identified Prescribed Environmental Matter**, or any other **Development Application** for the **Land**.

3. Obligations of the parties

3.1 Entity's obligations

The **Entity** must:

- (a) deliver the **Agreed Proponent-Driven Offset** in accordance with clause 4;
- (b) pay the **Financial Settlement Offset Amount** in accordance with clause 8; and
- (c) otherwise comply with the terms of this agreement.

3.2 Administering Agency's obligations

The **Administering Agency** must comply with the terms of this agreement.

3.3 Offset Landowner's obligations

The **Offset Landowner** must:

- (a) allow the **Agreed Proponent-Driven Offset** to be delivered on the **Offset Land** in accordance with clause 5; and
- (b) if clause 6 applies, make the application referred to in clause 6(b); and
- (c) otherwise comply with the terms of this agreement.

4. Delivery of the Proponent-Driven Offset

- (a) The parties acknowledge and agree that pursuant to section 19A(2)(a) of the **EO Act**, the **Entity** may start to deliver the **Agreed Proponent-Driven Offset** before an **Authority** is granted for a **Prescribed Activity** that includes an **Offset Condition** for the **Identified Prescribed Environmental Matter**.
- (b) The **Entity** must carry out all necessary actions and work to deliver the **Agreed Proponent-Driven Offset** in the way specified in the **Offset Delivery Plan**.
- (c) The parties acknowledge and agree that the **Entity** is responsible for all costs and ongoing responsibilities for the delivery of the **Agreed Proponent-Driven Offset** pursuant to the **Offset Delivery Plan**.

5. Consent to using Offset Land for the Agreed Proponent-Driven Offset

- (a) The **Offset Landowner** acknowledges that the **Offset Delivery Plan** specifies actions and work to be carried out on the **Offset Land** by the **Entity** to allow the **Agreed Proponent-Driven Offset** to be delivered in accordance with this agreement.
- (b) The **Offset Landowner** agrees:

- (i) to allow the actions and work specified in the **Offset Delivery Plan** to be carried out on the **Offset Land** by the **Entity** in accordance with the terms of this agreement, so that the **Agreed Proponent-Driven Offset** can be delivered;
- (ii) to comply with and carry out any actions or work required to be carried out by the **Offset Landowner** in the **Offset Delivery Plan**; and
- (iii) that it will not seek to restrain, prevent or hinder the **Entity** from carrying out the actions and work specified in the **Offset Delivery Plan** on the **Offset Land**.

6. Dealing with advanced offsets

- (a) This clause applies in the event that the **Offset Land** is registered as an advanced offset in the register kept by the **Administering Agency** under section 90 of the **EO Act**.
- (b) Within 10 **Business Days** of the **Commencement Date**, the **Offset Landowner** must make an application pursuant to section 14(6) of the *Environmental Offsets Regulation 2014* to the **Administering Agency** (as decision-maker) for the **Offset Land** to no longer be identified as an advanced offset and to be removed from the register.

7. When obligation to deliver the Agreed Proponent-Driven Offset ceases

The parties agree that the obligation on the **Entity** in clause 4 to deliver the **Agreed Proponent-Driven Offset** will cease to have effect once the **Chief Executive Officer** of the **Administering Agency** has given written notification that:

- (a) the actions and obligations of the **Offset Delivery Plan** have been completed in full; and
- (b) the **Agreed Proponent-Driven Offset** has been secured for at least the same duration as the impact on the **Prescribed Environmental Matter** arising from the **Prescribed Activity**.

8. Payment of the Financial Settlement Offset Amount

- (a) Pursuant to section 19A(2)(b) of the **EO Act**, the **Entity** must not pay the **Financial Settlement Offset Amount** until an **Authority** is granted for a **Prescribed Activity** that includes an **Offset Condition** for the **Identified Prescribed Environmental Matter**.
- (b) The **Entity** must pay the **Financial Settlement Offset Amount** (subject to clause 9) to the **Administering Agency** before the earlier of the following events:
 - (i) any **Operational Work** commencing on the **Land**;
 - (ii) a request for approval for any subdivision plan for **Reconfiguring a Lot** for the **Land**; and
 - (iii) the first **Material Change of Use** starting on the **Land**.
- (c) Payment of the **Financial Settlement Offset Amount** must:
 - (i) be made:
 - (A) by bank cheque, debit card (from a savings or cheque account), credit card, up to the amount of \$50,000 (credit card payments will incur a surcharge), or cash at a customer service centre of the **Administering Agency**; or
 - (B) by bank cheque by post to PO Box 5042, Gold Coast MC, QLD 9729;

- (ii) if made by bank cheque:
 - (A) describe the payee in the terms specified in the **Notice of Decision**; and
 - (B) not be a post-dated bank cheque;
- (iii) be in Australian currency.
- (d) Upon the **Administering Agency** providing a receipt to the **Entity** for the entire **Financial Settlement Offset Amount**, the obligation under this agreement for the **Entity** to pay the **Financial Settlement Offset Amount** will be satisfied.

9. Recalculation of the Financial Settlement Offset Amount

- (a) The parties acknowledge that where the time of payment of the **Financial Settlement Offset Amount** is 18 months or more after the **Commencement Date**, section 2.4.2 of the Queensland Environmental Offsets Policy (Version 1.1) requires that the **Financial Settlement Offset Amount** will need to be recalculated using the financial settlement offset calculator to account for fluctuations in **CPI**.
- (b) The parties agree that if the time of payment of the **Financial Settlement Offset Amount** (pursuant to clause 8) is 18 months or more after the **Commencement Date**, then prior to payment of the **Financial Settlement Offset Amount**:
 - (i) the **Entity** will complete and provide to the **Administering Agency** the standard form 'Application to recalculate/refund/credit Financial Settlement Offset Amount', which will attach the environmental offsets calculator results email and the environmental offsets calculator results email attachment (offset-data.csv) and identify the **Proposed Recalculated Financial Settlement Offset Amount**;
 - (ii) the **Administering Agency** will provide a notice to the **Entity** confirming whether it is of the view that the details inputted into the environmental offsets calculator to generate the **Proposed Recalculated Financial Settlement Offset Amount** are correct; and
 - (iii) if the **Administering Agency** identifies an error in the details input into the environmental offsets calculator, then:
 - (A) the notice referred to in clause 9(b)(ii) must identify the error in the details input into the environmental offsets calculator;
 - (B) the **Entity** must recalculate the **Proposed Recalculated Financial Settlement Offset Amount** (by rectifying the error in the details inputted into the environmental offsets calculator) and complete and provide to the **Administering Agency** the standard form 'Application to recalculate/refund/credit Financial Settlement Offset Amount'; and
 - (C) the **Administering Agency** will provide a notice to the **Entity** referred to in clause 9(b)(ii).
- (c) The parties agree that:
 - (i) the **Recalculated Financial Settlement Offset Amount** replaces the **Financial Settlement Offset Amount**; and

- (ii) a reference to the **Financial Settlement Offset Amount** in clause 8 of this agreement is a reference to the **Recalculated Financial Settlement Offset Amount** without any further amendment being required to be made to this agreement.

10. Assignment by Entity and novation of agreement

10.1 Restriction on assignment

The **Entity** shall not, either absolutely or by way of security, assign its interests, rights or obligations under this agreement prior to the performance and fulfillment of the **Entity's** obligations under this agreement without:

- (a) the prior consent of the **Administering Agency** in writing signed by the **Chief Executive Officer** of the **Administering Agency**; and
- (b) the **Assignee** having entered into a deed of novation of this document with the **Administering Agency**, on terms reasonably acceptable to the **Administering Agency**, whereby the **Assignee** becomes contractually bound to the **Administering Agency** to perform and fulfill the provisions of this document or such of them as remain unperformed or unfulfilled by the **Entity** at the time of such assignment.

10.2 Restriction on the right to refuse

The **Administering Agency** may, in its absolute discretion, withhold its consent to the assignment.

10.3 Conditions of the consent

If the **Administering Agency** grants its consent, the **Administering Agency** may impose conditions for the giving of such consent which are not inconsistent with the provisions of this agreement.

10.4 Entity to remain liable

In the event of an assignment being made other than in accordance with this clause 10 then the **Entity** shall perform and fulfill such of its obligations under this document as have not been performed in accordance with any necessary timeframes in this agreement.

11. Assignment by Offset Landowner and novation of agreement

11.1 Restriction on the right to sell the Offset Land

The **Offset Landowner** shall not **Sell** the **Offset Land** prior to the performance and fulfillment of the **Entity's** obligations and the **Offset Landowner's** obligations under this agreement except subject to the condition that the purchaser shall enter into a deed of novation of this document with the **Administering Agency**, on terms reasonably acceptable to the **Administering Agency**, whereby the purchaser becomes contractually bound to the **Administering Agency** to perform and fulfill the provisions of this agreement or such of them as remain unperformed or unfulfilled by the **Entity's** obligations and the **Offset Landowner's** obligations at the time of such **Sale**.

11.2 Restriction on assignment

Subject to clause 11.1, the **Offset Land Owner** shall not, either absolutely or by way of security, assign its interests, rights or obligations under this agreement without the prior consent of the **Administering Agency** in writing signed by the **Chief Executive Officer** of **Administering Agency**.

11.3 Restriction on the right to refuse

The **Administering Agency** may, in its absolute discretion, withhold its consent to the assignment.

11.4 Conditions of the consent

If the **Administering Agency** grants its consent, the **Administering Agency** may impose conditions for the giving of such consent which are not inconsistent with the provisions of this agreement.

12. Default

12.1 Rights of the Administering Agency on default

- (a) If the **Entity** has breached clauses 3.1, 4, 8 or 10 of this agreement, the **Administering Agency** may elect, in its absolute discretion and without limiting any other rights, to do one or more of the following:
 - (i) pursue contractual remedies for breach of this agreement; or
 - (ii) exercise any of its powers pursuant to Chapters 5 and 6 of **Planning Act**.
- (b) If the **Offset Landowner** has breached clauses 3.3, 5, 6 or 11 of this agreement, the **Administering Agency** may elect, in its absolute discretion and without limiting any other rights, to do one or more of the following:
 - (i) pursue contractual remedies for breach of this agreement; or
 - (ii) exercise any of its powers pursuant to Chapters 5 and 6 of **Planning Act**.

13. Mediation

13.1 Negotiation and good faith

If a dispute arises between the parties, then prior to initiating any court action, the parties must meet and in good faith attempt to resolve the dispute.

13.2 Parties to mediate

- (a) If the parties fail to resolve the dispute within 10 **Business Days** of the dispute arising, then the parties must submit to the mediation of the dispute by a mediator appointed by the President for the time being of the Queensland Law Society.
- (b) The mediator's fees shall be borne equally by the parties.

14. Service

14.1 Service by prepaid post

A notice is sufficiently made, given or served by a party if left at or forwarded by prepaid post in an envelope addressed to the other party or any of them (where there are more persons than one person comprising the other party) at the address of that party shown specified in the Notice details clause.

15. Miscellaneous

15.1 Payment of costs

Each party bears its own costs.

15.2 Time

Time is, in all cases, of the essence.

15.3 Joint and severable liability

- (a) If the **Entity** is more than one entity, then the provisions of this agreement bind the entities that are the **Entity** jointly and severally.
- (b) If the **Offset Landowner** is more than one entity, then the provisions of this agreement bind the entities that are the **Offset Landowner** jointly and severally.

15.4 Waiver

No waiver by the **Administering Agency** of any breach by the other parties of any of the provisions of this agreement shall be implied against the **Administering Agency** or be otherwise effective unless it is in writing under the hand of the **Chief Executive Officer**.

15.5 Laches and delay

No laches or delay by the **Administering Agency** at any time or times in enforcing any of its rights, powers and the like under this agreement prejudice or affect those rights or powers.

15.6 Severance

If any provision of this agreement cannot be given effect or full force and effect by reason of statutory invalidity that provision shall be severed or read down but so as to maintain and uphold so far as possible the remaining provisions of this agreement.

15.7 Warranty of authority

Any person signing this agreement:

- (a) as attorney of any party warrants to the other parties that at the date of execution that person has not received any notice or information of the revocation of the power of attorney appointing that person; and
- (b) as an authorised officer, agent or trustee of any party warrants to the other parties that at the date of execution that person has full authority to execute this agreement in that capacity.

15.8 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

15.9 Further assurances

Each party agrees at its cost to do everything reasonably necessary to give effect to this agreement.

15.10 Force Majeure

- (a) If a party is unable by reason of an event of **Force Majeure** to carry out its obligations under this agreement, that party must give a notice to the other party advising of the event of the **Force Majeure** as soon as it is reasonably practicable after the event of a **Force Majeure**.
- (b) If a party gives a notice advising of an event of **Force Majeure**, that party's obligations will be suspended during the period for which the event of **Force Majeure** or its effect extends.
- (c) Where the obligations of the **Administering Agency** are dependent upon the occurrence of specified circumstances, then the **Administering Agency** will be relieved of its obligations for so long as there is a change or deviation or nonoccurrence of those circumstances arising from a matter beyond the **Administering Agency's** control.

15.11 Amendment of agreement

- (a) Despite any other provision of this agreement, the parties may at any time agree to vary the terms of this agreement or the **Offset Delivery Plan** pursuant to:
 - (i) section 19(7) of the **EO Act**; or
 - (ii) section 20(2) of the **EO Act**.
- (b) If the parties agree to amend the terms of this agreement or the **Offset Delivery Plan** in accordance with clause 15.11(a)(ii) the parties acknowledge that any amendment to this agreement is subject to:
 - (i) the **Administering Agency** having regard to the matters mentioned in section 19(1)(a) and (b) of the **EO Act** (pursuant to section 20(3) of the **EO Act**); and
 - (ii) the **Offset Delivery Plan** complying with the requirements of section 18(4) and (5) of the **EO Act** (pursuant to section 20(4) of the **EO Act**).
- (c) No modification, variation or amendment of this agreement is of any force or effect unless:
 - (i) it is in the form of an amendment agreement and has been signed by the parties; and
 - (ii) where relevant the amendment agreement complies with the requirements of the **EO Act**.

Signing pages

EXECUTED as a deed.

Signed for and on behalf of COUNCIL OF THE
CITY OF GOLD COAST by _____
_____ (name) pursuant to
delegated authority number _____ on the _____
day of _____ (month) _____ (year) in the
presence of:

Signature



Witness

Full Name

Print full name

Instructions to the Entity:

1. If the Entity is only one entity, please sign in accordance with steps 4 and 5 on this page 18. Please do not sign on page 19.
2. If the Entity comprises two entities, please have the second entity sign on page 19 in accordance with steps 4 and 5.
3. If the Entity comprises more than two entities, please print out page 19 the number of times required so that each entity signs in accordance with steps 4 and 5.
4. If the Entity is a corporation (and not an individual) please sign **Entity Signing Clause – corporation**. Please do not sign Entity Signing Clause - individual.
5. If the Entity is an individual (and not a corporation) please sign **Entity Signing Clause – individual**. Please do not sign Entity Signing Clause – corporation.

Entity Signing Clause – corporation

Signed for the **Entity** under section 127 of the *Corporations Act 2001* on the ____ day of _____ (month) _____ (year) in the presence of:

Signature of director



Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Entity Signing Clause – individual

Signed for the **Entity** on the ____ day of _____ (month) _____ (year) in the presence of:

Signature



Witness

Full name

Print full name

This page only needs to be signed if the Entity is more than one entity.

Entity Signing Clause – corporation

Signed for the **Entity** under section 127 of the *Corporations Act 2001* on the ____ day of _____ (month) _____ (year) in the presence of:

Signature of director



Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Entity Signing Clause – individual

Signed for the **Entity** on the ____ day of _____ (month) _____ (year) in the presence of:

Signature



Witness

Full name

Print full name

Instructions to the Offset Landowner:

1. If the Offset Landowner is only one entity, please sign in accordance with steps 4 and 5 on this page 20. Please do not sign on page 21.
2. If the Offset Landowner comprises two entities, please have the second entity sign on page 21 in accordance with steps 4 and 5.
3. If the Offset Landowner comprises more than two entities, please print out page 21 the number of times required so that each entity signs in accordance with steps 4 and 5.
4. If the Offset Landowner is a corporation (and not an individual) please sign **Offset Landowner Signing Clause – corporation**. Please do not sign Offset Landowner Signing Clause - individual.
5. If the Offset Landowner is an individual (and not a corporation) please sign **Offset Landowner Signing Clause – individual**. Please do not sign Offset Landowner Signing Clause – corporation.

Offset Landowner Signing Clause – corporation

Signed for _____
(insert the name of the entity who is the Offset Landowner) under section 127 of the *Corporations Act 2001* on the ____ day of _____ (month) _____ (year) in the presence of:

Signature of director



Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Offset Landowner Signing Clause – individual

Signed for _____
(insert the name of the entity who is the Offset Landowner) on the ____ day of _____ (month) _____ (year) in the presence of:

Signature



Witness

Full name

Print full name

This page only needs to be signed if the Offset Landowner is more than one entity.

Offset Landowner Signing Clause – corporation

Signed for _____
(insert the name of the entity who is the Offset
Landowner) under section 127 of the
Corporations Act 2001 on
the ____ day of _____ (month) _____ (year)
in the presence of:

Signature of director



Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Offset Landowner Signing Clause – individual

Signed for _____
(insert the name of the entity who is the Offset
Landowner) on the ____ day of _____ (month)
_____ (year) in the presence of:

Signature



Witness

Full name

Print full name