

AMENDED ITEM

26 June 2013
To the Ordinary Council Meeting

Director's Report
Community and Recreation Services
Department

7.1 Agreement between Central Coast Group Training and Wyong Shire Council - Central Coast Youth Skills and Employment Centre

TRIM REFERENCE: F2009/01061 - D03423599
MANAGER: Michael Whittaker, General Manager
AUTHOR: Maxine Kenyon; Director

SUMMARY

This report provides a copy of the Agreement between Wyong Shire Council and Central Coast Group Training to deliver the Central Coast Youth Skills and Employment Centre.

RECOMMENDATION

That Council receive the report on Agreement between Central Coast Group Training and Wyong Shire Council - Central Coast Youth Skills and Employment Centre.

BACKGROUND

On 15 May Wyong Shire Council and Central Coast Group Training (CCGT) made a submission to the Department of Education, Employment and Workplace Relations Youth Commitments Infrastructure Funding Program for the development and construction of a youth skills centre at Tuggerah, the Central Coast Youth Skills and Employment Centre.

It was recently announced that this submission was successful. Funding will be available before the end of this financial year and required to be spent by 30 June 2014.

The Central Coast Youth Skills and Employment Centre will deliver employment pathways and career opportunities for young people on the Central Coast through:

- A skills centre
- Direct youth employment pathways
- A registered training organisation.

Central Coast Youth Skills and Employment Centre will consist of a cluster of serviced offices / business incubators, dedicated to youth of excellence or young entrepreneurs, seeking a start up assistance to commence their small business. Key to the function is to provide career opportunities through apprenticeships and traineeships both full time and school based.

Young people will be involved through the life of the project, on the co-ordinating committee, the design and construction phase, as well as once operational.

7.1 Agreement between Central Coast Group Training and Wyong Shire Council - Central Coast Youth Skills and Employment Centre (contd)

The long term outcomes for young people on the Central Coast will be:

- Improved employment opportunities, linked to training and support
- Hands on learning through involvement in the design, development and management of the project
- Increasing retention rates for the region by providing alternate learning pathways to young people
- In post construction phase young people with disabilities and those socially excluded in the community will be given access to employment and training opportunities.

Council resolved the following on 12 June 2013.

“1/13 That Council note the success of the Wyong Shire Council and Central Coast Group Training’s funding submission for the ‘Wyong Skills Centre’ through the Federal Government, Department of Education, Employment and Workplace Relations.

2/13 That Council delegate to the General Manager signing of the funding agreement for \$2.7m for the construction of the ‘Wyong Skills Centre’ at Tuggerah.

3/13 That Council agree to accept ownership of land at Lot 2037 Bounty Close, Tuggerah, at no cost (gifted) prior to providing any grant funds to the Central Coast Group Training.

4/13 That Council direct the Mayor and General Manager to authorise the affixing of the Council seal to the documents associated with the transfer of ownership of land at Lot 2037 Bounty Close, Tuggerah.”

CURRENT STATUS

The General Manager has signed the agreement with the Federal Government for \$2.7m for the Central Coast Youth Skills and Employment Centre.

Based on the funding agreement a separate agreement was developed between Wyong Shire Council and Central Coast Group Training to deliver the Central Coast Youth Skills and Employment Centre according to the requirements outlined by the Federal Government. This agreement also includes future leasing arrangements. A copy of this agreement will be provided under separate cover.

In addition, the land transfer of Lot 2037 Bounty Close, Tuggerah is proceeding.

ATTACHMENTS

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|---|--|-----------|
| 1 | Cover Sheet | D03437861 |
| 2 | Agreement between Central Coast Group Training and Wyong Shire Council - Central Coast Youth Skills and Employment Centre (distributed under separate cover) | D03437865 |

ITEM 7.1 Agreement between Central Coast Group Training and Wyong Shire Council – Central Coast Youth Skills and Employment Centre

Note, the annexures to this agreement are not yet included, they will include:

- A. A copy of the executed Funding Agreement between Council and the Commonwealth (it has been signed but we are awaiting on the final copy to be received).
- B. The Guidelines (awaiting on the final copy to be received).
- C. The Lease. The lease is close to being complete and the terms broadly include:
 - a. 40 year term at peppercorn rent
 - b. CCGT to pay for all outgoings
 - c. CCGT to undertake all maintenance
 - d. A put/call option for CCGT to purchase after the obligations under the Funding Agreement cease.

DEED

BETWEEN



AND



Central Coast Group Training Ltd

for the CENTRAL COAST YOUTH SKILLS AND EMPLOYMENT CENTRE

PURPOSE

- A. The Commonwealth operates the Program. The Project is one means of achieving the aims of the Program.
- B. The Commonwealth, Council and CCGT are committed to helping achieve the Program through CCGT's conduct of the Project.
- C. As a result of this commitment, the Commonwealth has agreed to support the Project by providing the Funding to Council, subject to the terms and conditions set out in the Funding Agreement, and Council has in turn agreed to provide the Monies to CCGT from that Funding, subject to the terms and conditions of this Deed.
- D. Council is accountable to the Commonwealth for the Funding. CCGT is accountable to Council for the Monies. CCGT agrees to accept the Monies on the terms and conditions set out in this Deed.

OPERATIVE PROVISIONS

PART A -INTRODUCTION

1. Definitions

- 1.1. In this Deed, unless the contrary intention appears:

'Asset' means any item of tangible property with a value of more than \$5,000.00 at the time of purchase, inclusive of GST;

'Auditor-General' means the office established under the *Auditor-General Act 1997(Cth)* and includes any other entity that may, from time to time, perform the functions of that office;

'Australian Accounting Standards' means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001 (Cth)*;

'Australian Auditing Standards' means the standards prepared by the Auditing Standards Board of the Australian Accounting Research Foundation and generally accepted audit practices to the extent they are not inconsistent with those standards;

'Author' means a person who is an author of any Project Material or Existing Material for the purposes of Part IX of the *Copyright Act 1968 (Cth)*;

'Bank Guarantee' means an unconditional bank guarantee in a form acceptable to Council issued by a bank authorised under the *Banking Act 1959 (Cth)* to carry on banking business in Australia;

'BCA' means the building code produced and maintained by the Australian Building Codes Board;

'Budget' means the budget, if any, specified in item E of the Schedule;

'Capital Works' means the works, if any, specified in item C of the Schedule;

'Capital Works Manager' means the person, if any, specified in item U of the Schedule who is appointed to supervise the Capital Works and undertake the functions specified in clause 45;

'CC BY Licence' means the creative commons BY licence, otherwise known as the creative commons attribution licence, as defined in the Funding Agreement.

'CCGT' means Central Coast Training Group Limited, and includes CCGT's officers, delegates (including members of the CCGT board holding relevant delegations from CCGT), employees and agents, and CCGT's successors;

'CCGT Confidential Information' means information that is described in item P2.1 of the Schedule;

'CCYSE Centre' means the Central Coast Youth Skills and Employment Centre to be established as a result of the Project;

'Commonwealth' means the Commonwealth of Australia, and includes the Commonwealth's officers, delegates, employees and agents, and the Commonwealth's successors;

'Commonwealth Coat of Arms' means the Commonwealth Coat of Arms, as set out at "It's an Honour – Commonwealth Coat of Arms" available at <http://www.itsanhonour.gov.au/coat-arms/index.cfm> ;

'Commonwealth Confidential Information' means information that:

- (a) Council notifies, by Notice to CCGT after the Date of this Deed, as confidential information of the Commonwealth for the purposes of this Deed; or
- (b) CCGT know or ought to know is confidential to the Commonwealth;

'Commonwealth Material' means any Material in which the Intellectual Property Rights are owned by the Commonwealth which the Commonwealth has provided to Council for the purpose of the Funding Agreement and Council provides to CCGT for the purpose of this Deed or any Material which is copied from that Material, except for the Commonwealth Coat of Arms;

'Commonwealth Information Commissioner' means the Information Commissioner within the meaning of the *Australian Information Commissioner Act 2010 (Cth)*;

'Conflict' means a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through CCGT engaging in any activity or obtaining any interest that is likely to interfere with or restrict CCGT in providing the Project to Council fairly and independently;

'Council' means Wyong Shire Council, and includes Council's officers, delegates, employees and agents, and Council's the Commonwealth's successors;

'Council Confidential Information' means information that:

- (a) Council notifies, by Notice to CCGT after the Date of this Deed, as confidential information of Council for the purposes of this Deed; or
- (b) CCGT know or ought to know is confidential to the Council;

'Council Material' means any Material in which the Intellectual Property Rights are owned by Council which Council provides to CCGT for the purpose of this Deed or any Material which is copied from that Material;

'Council Officer' means the person specified in item T of the Schedule who can send and receive Notices on Council's behalf;

'Deed' means this document, any attachments (including but not limited to the Funding Agreement and the Lease) and any documents included by reference;

'Departmental Officer' means the person so specified in item T of the Schedule;

'Designated Use' has the meaning specified in item W1.1 of the Schedule;

'Designated Use Period' means the period of time specified in item W1.2 of the Schedule;

'End Date' means whichever of the following applies:

- (a) the day specified in item A1.1 of the Schedule;
- (b) if no day is specified in item A1.1 of the Schedule, the day on which CCGT completes all of its obligations under this Deed to Council's satisfaction; or

unless this Deed is terminated earlier, in which case the End Date is the day on which this Deed is terminated;

'Environmental Law' means the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)*, the *Protection of the Environment Operations Act 1997 (NSW)*, the *Environmental Planning and Assessment Act 1979 (NSW)*, the *Contaminated Land Management Act 1997* and any other legislation relating to the environment;

'Existing Material' means any Material, except Commonwealth Material and Council Material, which was in existence before the execution of the Funding Agreement and this Deed, or which is developed independently of the Funding Agreement and this Deed, and which is incorporated in, supplied with or as part of, or required to be supplied with or as part of, the Project Material;

'Funding' means the amount or amounts, in cash or in kind, payable by the Commonwealth to Council pursuant to the Funding Agreement, as specified in item F of the Schedule;

'Funding Agreement' means the Agreement between Council and the Commonwealth, a copy of which is annexure "A" to this Deed;

'Funding Group' means a group of two or more entities, however constituted, other than a partnership, which have entered into an arrangement for the purposes of jointly conducting the Project, and which have appointed a lead member of the group with authority to act on behalf of all members of the group for the purposes of this Deed;

'GIPA Act' means the *Government Information (Public Access) Act 2009 (NSW)*;

'GST' has the same meaning as it has in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*;

'Guidelines' means the guidelines specified in item B of the Schedule;

'Implementation Plan' means the implementation plan CCGT is required to submit to Council in accordance with the Schedule;

'Information Privacy Principle' has the meaning given in the Privacy Act;

'Intellectual Property Rights' includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953 (Cth)*, on a daily compounding basis;

'Letter of Offer' means the letter of offer from the Commonwealth to Council inviting Council to enter into the Funding Agreement;

Lease means the proposed lease agreement between Council and CCGT in respect to the Premises, a copy of which is annexure "C" to this Deed;

'Material' includes documents, reports, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

'Milestone' means a stage of completion of the Project, as specified in item F of the Schedule;

'Monies' means the monies that Council agrees to provide to CCGT, for the purposes of and subject to this Deed;

'National Privacy Principle' has the meaning given in the *Privacy Act 1988 (Cth)*;

'Notice' means a notice sent from one party to the other party in accordance with the requirements of clause 38 and **'Notify'** means the action of sending a Notice in accordance with the requirements of clause 38;

'NSW Information Commissioner' means the Information Commissioner under the *Government Information (Information Commissioner) Act 2009 (NSW)*, having functions under the *Government Information (Public Access) Act 2009 (NSW)*;

'NSW Privacy Principle' has the same meaning as "information protection principle" in the *Privacy and Personal Information Protection Act 1998 (NSW)*;

'Parties' means Council and CCGT.

'Partnership Funding' means any financial or in-kind contributions for the Project, other than the Funding, that are required to be obtained, as specified in the Schedule or the Implementation Plan;

'Party' means Council or CCGT;

'Personal Information' has the same meaning given in section 6 of the Privacy Act;

'PIIP Act' means the *Privacy and Personal Information Protection Act 1998 (NSW)*;

'Premises' has the same meaning as in the Funding Agreement, and for the sake of clarity is the land known as Lot 2073 in Deposited Plan 1052715;

'Privacy Act' means the *Privacy Act 1988 (Cth)*;

'Program' means the program specified in item B of the Schedule;

'Project' means the project specified in item C of the Schedule, and includes the provision of Project Material specified in that item;

'Project Material' means all Material:

- (a) created for the purpose of performing this Deed;
- (b) incorporated in, supplied with or required to be supplied along with, the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

'Project Party' means any contractor, subcontractor, consultant or employee of CCGT that performs work on the Premises for the purpose of the Capital Works;

'Project Period' means the period specified in item D of the Schedule;

'Records' includes documents, information and data stored by any means and all copies and extracts of the same;

'Report' means the reports specified in item M of the Schedule;

'Schedule' means the schedule to this Deed;

'Serious Event' means:

- (a) any circumstance in which a person dies during, or as a result of, the Project;
- (b) any circumstance in which a person suffers an injury during, or as a result of, the Project for which treatment from a medical or dental practitioner was sought or ought reasonably to have been sought;
- (c) any incident arising during, or as a result of, the Project which was reported to the police; or
- (d) any incident arising during, or as a result of, the Project which satisfies the definition of 'serious incident' in clause 12 of the *Education and Care Services National Regulations 2011*.

'Specified Acts' means any of the following acts or omissions by or on behalf of Council:

- (a) using, reproducing, adapting or exploiting all or any part of the Project Material, with or

without attribution of authorship;

- (b) supplementing the Project Material with any other Material; or
- (c) using the Project Material in a different context to that originally envisaged, but does not include false attribution of authorship;

'Start Date' means the date on which this Deed is signed by the last party to do so.

'Term' means the period of time specified in clause 4.

2. Interpretation

2.1. In this Deed:

- 1.1.1. words in the singular include the plural, and vice versa;
- 1.1.2. words importing a gender include the other gender;
- 1.1.3. a reference to a person includes a partnership and a body whether corporate or otherwise;
- 1.1.4. clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- 1.1.5. all references to dollars are to Australian dollars;
- 1.1.6. unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
- 1.1.7. an uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a party just because that party prepared the provision;
- 1.1.8. where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- 1.1.9. a reference to a clause is to a clause of this Deed;
- 1.1.10. a reference to an item is to an item in the Schedule.

- 2.2. If a reference in this Deed is to a Saturday, Sunday or a public holiday in the relevant place, then the reference is to be taken to mean the first day after that day which is not a Saturday, a Sunday or a public holiday in that place.

3. Precedence

3.1. In the event of any conflict or inconsistency between any part of:

- 3.1.1. the clauses of this Deed;
- 3.1.2. the items in the Schedule;
- 3.1.3. any annexure or attachment to this Deed
- 3.1.4. any document incorporated by reference in this Deed

then the material in any one of paragraphs 3.1.1 to 3.1.4 above prevails, to the extent of any conflict or inconsistency, over the material in a subsequent paragraph.

4. Term

4.1. This Deed starts on the Start Date and ends on the End Date.

5. The Funding Agreement

5.1. CCGT warrants that it has that it has read and understood the Funding Agreement.

5.2. CCGT acknowledges that:

- 5.2.1. it has received independent legal advice, or had a reasonable opportunity to seek independent legal advice, on the effect of the Funding Agreement; and
- 5.2.2. the Funding Agreement imposes strict obligations on Council, and that breach of those obligations may cause Council to suffer significant loss and harm, including repayment to the Commonwealth of the Funding, if the Commonwealth were to exercise rights it has under the Funding Agreement; and
- 5.2.3. the strict obligations imposed on Council by the Funding Agreement include but are not limited to:
 - 5.2.3.1. the delivery of the Project in strict compliance with the Milestones and Budget set out in the Funding Agreement; and
 - 5.2.3.2. to undertake the Capital Works required by the Funding Agreement:
 - 5.2.3.2.1. in accordance with the Guidelines, the Implementation Plan, and the documents that comprise Annexure 1 to the Funding Agreement; and
 - 5.2.3.2.2. in compliance with the Code, and the Code Guidelines, and the Scheme (where applicable); and
 - 5.2.3.2.3. to maximise the training opportunities for, and employment of, persons aged between 15 and 25 years;
 - 5.2.3.3. ensuring that during the Designated Use Period the CCYSE Centre is used only for the Designated Use and any other alternate uses that the Commonwealth approves, and that those uses are provided or undertaken in accordance with all relevant laws and policies including but not limited to the law and policies relating to working with children; and
 - 5.2.3.4. ensuring that Assets purchased with the Funds are managed in strict compliance with the Funding Agreement; and

- 5.2.3.5. the management of the Funding in strict compliance with the Funding Agreement; and
- 5.2.3.6. provision of reports strictly in accordance with the specifications and periods set out in the Funding Agreement; and
- 5.2.3.7. ensuring that CCGT makes specific contributions towards the Project; and
- 5.2.3.8. dealing with information and privacy in clearly prescribed ways; and
- 5.2.3.9. adherence to strict requirements for publicity concerning the Project; and
- 5.2.4. any failure by CCGT to meet its obligations under this Deed may cause Council to be in breach of Council's obligations under the Funding Deed, and that CCGT may be liable to Council for loss or damage caused to Council as a result of any failure by CCGT to comply strictly with its obligations under this Deed.

5.3. CCGT must ensure that it does not, by any act or omission by it or its agents or contractors cause Council to be in breach of its obligations under the Funding Agreement.

6. Survival of clauses

6.1. The operation of:

- 6.1.1. clauses 10 [Management of Funding], 11 [Repayment of Funding], 12 [Assets], 17 [Reports], 18 [Commonwealth Material], 19 [Project Material], 20 [Confidential Information], 21 [Personal Information], 22 [Records], 24 [Indemnity] and 27 [Dispute Resolution]; and
- 6.1.2. any other provision that is expressly specified as surviving; and
- 6.1.3. any provision that by implication is intended to survive,

survive the expiration or earlier termination of this Deed.

6.2. Clauses 15 [Acknowledgment and publicity], 22.2 [Records], and 23 [Access to premises and records] apply during the Term and for 7 years from the End Date.

PART B PROJECT AND FUNDING

7. Project

7.1. CCGT must carry out the Project:

- 7.1.1. at the times and in the manner specified in item C of the Schedule;
- 7.1.2. within the Project Period;
- 7.1.3. in accordance with this Deed and the Guidelines;
- 7.1.4. in a manner that allows Council to meet its obligations under the Funding Agreement; and

- 7.1.5. diligently, effectively and to a high professional standard.
- 7.2. CCGT must expend the Monies only in accordance with this Deed and only in accordance with the Budget, if any, specified in item E of the Schedule.
- 7.3. CCGT must not act in a way that may bring the Project into disrepute.
- 7.4. Council is not responsible for the provision of any additional money in excess of the Monies. CCGT is solely responsible for the delivery of the Project within the Budget, and for any resources other than the Monies that are required to deliver the Project in accordance with the Milestones.

8. Monies

- 8.1. Subject to the Funding being provided to Council by the Commonwealth, and subject to strict compliance by CCGT with this Deed (including but not limited to compliance with the invoicing requirements, if any, specified in item G of the Schedule), Council will provide CCGT with the Monies at the times and in the manner specified in item F of the Schedule.
- 8.2. In addition to any other rights Council may have under this Deed, Council may suspend payment of any part or the whole of the Monies to CCGT if Council forms the opinion, in good faith, that CCGT may not be performing one or more of CCGT's obligations in accordance with this Deed, including but not limited to fraudulent conduct.
- 8.3. If Council exercises its rights under clause 8.2, CCGT must continue to perform any obligations under this Deed, unless Council directs CCGT otherwise in writing.
- 8.4. If CCGT earns any amount of interest on any part of the Monies, CCGT must, for the purposes of this Deed, treat that interest as if it were Monies. CCGT may use interest earned on any part of the Monies to pay for any Bank Guarantee(s) which Council requires CCGT to obtain in accordance with clause 8.5.
- 8.5. Council may require CCGT to provide one or more Bank Guarantees as security for performance of CCGT's obligation to under Item F2.1 of the Schedule.
- 8.6. CCGT must ensure either that its bank will issue the required Bank Guarantees prior to Council paying any of the Monies to CCGT.
- 8.7. Council will release the Bank Guarantee/s to CCGT once Council is satisfied that CCGT has provided the contribution required of it by Item F2.1 of the Schedule.

8A CCGT Contributions and the Lease

- 8A.1 CCGT must do all acts and things necessary to transfer all of CCGT's right title and interest in the Premises to Council, at no cost to Council. CCGT must complete its obligation under this clause 8A.1 no later than 1 working day after the commencement of this Deed. Time is of the essence for this clause. If CCGT fails to comply with the requirements of this clause 8A.1 Council may terminate this Deed in accordance with clause 30.
- 8A.2 CCGT acknowledges and agrees that it is a requirement of the Funding Agreement that the Premises are owned by Council and that without the transfer required by clause 8A.1 of this Deed, Council would have no entitlement to receive the Funding from the Commonwealth pursuant to the Funding Agreement and so would have no capacity to provide CCGT with Monies pursuant to this Deed.
- 8A.3 CCGT must provide the contribution referred to in Item F2.1 of the Schedule by the date specified in that Item.
- 8A.4 If CCGT fails to provide the contribution required by clause 8A.3, Council may:
- 8A.1.1 suspend payment of the whole or any part of the Monies until CCGT has completed making that contribution; or
 - 8A.4.2 reduce the Monies to be paid to CCGT by an amount equal in proportion to the amount of the contribution that CCGT has not provided; or
 - 8A.4.3 terminate this Deed in accordance with clause 30.
- 8A.5 On or before the completion of the Capital Works the Parties agree to execute the Lease and have the Lease registered pursuant to the *Real Property Act 1900*. CCGT is solely responsible for all fees, charges and duties resulting from or incurred as a result of the Parties complying with this clause 8A.5.

9. Goods and Services Tax

General

- 9.1. Unless otherwise indicated, all consideration for any supply made under this Deed is exclusive of any GST imposed on the supply.
- 9.2. If one party (**the supplier**) makes a taxable supply to the other party (**the recipient**) under this Deed, the recipient, on receipt of a tax invoice from the supplier, must pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.
- 9.3. No party may claim or retain from the other party any amount in relation to a supply made under this Deed for which the first party can obtain an input tax credit or decreasing adjustment.

Recipient created tax invoice

- 9.4. CCGT agrees to allow Council, if in Council's sole discretion, Council chooses to do so, to issue CCGT with a recipient created tax invoice for any taxable supply made under this Deed within 28 days of determining the value of the taxable supply to which the recipient created tax invoice relates.
- 9.5. If Council does not issue CCGT with a recipient created tax invoice within the time period specified in clause 9.4, CCGT must as soon as practicable provide Council with a tax invoice in relation to that taxable supply.
- 9.6. Subject to clause 9.5, CCGT must not use a tax invoice in relation to a taxable supply to which a recipient created tax invoice applies.

Adjustment notes

- 9.7. CCGT must provide Council with an adjustment note if required by the *A New Tax System (Goods and Services Tax Act) 1999*, including where CCGT repays some or all of the Monies to Council.

Interpretation

- 9.8. A term used in this clause 9 has the same meaning as the corresponding term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

10. Management of Monies

- 10.1. CCGT must:
 - 10.1.1. ensure that the Monies are held in an account in CCGT's name, and which CCGT has sole control of, with an authorised deposit-taking institution authorised under the *Banking Act 1959 (Cth)* to carry on a banking business in Australia; and
 - 10.1.2. ensure that the account is:
 - 10.1.2.1. established solely to account for and administer the Monies; and
 - 10.1.2.2. separate from CCGT's other accounts; and
 - 10.1.3. on request from Council, provide Council and the authorised deposit-taking institution with an authority for Council and the Commonwealth to obtain all details relating to any and all uses of the account; and

- 10.1.4. identify the receipt and expenditure of the Monies separately within CCGT's accounting Records so that at all times the Monies are identifiable and ascertainable; and
- 10.1.5. provide Council with the details for the account as are required by Item H1.1 of the Schedule.
- 10.2. CCGT must keep financial Records relating to the Project to enable:
 - 10.2.1. all income and expenditure related to the Project to be identified in CCGT's accounts;
 - 10.2.2. the preparation of financial statements in accordance with Australian Accounting Standards; and
 - 10.2.3. the audit of those Records in accordance with Australian Auditing Standards.
- 10.3. CCGT must not use the Monies:
 - 10.3.1. as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
 - 10.3.2. for the preparation of, or in the course of, any litigation.

11. Repayment of Funding

Definition of 'Surplus Amount'

- 11.1. If:
 - 11.1.1. at any time, Council in its sole discretion, determines that:
 - 11.1.1.1. an overpayment has occurred, including where an invoice is found to have been incorrectly rendered after payment; or
 - 11.1.1.2. some or all of the Monies have not been dealt with by CCGT in accordance with this Deed to Council's satisfaction; or
 - 11.1.2. at the End Date, or, if another date is specified in item C of the Schedule, that date, some or all of the Monies have not been:
 - 11.1.2.1. spent in accordance with this Deed; or
 - 11.1.2.2. acquitted to Council's satisfaction; or
 - 11.1.3. the Commonwealth has made a determination under clause 11.2(a) and/or 11.2(b) of the Funding Agreement

then the amount in paragraph 11.1.1, 11.1.2 or 11.1.3 is a **Surplus Amount** for the purposes of this clause 11.

11.2. Council may, in its sole discretion, divide a Surplus Amount into two amounts and:

11.2.1. send CCGT a Notice in accordance with clause 11.3 in relation to one of the two amounts; and

11.2.2. require CCGT to comply with clause 11.4 in relation to the other of the two amounts,

and if Council does this, then a reference to 'Surplus Amount' in clauses 11.3 and 11.4, respectively, is to whichever of the two amounts the clause applies to in accordance with clauses 11.2.1 and 11.2.2.

Council may issue CCGT with directions regarding the Surplus Amount

11.3. Council may, in its sole discretion by Notice to CCGT, give CCGT directions to deal with a Surplus Amount in accordance with the terms and conditions set out in Council's Notice and if Council does so, the following provisions apply to the Surplus Amount:

11.3.1. if CCGT accepts, within the period of time specified in Council's Notice, the terms and conditions of Council's Notice in relation to the Surplus Amount:

11.3.1.1. this Deed is varied in accordance with Council's Notice;

11.3.1.2. CCGT must deal with the Surplus Amount in accordance with all the requirements:

11.3.1.2.1. applying to Monies under this Deed as if the Surplus Amount were an additional amount of the Monies; and

11.3.1.2.2. specified in Council's Notice; and

11.3.1.3. on and from the day CCGT accepts the terms and conditions of Council's Notice, Council may exercise its rights under this clause 11 as if the Surplus Amount were part of the Monies; or

11.3.2. if CCGT:

11.3.2.1. does not accept the terms and conditions of Council's Notice; or

11.3.2.2. fail to accept the terms and conditions of Council's Notice within the period of time specified in that Notice,

then notwithstanding the Notice sent to CCGT under this clause 11.3, on and from the day after the end of the period of time specified in Council's Notice, clause 11.4 will apply to the Surplus Amount and Council may send CCGT a Notice in accordance with clause 11.5(a) in relation to the Surplus Amount.

Council may recover a Surplus Amount

- 11.4. Unless Council issues CCGT with a Notice in accordance with clause 11.3, a Surplus Amount, and any Interest owed under clause 11.5, is a debt due to Council by CCGT, and Council may recover the Surplus Amount and any Interest:
- 11.4.1. from CCGT as a debt without further proof of the debt by Council; or
 - 11.4.2. by offsetting part or all of the Surplus Amount and Interest against any amount due to CCGT under:
 - 11.4.2.1. this Deed, and/or
 - 11.4.2.2. any other arrangement between Council and CCGT.
- 11.5. Council may issue CCGT with a Notice in relation to a Surplus Amount to which clause 11.4 applies, and if Council does so:
- 11.5.1. CCGT must repay Council the Surplus Amount within 20 business days of receiving the Notice from Council, or within any other period of time which Council specify in the Notice or which Council subsequently approves in writing; and
 - 11.5.2. if CCGT does not repay Council the Surplus Amount in accordance with, and within the period of time specified in, Council's Notice, Interest payable by CCGT to Council accrues on the Surplus Amount on and from the day after the end of the period of time specified in Council's Notice until the Surplus Amount is paid to Council in full.

Offsetting under this Deed other debts CCGT owes to Council

- 11.6. Without limiting Council's rights under this Deed, under statute, at law or in equity, if CCGT:
- 11.6.1. owes Council any debt; or
 - 11.6.2. has any outstanding or unacquitted money,
- under any other arrangement with Council, Council may offset or deduct an amount equal to part or all of the debt or outstanding or unacquitted money against any amounts payable to CCGT under this Deed.

12. Assets

- 12.1. CCGT must not use the Monies to purchase or create any Asset, apart from those detailed in item I of the Schedule, without obtaining Council's prior written approval. Council's approval may be subject to conditions. Clauses 12.4 to 12.8 apply only to Assets purchased or created with the Monies.

- 12.2. Unless specified otherwise in item I of the Schedule and subject to this clause 12, CCGT owns any Asset purchased or created with the Monies.
- 12.3. Clauses 12.5, 12.6 and 12.7 do not apply to any Asset which Council or the Commonwealth own.
- 12.4. During the Project Period CCGT must:
- 12.4.1. use each Asset in accordance with this Deed and for the purposes of the Project only;
 - 12.4.2. not, without Council's prior written approval, encumber or dispose of any Asset, or deal with or use any Asset, other than in accordance with this clause 12;
 - 12.4.3. safeguard all Assets against theft, loss, damage, or unauthorised use;
 - 12.4.4. maintain all Assets in good working order;
 - 12.4.5. maintain all appropriate insurances for all Assets to their full replacement value, noting both Council interest in the Asset under this Deed and the Commonwealth's interest in the Asset under the Funding Agreement, and provide satisfactory evidence of this on request from Council and/or the Commonwealth;
 - 12.4.6. maintain registration and licensing of each Asset required by law to be registered or licensed;
 - 12.4.7. take full responsibility for, and bear all risks relating to, the use or disposal of all Assets.
- 12.5. Council may require CCGT to pay to Council a proportion of the market value of an Asset which is equivalent to Council's contribution to the purchase of the Asset:
- 12.5.1. if CCGT sells or otherwise disposes of the Asset during the Project Period (which must be with Council's prior written consent and subject to any conditions Council may impose); or
 - 12.5.2. on completion of the Project Period or earlier termination of this Deed.
- 12.6. If CCGT fails to make payment as required by clause 12.5 within 20 business days of receiving a Notice from Council:
- 12.6.1. CCGT must pay Council Interest on any amount outstanding from the date the payment was due, for the period it remains unpaid; and
 - 12.6.2. the amount and Interest are recoverable by Council as a debt due to Council by CCGT, without further proof of the debt by Council.
- 12.7. If an Asset is lost, damaged or destroyed, CCGT must reinstate the Asset including from the proceeds of the insurance and this clause 12 continues to apply to the reinstated Asset. Any surplus from the proceeds of the insurance must be Notified to Council and used and accounted for as Monies under

this Deed.

- 12.8. Notwithstanding that CCGT may own an Asset in accordance with this clause 12, Council may, in its sole discretion, at the end of the Project Period or on earlier termination of this Deed require CCGT to deal with any Asset in accordance with Council's written directions.

13. Subcontracting

- 13.1. CCGT must not subcontract any of its obligations under this Deed, except those obligations that relate to Capital Works.
- 13.2. CCGT must maintain a register detailing each subcontractor engaged by it to undertake CCGT's obligations under this Deed in respect to Capital Works. That Register must be made available at any time on demand to Council and the Commonwealth, and include the following information:
- 13.2.1. Each subcontractor's legal name and any trading name;
- 13.2.2. a description of the obligations under this Deed that CCGT has subcontracted to the subcontractor; and
- 13.2.3. any further information that Council may reasonably require, or that the Commonwealth may direct, as advised by Council.
- 13.3. CCGT must ensure that in any subcontract CCGT:
- 13.3.1. reserves a right of termination to take account:
- 13.3.1.1. Council's right of termination under clauses 29 [Termination with costs and reduction] and 30 [Termination for default] of this Deed; and
- 13.3.1.2. Council's right of revocation of approval of a subcontractor under clause 13.7 of this Deed; and
- 13.3.2. binds the subcontractor, with respect to Council, to all relevant terms and conditions of this Deed including, but not limited to, clauses 19.11 [Project Material], 20 [Confidential Information], 21 [Personal Information], 22 [Records], 23 [Access to premises and records], 25 [Insurance], 26A [Work health and safety], 31 [Negation of employment, partnership or agency] and 36 [Compliance with laws and policies]; and
- 13.3.3. binds the subcontractor, with respect to the Commonwealth, to all relevant terms and conditions of the Funding Agreement including, but not limited to, clauses 19.11 [Project Material], 20 [Confidential Information], 21 [Personal Information], 22 [Records], 23 [Access to premises and records], 25 [Insurance], 26A [Work health and safety], 31 [Negation of employment, partnership or agency] and 36 [Compliance with laws and policies];

- 13.4. CCGT is fully responsible for the performance of its obligations under this Deed, even if CCGT subcontracts some or all of its obligations.
- 13.5. CCGT is liable to Council for all losses caused under, or in connection with, this Deed by the acts or omissions of any subcontractor including (if Council revokes its approval of a subcontractor) the subcontractor's acts or omissions prior to that revocation as if that subcontractor were a current subcontractor.
- 13.6. CCGT is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out, and for ensuring that the subcontractor's work meets the requirements of this Deed.
- 13.7. Council may, on any reasonable ground, give Notice to CCGT that it does not approve of a subcontractor engaged by CCGT. On receipt of the Notice CCGT must, at CCGT's own cost, promptly cease using that subcontractor and arrange for their replacement with personnel or another subcontractor acceptable to Council. For the purpose of this clause a "reasonable ground" specifically includes receipt of a Notice by Council from the Commonwealth pursuant to clause 13.7 of the Funding Agreement.
- 13.8. CCGT must not enter into a subcontract under this Deed with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012 (Cth)*.

14. Removal of Personnel

- 14.1. Council may give notice on reasonable grounds related to performance of the Project requiring CCGT to remove identified personnel from work on the Project. If Council does so, CCGT must, at CCGT's own cost, promptly arrange for the removal of the identified personnel from work on the Project and their replacement with personnel acceptable to Council.
- 14.2. If CCGT is unable to provide acceptable replacement personnel, Council may terminate this Deed under clause 30 [Termination for default].

15. Acknowledgement and publicity

- 15.1. During the Term and for a 7 year period from the End Date CCGT must not make any Public Statement concerning the Project and Project Outcomes without the prior written approval of Council. Council may give approval for the purpose of this clause 15.1 in respect to a specific Public Statement or generally to types or classes of Public Statements as it sees fit, and may impose conditions on any such approval.
- 15.2. CCGT must ensure that all Public Statements concerning the Project and Project Outcomes are:

- 15.2.1. strictly in accordance with any approval given by Council pursuant to cl. 15.1; and
- 15.2.2. are consistent with the requirements set out in Item L of the Schedule and the Guidelines.
- 15.3. Council may publicize and report on the grant of Monies to CCGT, including CCGT's name, the amount of Monies given to CCGT and the title and a brief description of the Project.
- 15.4. CCGT must not use the Commonwealth Coat of Arms for the purposes of this Deed.
- 15.5. CCGT acknowledges that Council is under strict obligations under cl. 15 of the Funding Agreement, and CCGT undertakes that it will not do any act or thing that would cause Council to be in breach of Council's obligations under cl. 15 of the Funding Agreement.
- 15.6. For the purposes of this clause 15, the following terms have the following meanings:
- 'Public Statement'** means the publication by any means of any promotional or advertising material; the making of any public announcement; and any other public relations exercise.
- 'Project Outcomes'** means any product, process or invention developed as a result of or from the Project.
- 15.7. For the sake of clarity, if CCGT is in breach of this clause 15 Council may terminate this Deed under clause 30.

16. Liaison and monitoring

Liaison and monitoring

- 16.1. CCGT must:
- 16.1.1. liaise with and provide information to:
- 16.1.1.1. the Council Officer, or a person nominated by the Council Officer; and/or
- 16.1.1.2. the Departmental Officer, or a person nominated by the Departmental officer
- as reasonably required by the Council Officer; and
- 16.1.2. comply with all reasonable requests, directions or monitoring requirements received from the Council Officer; and
- 16.1.3. immediately notify Council of a Serious Event or any circumstance that could have resulted in the occurrence of a Serious Event but did not; and
- 16.1.4. provide any other information to Council that Council requires.

Delay

- 16.2. CCGT must take all reasonable steps to minimise delay in meeting its obligations under this Deed.
- 16.3. If CCGT becomes aware that it may be delayed in meeting any of its obligations under this Deed, CCGT must immediately Notify Council of the:
 - 16.3.1. cause and nature of the delay; and
 - 16.3.2. steps CCGT will take to limit the delay.
- 16.4. If Council approves the steps CCGT Notifies to Council in accordance with clause 16.3.2, CCGT must comply with those steps.
- 16.5. CCGT must comply with any reasonable direction that Council gives to CCGT in relation to limiting the delay.

17. Reports

- 17.1. CCGT must provide Council with the Reports specified in item M of the Schedule, in the manner and at the times specified in that Item M.
- 17.2. Subject to clause 17.6, unless item M of the Schedule provides otherwise, CCGT must provide Council with:
 - 17.2.1. a certificate that all Monies received by CCGT were expended for the Project and in accordance with this Deed;
 - 17.2.2. an audited detailed statement of income and expenditure in respect of the Monies, which must include:
 - 17.2.2.1. a definitive statement as to whether the financial accounts are true and fair; and
 - 17.2.2.2. a statement of the balance of the account that CCGT is required to hold under clause 10.1.1 of this Deed; and
 - 17.2.3. an audit statement that all Monies received by CCGT were expended for the Project and in accordance with this Deed.
- 17.3. The certificate referred to in clause 17.2.1 and the audits referred to in clauses 17.2.2 and 17.2.3 must:
 - 17.3.1. contain the details, if any, specified in item M of the Schedule;
 - 17.3.2. be provided to the Council Officer:
 - 17.3.2.1. within 10 business days of the end of the Project Period, or within any other period of time specified in item F of the Schedule; and

- 17.3.2.2. at the other times specified in item F of the Schedule, if any.
- 17.4. The certificate referred to in clause 17.2.1 must be provided by the person specified in item M of the Schedule or, if no person is specified, by CCGT's executive officer, chief internal auditor or board member.
- 17.5. Subject to clause 17.6, the audits referred to in clauses 17.2.2 and 17.2.3 must:
- 17.5.1. comply with the Australian Auditing Standards; and
 - 17.5.2. be carried out by a person who is:
 - 17.5.2.1. registered as a company auditor under the *Corporations Act 2001*, or a member of the Institute of Chartered Accountants in Australia (who is entitled to use the letters CA or FCA), or of CPA Australia (who is entitled to use the letters CPA or FCPA) or the National Institute of Accountants (who is entitled to use the letters MNIA, FNIA, PNA or FPNA); and
 - 17.5.2.2. not a principal, member, shareholder, officer or employee of CCGT, any holding company of CCGT or a subsidiary of CCGT or any holding company of CCGT.
- 17.6. If CCGT is audited by the Auditor-General or a state or territory Auditor-General:
- 17.6.1. for all of the Term; and
 - 17.6.2. the Monies are included in the income and expenditure which is subject to the audit, then, instead of the certificate and audits referred to in clause 17.2, CCGT may provide Council with:
 - 17.6.3. a detailed statement of income and expenditure for the Monies, which must include:
 - 17.6.3.1. a definitive statement as to whether the financial accounts are true and fair; and
 - 17.6.3.2. a statement of the balance of the account that CCGT is required to hold under clause 10.1.1; and
 - 17.6.4. a statement that the Monies were expended for the Project and in accordance with this Deed.
- 17.7. The statements referred to in clauses 17.6.3 and 17.6.4 must be:
- 17.7.1. certified by:
 - 17.7.1.1. CCGT's chief executive officer; and
 - 17.7.1.2. the senior executive officer employed by CCGT who has primary responsibility for managing CCGT's audit functions; and

17.7.2. delivered at the times and in the manner specified in clause 17.3.

17.8. In addition to any other rights Council may have under this Deed, Council may at any time direct CCGT to provide Council with any information Council may reasonably require for the purpose of determining, to Council's satisfaction, that CCGT has sufficient financial resources to continue carrying on business, and CCGT must comply with Council's direction within the time frame specified in those directions by Council.

PART C MATERIAL AND INFORMATION

18. Commonwealth Material and Council Material

18.1. [NOT USED]

18.2. Council grants CCGT a licence to use, copy and reproduce the Council Material only for the purposes of this Deed and in accordance with any conditions or restrictions specified in item N of the Schedule.

18.3. Council grants CCGT a sub-licence to use, copy and reproduce the Commonwealth Material only for the purposes of this Deed and in accordance with any conditions or restrictions specified in item N of the Schedule.

18.4. CCGT must keep the Council Material and the Commonwealth Material safe.

18.5. Subject to clause 18.6, CCGT must deal with all Commonwealth Material and all Council Material in CCGT's possession on the End Date by returning that Material to Council, or destroying that Material, within 10 business days of the End Date.

18.6. If at any time Council provides CCGT with a written direction in relation to Commonwealth Material or the Council Material, CCGT must comply with the direction.

19. Project Material

Ownership

19.1. Unless otherwise specified in item O of the Schedule and subject to this clause 19, CCGT owns the Project Material and the Intellectual Property Rights in Project Material immediately on their creation.

Licences – Project Material

19.2. Unless, in item O of the Schedule, it is specified that Council owns the Intellectual Property Rights in the Project Material:

- 19.2.1. CCGT grants both Council and the Commonwealth permanent, irrevocable, free, worldwide, non-exclusive licences, including a right of sublicense (including the right to grant a CC BY Licence), to use, reproduce, adapt and exploit the Intellectual Property Rights in the Project Material for any purpose;
- 19.2.2. if for any reason CCGT is unable to grant the licences in clause 19.2.1, CCGT must do all acts and things necessary to have those licences granted to Council and the Commonwealth; and
- 19.2.3. if Council Notifies CCGT that Council or the Commonwealth are granting a CC BY Licence over part or all of the Project Material, CCGT must provide Council or the Commonwealth (as the case may be) with all the attribution details necessary to enable the grant of the CC BY Licence over that Material.
- 19.3. If, in item O of the Schedule, it is specified that Council owns the Intellectual Property Rights in the Project Material, unless Council advises CCGT that Council has granted a CC BY Licence over the Project Material, Council grants CCGT a licence to use, copy and reproduce the Project Material only for the purposes of this Deed and in accordance with any conditions or restrictions specified in item O of the Schedule.

Licences - Existing Material

- 19.4. CCGT must:
- 19.4.1. grant Council and the Commonwealth, or must arrange for the grant to Council and the Commonwealth, of, a permanent, irrevocable, free, worldwide, non-exclusive licence, including a right of sublicense (including the right to grant a CC BY Licence), to use, reproduce, adapt and exploit the Intellectual Property Rights in the Existing Material for any purpose;
- 19.4.2. not supply any Existing Material under or in connection with this Deed unless CCGT grants Council and the Commonwealth, or arrange for the grant to Council and the Commonwealth of, the licence set out at 19.4.1; and
- 19.4.3. must, if Council Notifies CCGT that Council or the Commonwealth are granting a CC BY Licence over part or all of the Project Material, provide Council or the Commonwealth (as the case may be) with all the attribution details in relation to the Existing Material necessary.

Performance of Specified Acts

- 19.5. If CCGT is an Author, whether a sole Author or a joint Author, of any Project Material or Existing Material, CCGT consents to the performance of the Specified Acts by Council or any person licensed by Council (including the Commonwealth) to use, reproduce, adapt or exploit that Project Material or Existing Material.

19.6. CCGT agrees:

19.6.1. to obtain from each Author (other than CCGT) of any Project Material or Existing Material a written consent to the performance of the Specified Acts (whether occurring before or after the consent is given) by Council or any person licensed by Council to use, reproduce, adapt or exploit that Project Material or that Existing Material; and

19.6.2. on Council's request, to provide the executed original of each consent to Council.

General

19.6.3. CCGT must comply with any request that Council makes of CCGT, at any time, to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 19.

19.6.4. CCGT warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Project Material and the Existing Material in accordance with this clause 19.

19.6.5. If requested by Council, CCGT must provide Council with a copy of the Project Material in the form requested by Council and within the time frame Council specifies.

Compliance with the Freedom of Information Act 1982 (Cth)

19.7. In clause 19.8, 'Document', 'Commonwealth Contract' and 'Subcontractor' have the same meaning as in the *Freedom of Information Act 1982*.

19.8. If this Deed is a Commonwealth Contract, and Council gives Notice to CCGT under this clause that Council has been served with Notice under clause 19.11 of the Funding Agreement in respect to a Document relating to the performance of this Deed which was created by, or is in the possession of CCGT or any of CCGT's Subcontractors, then CCGT must, on receipt of that Notice from Council, immediately provide Council with the Document specified in the Notice to CCGT from Council.

19.9. CCGT acknowledges that Council may have obligations under the GIPA Act in respect to this Deed.

20. Confidential Information

20.1. Subject to clause 20.5:

20.1.1. CCGT must not, without Council's prior written approval, disclose any Council Confidential Information or Commonwealth Confidential Information to a third party; and

- 20.1.2. Council must not, without CCGT's prior written approval, disclose any CCGT Confidential Information to a third party. For the purpose of this clause 20.1.2 the Commonwealth is not a third party.
- 20.2. In giving written approval to a disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.
- 20.3. Council may at any time require CCGT to arrange for any person engaged in, or in relation to, the performance or management of this Deed to give written undertakings, in a form required by Council, relating to the non-disclosure of Council Confidential Information or Commonwealth Confidential Information.
- 20.4. If required under clause 20.3, CCGT must promptly arrange for all undertakings to be given and, if Council requests it, promptly provide Council with a copy of the undertakings.
- 20.5. The obligations on the parties under this clause 20 will not be breached if information:
- 20.5.1. is disclosed by Council to the Minister responsible for the portfolio that is responsible for administering the Program; or
- 20.5.2. is disclosed by Council, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or by either House of the NSW Parliament; or
- 20.5.3. is authorised or required by law to be disclosed; or
- 20.5.4. is in the public domain otherwise than due to a breach of this clause 20.
- 20.6. Nothing in this clause 20 limits CCGT's obligations under clause 21 [Personal Information] or clause 23 [Access to premises and records].

21. Personal Information

- 21.1. CCGT agrees to:
- 21.1.1. comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Deed, as if CCGT were an agency as defined in the Privacy Act; and
- 21.1.2. comply with the NSW Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Deed, as if CCGT were a public sector agency for the purposes of the PPIP Act; and
- 21.1.3. deal with Personal Information received, created or held by CCGT for the purposes of this Deed only to fulfill CCGT's obligations under this Deed and in accordance with any conditions

or restrictions specified in item Q of the Schedule; and

21.2. An act done or a practice engaged in by CCGT or any subcontractor of CCGT to meet (directly or indirectly) an obligation under this Deed:

21.2.1. is authorised by this clause 21 for the purposes of subsections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to CCGT or the subcontractor; but

21.2.2. is subject to the other obligations in this Deed including this clause 21.

21.3. In this clause 21, 'received' includes 'collected'.

22. Records

22.1. CCGT must make and keep full and accurate Records of the conduct of the Project including progress against the Milestones (if any), the receipt and use of Monies (in accordance with Australian Accounting Standards), the acquisition of Assets and the creation of Intellectual Property Rights in Project Material (other than Reports).

22.2. Subject to CCGT's obligations under clause 21 [Personal Information], Records must be retained by CCGT for at least 7 years after the End Date.

23. Access to premises and records

23.1. CCGT must at all reasonable times give any employee of Council or the Commonwealth, on production of photo identification, or any person authorised in writing by Council:

23.1.1. reasonable access to:

23.1.1.1. CCGT's employees and equipment;

23.1.1.2. premises occupied by CCGT;

23.1.1.3. Material; and

23.1.2. reasonable assistance to

23.1.2.1. inspect the performance of the Project;

23.1.2.2. locate and inspect Material; and

23.1.2.3. make copies of Material and remove those copies, relevant to the Project.

- 23.2. The rights referred to in clause 23.1 are subject to:
- 23.2.1. the provision of reasonable prior Notice to CCGT; and
 - 23.2.2. CCGT's reasonable security procedures.
- 23.3. If a matter is being investigated which, in Council's opinion, the Commonwealth's opinion or in the opinion of any person authorised in writing by Council or the Commonwealth, may involve an actual or apprehended breach of the law, clause 23.2.1 will not apply.
- 23.4. The requirement for access specified in clause 23.1 does not in any way reduce CCGT's responsibility to perform its obligations under this Deed.
- 23.5. A breach of CCGT's obligations under clause 23.1 is, for the purposes of clauses 28 [Remedies] and 30 [Termination for breach], a breach which is not capable of being rectified.

PART D MANAGING RISK

24. Indemnity

- 24.1. CCGT agrees to indemnify Council and the Commonwealth against any:
- 24.1.1. loss or liability incurred by the Council and the Commonwealth;
 - 24.1.2. loss of or damage to property owned by Council or the Commonwealth; or
 - 24.1.3. loss or expense incurred by Council or the Commonwealth in dealing with any claim against either of them, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by them,
- arising from:
- 24.1.4. any act or omission by CCGT, including any of its employees, agents or subcontractors, in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - 24.1.5. any breach by CCGT, including any of its employees, agents or subcontractors, of obligations or warranties under this Deed; or
 - 24.1.6. the use by Council of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

- 24.2. CCGT's liability to indemnify Council and the Commonwealth under this clause 24 will be reduced proportionately to the extent that any fault on Council or the Commonwealth contributed to the relevant loss, damage, expense, or liability.
- 24.3. A right to be indemnified under this clause 24 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but neither Council or the Commonwealth is entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.
- 24.4. In this clause 24, "fault" means any negligent or unlawful act or omission or willful misconduct.

24B Special Rules about Funding Groups

24B.1 CCGT acknowledges that:

24B.1.1 CCGT and Council are a Funding Group for the purposes of the Funding Deed; and

24B.1.2 Council is the leading member of that Funding Group.

24B.2 CCGT authorizes Council to act as its agent to negotiate, bind, and act on its behalf in relation to the Funding Agreement and any variation thereto.

25. Insurance

25.1. CCGT must, for as long as any obligations remain in connection with the Project, either:

25.1.1. maintain with an insurance company authorised by the Australian Prudential Regulatory Authority established under the *Australian Prudential Regulatory Authority Act 1998 (Cth)*; or

25.1.2. warrant that CCGT has, if it is a self-insurer and Council agrees that CCGT may self-insure to satisfy its obligations under this Deed,

the following insurance:

25.1.3. public liability for not less than \$10 million for each claim;

25.1.4. worker's compensation as required by law; and

25.1.5. professional indemnity for not less than \$5 million for each claim, and in the aggregate, for each year,

unless otherwise specified in item R of the Schedule.

- 25.2. When requested, CCGT must provide Council, within 10 business days of the request, with evidence satisfactory to Council that CCGT has complied with its obligation to insure.

26. Conflict of interest

- 26.1. CCGT warrants that, to the best of its knowledge after making reasonable inquiries, at the Start Date no Conflict exists or is likely to arise in the performance of its obligations under this Deed.
- 26.2. If during the Term, a Conflict arises, or is likely to arise, CCGT must:
- 26.2.1. immediately notify Council in writing of that Conflict and of the steps CCGT proposes to take to resolve or otherwise deal with the Conflict;
 - 26.2.2. make full disclosure to Council of all relevant information relating to the Conflict; and
 - 26.2.3. take such steps as Council may reasonably require to resolve or otherwise deal with that Conflict.
- 26.3. If CCGT fails to notify Council under this clause 26, or is unable or unwilling to resolve or deal with the Conflict as Council requires, Council may terminate this Deed under clause 30 [Termination for default].

26A Work health and safety

- 26A.1 In this clause 26A:

'Construction Project' has the same meaning as that given in Chapter 6 of the WHS Regulations.

'Construction Work' means any construction work carried out or caused to be carried out by CCGT, within the meaning of Chapter 6 of the WHS Regulations.

'Inspector' means a person appointed as such under the WHS Act.

'Notifiable Incident' has the meaning given in the WHS Act.

'Regulator' means the person who is the regulator within the meaning of the WHS Act.

'WHS Act' means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS law within the meaning of section 4 of the WHS Act.

'WHS Code of Practice' means any Code of Practice approved for the purposes of the WHS Act.

'WHS Entry Permit Holder' has the same meaning as that given in the WHS Act.

'WHS Laws' means the WHS Act and WHS Regulations.

'WHS Principal Contractor' has the same meaning as that given in the WHS Regulations.

'WHS Regulations' means the regulations made under the WHS Act.

26A.2 CCGT must at all times:

26.3.1. ensure that the Project is carried out in a safe manner;

26.3.2. comply with the WHS Laws;

26.3.3. be aware of, understand and comply with Council's work health and safety policy and procedures that are in any way applicable to this Deed or the performance of the Project under this Deed;

26.3.4. comply with any reasonable instruction from Council or the Commonwealth relating to work health and safety;

26.3.5. immediately comply with directions on health and safety issued by any person having authority under the WHS Laws to do so;

26.3.6. where the health and safety of other persons may be affected by the Project, ensure full communication and coordination occurs on health and safety matters with those persons and Council;

26.3.7. communicate any issue or concern that CCGT has regarding work health and safety matters, as soon as practicable, with Council;

26.3.8. when requested by Council or the Commonwealth, provide evidence of CCGT's ongoing compliance with the WHS Laws;

26.3.9. if CCGT is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Project:

26.3.9.1. at the same time, or as soon as is possible in the circumstances, give notice of such incident, and a copy of any written notice provided to the Regulator, to Council; and

26.3.9.2. provide to Council, within such time as Council specifies, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;

26.3.10. inform Council of the full details of:

26.3.10.1. any suspected contravention of the WHS Laws relating to the Project, within 24 hours of becoming aware of any such suspected contravention;

26.3.10.2.any cessation or direction to cease work relating to the Project, due to unsafe work, immediately upon Council being informed of any such cessation or direction;

26.3.10.3.any workplace entry by a WHS Entry Permit Holder, or an Inspector, to any place where the Project is being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and

26.3.10.4.any proceedings against CCGT, or any decision or request by the Regulator given to CCGT, under the WHS Laws, within 24 hours of becoming aware of any such proceedings, decision or request; and

26.3.11. provide Council with copies of all notices and correspondence issued to CCGT by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

26A.3 If CCGT is required by the WHS Laws to:

- (a) prepare, submit, supply or obtain any document, including but not limited to a WHS management plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together 'WHS Safety Documents'), or review any existing WHS Safety Documents;
- (b) obtain or sight any licence, permit, or authorisation (together WHS Licences); or
- (c) display or install any sign, or barrier, specific to the Project,

CCGT must:

- (d) prepare or obtain any such WHS Safety Documents or WHS Licences tailored to the Project and in compliance with the WHS Laws;
- (e) provide Council with a copy of any such WHS Safety Documents or WHS Licences with sufficient time for Council to review the same and consult as Council considers appropriate, including with CCGT and the Commonwealth, regarding the same; and
- (f) display or install any such sign or barrier, before commencing any, or undertaking further, work.

26A.4 Without limiting any other right or remedy Council may have, if during the performance of any work under this Deed:

- (a) Council Notifies CCGT that Council is not satisfied that CCGT is or has been:
 - (i) performing the Project in compliance with CCGT's work health and safety obligations as specified in this clause 26A, relevant legislation or Council's work health and safety policy and procedures, CCGT must promptly rectify that breach; and

- (ii) Council may direct CCGT to suspend the Project until such time as CCGT satisfies Council that the Project will be performed in compliance with the work health and safety obligations referred to in this clause, and during the period of suspension in accordance with this clause, Council will not be required to make any payment whatsoever to CCGT;
- (b) CCGT fails to rectify any breach for which the Project has been suspended under this clause within a reasonable time, but not later than 10 business days, after receiving a Notice from Council to do so, Council may, at its discretion, immediately terminate this Deed under clause 30 [Termination for default].

26A.5 If the Project is or includes Construction Work which is a Construction Project:

- (a) Council appoints CCGT, and CCGT accepts the appointment, as the WHS Principal Contractor for the Project, and CCGT must, in addition to CCGT's obligations under this clause 26A, comply with CCGT's obligations as WHS Principal Contractor, at CCGT's own cost, and do all things necessary to assist Council to discharge its obligations under the WHS Laws;
- (b) Council authorises CCGT to exercise such authority as is necessary to enable CCGT to discharge the responsibilities imposed on CCGT by the WHS Laws, as WHS Principal Contractor; and
- (c) CCGT must complete all forms and attend to all statutory requirements to ensure that CCGT is appointed as the WHS Principal Contractor.

Note: Construction Project is Construction Work where the cost is \$250,000 or more.

26A.6 Without limiting this clause, if the Project is or includes Construction Work, CCGT must perform its obligations under this Deed in such a way that ensures:

- (a) Council is able to participate in any necessary inspections of work in progress and tests and evaluations of the Capital Works; and
- (b) Council is able, on completion of the Capital Works, able to maintain, support and make full use of the Premises,

without Council being in breach of any WHS Laws which apply to the Project.

26A.7 Council may monitor CCGT's compliance with the WHS Laws, including but not limited to:

- (a) conducting audits of CCGT's work health and safety performance; and
- (b) requiring CCGT to provide Council with whatever documents or other information Council reasonably requires relating to work health and safety matters.

26A.8 CCGT must cooperate with any investigation undertaken by Council concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, arising out of or in respect of the Project.

26A.9 Where there is any inconsistency or ambiguity between this clause and the WHS Laws, the WHS Laws will prevail.

PART E DISPUTES AND TERMINATION

27. Dispute resolution

27.1. Subject to clause 27.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed which cannot be resolved by informal discussion, until the procedure specified in clause 27.2 has been undertaken.

27.2. The Parties agree that any dispute arising under or in relation to this Deed is to be dealt with as follows:

27.2.1. the party claiming that there is a dispute will send the other party a Notice setting out the nature of the dispute;

27.2.2. the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute; and

27.2.3. the Parties have 10 business days from the receipt of the Notice by the other party to reach a resolution or to agree that the dispute is to be submitted to mediation or some other alternative dispute resolution procedure,

and if:

27.2.4. there is no resolution of the dispute;

27.2.5. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or

27.2.6. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 business days,

then either party may commence legal proceedings.

27.3. Clauses 27.1 and 27.2 do not apply if:

27.3.1. either party commences legal proceedings for urgent interlocutory relief;

27.3.2. action is taken by Council under clauses 11 [Repayment of Funding], 23 [Access to premises and records], 28 [Remedies for breach], 29 [Termination with costs or reduction], 30 [Termination for default], 44 [Our right to step in] or 47 [Liquidated damages]; or

27.3.3. an authority of the Commonwealth, a state or a territory is investigating a breach or suspected breach of the law by CCGT.

27.4. Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their obligations under this Deed.

28. Remedies for breach

28.1. Notwithstanding any other rights available to Council under this Deed, if:

28.1.1. CCGT fails to rectify a breach of this Deed within 10 business days of receiving a Notice from Council, or within such other period Council specifies;

28.1.2. CCGT fails to fulfill, or is in breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by Council; or

28.1.3. an event has occurred which would entitle Council to terminate this Deed in whole or in part under clause 30 [Termination for default],

Council, by Notice to CCGT, immediately exercises one or more of the remedies set out in clause 28.2.

28.2. The remedies Council may exercise are:

28.2.1. suspending, withholding, or deferring any payment of Monies payable under this Deed;

28.2.2. imposing additional conditions on the payment of the Monies under this Deed, as specified by Notice to CCGT;

28.2.3. reducing the scope of this Deed, but without Council being liable to make any payment to CCGT which would be payable to CCGT if the reduction in scope were made under clause 29 [Termination with costs and reduction].

28.3. If Council takes action under this clause 28, Council will set out in its Notice to CCGT:

28.3.1. the reasons for the action;

28.3.2. the duration, if applicable, of the action; and

28.3.3. any corresponding variation to this Deed.

29. Termination with costs and reduction

- 29.1. Council may, at any time by Notice to CCGT, terminate this Deed in whole or reduce the scope of this Deed without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If Council terminates or reduces the scope of this Deed Council will only be liable for:
- 29.1.1. payments under the payment provisions of this Deed that were due before the effective date of termination; and
 - 29.1.2. subject to clauses 29.3 and 29.4, any reasonable costs incurred by CCGT and directly attributable to the termination or partial termination of this Deed.
- 29.2. On receipt of a Notice of termination or reduction in scope given by Council under clause 29.1, CCGT must:
- 29.2.1. stop work as specified in the Notice;
 - 29.2.2. take all available steps to:
 - 29.2.2.1. minimise loss resulting from the termination or reduction in scope; and
 - 29.2.2.2. protect Council Material, Commonwealth Material and Project Material; and
 - 29.2.3. continue work on any part of the Project not affected by the Notice.
- 29.3. If there is a reduction in scope of the obligations under this Deed, Council's liability to pay any part of the Monies will, in the absence of agreement to the contrary, abate proportionately to the reduction in CCGT's obligations under this Deed.
- 29.4. Council is not liable to pay compensation for:
- 29.4.1. loss of CCGT's prospective profits for a termination or reduction in scope under this clause 29; or
 - 29.4.2. loss of any benefits that would have been conferred on CCGT had the termination or reduction not occurred.

30. Termination for default

30.1. Council may immediately terminate this Deed by giving CCGT Notice of the termination if:

30.1.1. Council is satisfied that any statement made by CCGT in support of the application for funding to the Commonwealth is incorrect, incomplete, false or misleading in a way which may have affected:

30.1.1.1. the original decision by the Commonwealth to approve the Funding;

30.1.1.2. the terms and conditions of the Funding Agreement or this Deed; or

30.1.1.3. action taken by Council under this Deed; or

30.1.1.4. action taken by the Commonwealth under the Funding Agreement,

30.1.2. CCGT fails to fulfill, or are in breach of any of its obligations under this Deed and either:

30.1.2.1. if the breach is rectifiable, CCGT does not rectify the omission or breach within 10 business days of receiving a Notice from Council to do so, or within such other period Council specifies; or

30.1.2.2. the breach is not capable of being rectified, as determined by Council;

30.1.3. CCGT is unable to pay all its debts as and when they become due and payable;

30.1.4. if:

30.1.4.1. CCGT fails to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;

30.1.4.2. proceedings are initiated to obtain an order for CCGT's winding up or any shareholder, member or director convenes a meeting to consider a resolution for CCGT's winding up;

30.1.4.3. CCGT comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place CCGT under external administration; or

30.1.4.4. notice is served on CCGT or proceedings are taken to cancel CCGT's incorporation or registration or to dissolve CCGT as a legal entity;

30.1.5. CCGT ceases to carry on a business relevant to the performance of the Project; or

30.1.6. Council is expressly entitled to terminate this Deed under any other provision of this Deed; or

30.1.7. The Funding Agreement is terminated.

PART F ADMINISTRATION

31. Negation of employment, partnership or agency

- 31.1. CCGT is not, by virtue of this Deed or for any other purpose, deemed to be Council's employee, partner or agent.
- 31.2. CCGT must not represent itself, and must ensure that its employees, partners, agents or sub-contractors do not represent themselves, as being Council's employees, partners or agents.

32. Entire agreement, variation and severance

- 32.1. This Deed records the entire agreement between the parties in relation to its subject matter.
- 32.2. Except for action Council is expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by the Parties.
- 32.3. If a court or tribunal says any provision of this Deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

33. Waiver

- 33.1. If a party does not exercise (or delays in exercising) any rights under this Deed, that failure or delay does not operate as a waiver of those rights.
- 33.2. A single or partial exercise by a party of any of its rights under this Deed does not prevent the further exercise of that right.
- 33.3. Waiver of any provision of, or right under, this Deed:
 - 33.3.1. must be in writing signed by the party entitled to the benefit of that provision or right; and
 - 33.3.2. is effective only to the extent set out in the written waiver.
- 33.4. In this clause 33, 'rights' means rights or remedies provided by this Deed or at law.

34. Assignment and novation

- 34.1. CCGT must not assign its rights or obligations under this Deed without prior written approval from Council.
- 34.2. CCGT agrees not to negotiate with any other person to enter into an arrangement that will require novation of this Deed without Council's prior written approval.

35. Incorporation

- 35.1. CCGT warrants that its constitution is not inconsistent with this Deed.
- 35.2. CCGT must notify Council if CCGT intends to amend its constitution in a way which affects CCGT's ability to comply with this Deed.
- 35.3. If CCGT alters its constitution in a way which affects its ability to comply with this Deed, Council may terminate this Deed under clause 30.1(g) [Termination for default].

36. Compliance with laws and policies

- 36.1. CCGT must, in carrying out its obligations under this Deed, comply with:
 - 36.1.1. all relevant statutes, regulations, by-laws and requirements of the Commonwealth, a state or territory government or a local government authority, including but not limited to Environmental Laws; and
 - 36.1.2. any of Council's policies notified by Council to CCGT in writing, including those listed in item S of the Schedule.

37. Applicable law and jurisdiction

- 37.1. The laws of the Australian Capital Territory apply to the interpretation of this Deed.
- 37.2. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Deed.

38. Notices

- 38.1. A party giving a Notice under this Deed must do so in writing and the Notice must be:
 - 38.1.1. hand delivered or sent by prepaid post to the street address; or

38.1.2. sent by facsimile transmission to the facsimile address; or

38.1.3. sent by email to the email address,

of the Council Officer (in the case of a Notice to be given to Council) or the person specified in item T3.1 of the Schedule (in the case of a Notice to be given to CCGT).

38.2 A Notice given under clause 38.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 business days after the date of posting;
- (c) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission confirmation receipt; or
- (d) if sent by email, on actual receipt by the addressee.

PART G PROVISION OF YOUTH CENTRE SERVICES

39 Working with children checks

Complying with applicable state or territory requirements

39.1 In connection with the Project, CCGT must not involve a person in Working with Children Activities unless:

- (a) the person is not prohibited by law from being employed or otherwise involved in Working with Children Activities; and
- (b) CCGT and the person have complied with all legal requirements which apply to the person's employment or engagement in Working with Children Activities.

Failure to comply with this clause

39.2 If CCGT fails to comply with clause 39.1, Council may at its sole discretion immediately terminate this Deed in accordance with clause 30.1(g) [Termination for default].

Definitions

39.3 In this clause 39, 'Working with Children Activities' means the performance by CCGT, or for it , or on its behalf, of any of its obligations under this Deed which involves contact, regardless of whether that contact is:

- (a) supervised or not; and
- (b) physical or non-physical (including over the internet, via telephone or any other form of communication),

with an individual or a group of individuals where the individual, or at least one member of the group, is:

- (c) under the age of 18 years; or
- (d) a person who may be unable to take care of themselves, or are unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

PART H CAPITAL WORKS

40 Application of this Part H – Capital Works

40.1 Clauses 41 to 47 apply only if the Project involves any Capital Works.

41 The National Code of Practice for the Construction Industry

Definitions and interpretation

41.1 In this clause 41:

'Code' means the *National Code of Practice for the Construction Industry 1997*;

'Code Guidelines' means the *Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009* or any subsequent version;

'Model Tender Document' means the *Model Tender and Contract Documentation August 2009* or any subsequent version;

'Office of the Australian Building and Construction Commissioner' means the statutory authority of that name, established under the *Building and Construction Industry Improvement Act 2005* and includes any other entity that may, from time to

time, perform the functions of that authority; and

'**Project Party**' means any of CCGT's contractors, subcontractors, consultants and employees who perform on site work in relation to the Capital Works.

Compliance with the Code and Code Guidelines

41.2 If:

- (a) the Capital Works fall within the scope of the Code and Code Guidelines; and
- (b) the Commonwealth's funding contribution(s) in relation to the Capital Works is above an applicable threshold specified in the Code Guidelines,

CCGT must, in relation to the Capital Works, comply with the Code, the Code Guidelines and this clause 41.

Selecting Project Parties for the Capital Works

41.3 CCGT must, in relation to the Capital Works:

- (a) set out the model tender material contained in the Model Tender Document in all requests for tender, expressions of interests, submissions and invitations to join;
- (b) include, in any contract CCGT enters into, provisions which require the Project Party to comply with all the obligations in this clause 41 and all relevant terms and conditions of this Deed;
- (c) not engage a Project Party for the Capital Works, if:
 - (i) the engagement would breach a sanction imposed on the Project Party for a failure to comply with the Code or Code Guidelines; or
 - (ii) the Project Party has had a judicial decision against it relating to employee entitlements, not including decisions under appeal, and has not paid the claim; and
- (d) in selecting Project Parties, give primary consideration to achieving value for money, subject to any demonstrated commitment of the Project Party to any one or more of the following matters, which CCGT may take into account:
 - (i) adding or retaining trainees or apprentices;
 - (ii) increasing the participation of women in all aspects of the construction industry; and

- (iii) promoting employment or training opportunities for Indigenous Australians in areas where there is a significant population of Indigenous Australians.

Records

41.4 In relation to the Capital Works, CCGT must:

- (a) create and maintain, in relation to the Capital Works, written records of compliance with the Code and Code Guidelines by CCGT and its contractors that would be sufficient to satisfy Council of compliance with the Code and Code Guidelines by CCGT and its contractors; and
- (b) if, in Council's opinion, either the form or content of the records created in accordance with clause 41.4(a) is not satisfactory, CCGT must submit a revised version of the records to Council's satisfaction within 20 business days of Council's Notice to CCGT.

Access to premises and records

41.5 If it is reasonably necessary to monitor CCGT's compliance, and the compliance of the Project Parties, with the Code or the Code Guidelines, CCGT must, if requested by:

- (a) Council;
- (b) The Commonwealth;
- (c) any person authorised by Us; or
- (d) any person occupying a position in the Office of the Australian Building and Construction Commissioner,

provide any of the following:

- (a) in person, by facsimile transmission or by post, within the requested timeframe, any requested document;
- (b) full access to CCGT's premises and records and to the premises and records of any contractor for the purpose of any one or more of the following:
 - (i) inspecting any work, material, machinery, appliance, article or facility; or
 - (ii) inspecting and copying any record relevant to the Capital Works.

Publication of information

41.6 Council, the Commonwealth and any person authorised by either of them may publish or otherwise disclose any information in relation to CCGT's compliance, and the compliance of the Project Parties, with the Code and Code Guidelines and CCGT must in any contract with a Project Party that relates to the Capital Works include a provision giving Council, the Commonwealth and any person authorised by either the Commonwealth or Council with the right to publish such information.

42 [NOT USED]**43 Capital Works standards***Capital Works construction standards*

43.1 CCGT must ensure that:

- (a) all aspects of the Capital Works are undertaken by qualified tradespeople or professionals who:
 - (i) use workmanship of a standard consistent with the best industry standards for work of a nature similar to the Capital Works; and
 - (ii) are registered with relevant Australian state or territory accreditation bodies to the extent that such bodies exist to regulate the activities of members of that particular trade or profession;
- (b) all activity relating to the Capital Works is carried out in accordance with all legal requirements and standards applicable to the building, construction or fit out being undertaken;
- (c) all materials used in the Capital Works comply with any requirements set out in this Deed and are of merchantable quality, fit for their purpose and consistent with the nature and character of the Capital Works; and
- (d) the Capital Works comply with the requirements of the BCA.

Requirements relating to protection of the environment and biodiversity

43.2 In undertaking the Capital Works CCGT must comply with all obligations it has under any Environmental Law and any other requirements relating to the environment specified in item S4.1 of the Schedule.

Construction and completion requirements

- 43.3 When completed, the Capital Works must be:
- (a) complete and free from errors, defects or omissions except for errors, defects or omissions that are, as determined by Council at its absolute discretion, of a minor nature; and
 - (b) fit for use for the Designated Use.
- 43.4 CCGT must, in relation to the Capital Works, obtain all necessary approvals and certificates to be issued by the relevant authorities, and, if requested by Council, provide Council with a copy within 5 business days of Council's request.

Material Variations to the Capital Works

- 43.5 CCGT must not, without Council's prior written approval, vary, or enter into an agreement with any entity to vary a material requirement or specification of the Capital Works.
- 43.6 For the purposes of clause 43.5, a material requirement or specification includes, but is not limited to, the:
- (a) price of the Capital Works;
 - (b) budget, if any, for the Capital Works;
 - (c) design of the Capital Works;
 - (d) timeframes for completion of the Capital Works; and
 - (d) fitness of the completed Capital Works for the Designated Use.

44 Council's right to step in

- 44.1 In this clause 44, 'step in' means Council's right to, by itself or through a third party:
- (a) take control or management of part or all of the Capital Works, including, at Council's discretion, the performance of CCGT's Capital Works obligations under this Deed; or
 - (b) make any other arrangements to complete part or all of the Capital Works, or to otherwise ensure the completion of the Capital Works to Council's satisfaction.
- 44.2 If CCGT fails to:
- (a) rectify a breach of this Deed in relation to the Capital Works within 10 business days of receiving a Notice from Council, or within such other period that Council specifies; or
 - (b) fulfill, or CCGT is in breach of, any of its obligations under this Deed in relation to the Capital

Works that are not capable of being rectified, as determined by Council,

Council may, by Notice to CCGT, do either or both of the following:

- (c) immediately exercise one or more of the remedies set out in clause 28 [Remedies];
- (d) step in.

44.3 If Council exercises its right to step in, CCGT must provide sufficient assistance and cooperation, to Council's satisfaction, to enable the Capital Works to continue. The sufficient assistance and cooperation includes, but is not limited to, complying with Council's directions and within in the timeframes specified by Council, in relation to any one or more of the following:

- (a) novating or assigning to Council or to Council's nominee any of CCGT's contracts with third parties relating to the Capital Works;
- (b) novating or assigning this Deed or part of this Deed to a third party nominated by Council;
- (c) assigning to Council, or otherwise assisting Council or its nominee to obtain all necessary leases, licences, consents and approvals to ensure that Council can fully exercise its rights under this clause 44.

44.4 If Council incurs any costs while exercising its rights under this clause 44, Council may determine, at its absolute discretion, that these costs constitute an overpayment for the purposes of clause 11 of this Deed and require CCGT to repay to Council the amount of the overpayment in accordance with that clause.

45 Capital Works /Project Manager

45.1 CCGT must, if specified in item U1.1 of the Schedule, appoint a Capital Works/Project Manager.

45.2 Before appointing a person as the Capital Works/Project Manager, CCGT must obtain:

- (a) Council's written approval; and
- (b) the written approval of any other party, if any, specified in item U1.2 of the Schedule,

of the proposed appointment and provide Council with the Capital Works Manager's/Project Manager's resume.

45.3 CCGT must not appoint a person as the Capital Works/Project Manager unless the person holds one or more of the following professional qualifications or accreditations:

- (a) registration with the Royal Australian Institute of Architects or other equivalent professional organisation satisfactory to Council;
- (b) a licence under the construction occupations licensing legislation in force in the state or territory

in which the Capital Works are undertaken;

- (c) membership of the Master Builders Association of the state or territory in which the Capital Works are undertaken;
- (d) registration with the National Professional Engineers Register; or
- (e) any other qualification or accreditation approved by Council in writing or specified in item U2.1 of the Schedule.

45.4 As CCGT is required to appoint a Capital Works/Project Manager under this Deed, CCGT must enter into an agreement with the Capital Works/Project Manager:

- (a) that requires, among other things, the Capital Works/Project Manager to supervise the Capital Works; and
- (b) that is in accordance with the additional requirements, if any, specified in item U3.1 of the Schedule.

46 [NOT USED]

47 Designated Use and liquidated damages

47.1 This clause 47 applies if a Designated Use is specified in item W1.1 of the Schedule.

47.2 CCGT must ensure that:

- (a) the Premises are used, throughout the Designated Use Period, only for the Designated Use;
- (b) it provides the Designated Use, and must obtain Council's prior written approval if CCGT wishes to arrange for a person not specified in Item W1.3 to provide the Designated Use; and
- (c) the Designated Use is provided in accordance with the requirements, if any, specified in item W1.4 of the Schedule.

Failure to ensure that the Premises are used for the Designated Use

47.3 The Parties agree that the repayment provisions set out in this clause 47 and at item W2.1 of the Schedule constitute a genuine and reasonable pre-estimate of the loss of public utility to Council and the Commonwealth if the Premises are not used for the Designated Use throughout the Designated Use Period.

47.4 Subject to clause 47.5, in addition to any other rights available to Council under this

Deed, under statute, at law, or in equity, if CCGT fails to ensure that the Premises are used for the Designated Use throughout the Designated Use Period, Council may require CCGT to repay Council a proportion of the Monies in accordance with item W2.1 of the Schedule.

47.5 Clause 47.4 does not apply if, for a limited period of time, CCGT fails to ensure that the Premises are used for the Designated Use and Council determines, acting reasonably, that:

- (a) the situation has not arisen through any substantial failure by CCGT;
- (b) CCGT has used all reasonable efforts to resolve the situation to Council's satisfaction;
- (c) CCGT has complied with all reasonable directions Council has given to CCGT to assist CCGT to resolve the situation; and
- (d) the situation is resolved to Council's satisfaction.

EXECUTED AS A DEED ON

Executed by **WYONG SHIRE COUNCIL**)
pursuant to a delegation under s. 377)
of the *Local Government Act 1993*)
in the presence of:)

.....
Michael Whittaker
General Manager

.....
Brian Glendenning
General Counsel

Executed by **CENTRAL COAST GROUP**)
TRAINING LIMITED ABN 37002520176)
in accordance with s. 127 of the)
Corporations Act 2001 (Cth))

.....
Signature of Director
.....
Name of Director

.....
Signature of Director
.....
Name of Director

SCHEDULE

<u>Reader's guide – important funding agreement dates</u>			
Key Agreement dates/periods	Date	Relevant Agreement clause/item	Comments
'Start Date'	The date on which this Deed is signed (executed)	See clause 1.1	
'Project Period'	Starts on the 'Start Date'. Ends on 30 June 2019	See clause 1.1 and item D	This includes the Capital Works period and the Designated Use period.
'Completion Date'	The day on which the Central Coast Youth Employment Solutions Centre is legally entitled to be open for operation – 30 June 2014.	See item C1.4	The date on which the Capital Works have been completed and the Certificate of Occupancy has been issued and sighted by Us.
'Designated Use Period'	Starts one day after the 'Completion Date' – 1 July 2014. Ends on 30 June 2019	See clause 1.1 and item W	A period of five years commencing 1 day after the issue of the Certificate of Occupancy
'End Date'	30 June 2019	See clause 1.1 and item A1.1	

A. End Date (clause 4)

A1.1 The End Date:

- (a) subject to A1.1(b), is 20 business days after the end of the Designated Use Period; and
- (b) must be on or before 21 July 2019.

B Program and Guidelines (clause 7)

B1.1 The Program is the 'Community Infrastructure Grants – Youth Commitments Program'.

Grants provided under the Program support projects in Australian Government Priority Employment Areas, involving the construction and upgrade of local sport, recreation and community infrastructure that support the engagement of young people in education, training, employment and engagement activities within the local community.

B1.2 The Guidelines are the 'Guidelines for Community Infrastructure Grants – Youth Commitments Program as amended from time to time by the Commonwealth. A current copy of the Guidelines is attached to this Deed as 'Annexure 2'.

C Project (clause 7)

C1.1 The name of the Project is: Central Coast Youth Employment Solutions Centre.

C1.2 The Project consists of the following components:

- (a) undertaking the Capital Works; and
- (b) providing the Designated Use throughout the Designated Use Period.

Alternative date by which Monies must be spent (clause 11.1.2))

C1.3 For the purposes of 11.1.2 – a date other than the End Date is specified. The date specified for the purposes of 11.1.2 is the Completion Date.

Interpretation

C1.4 In this Schedule, unless the contrary intention appears:

'Alternative Use' means a use of the Central Coast Youth Employment Solutions Centre which Council may approve at its sole discretion and:

- (a) which is in addition to, or instead of, the Designated Use; and
- (b) for which CCGT has obtained, to Council's satisfaction, all necessary approvals and consents.

'Central Coast Youth Employment Solutions Centre' means the structure(s) CCGT must construct and

fit out in accordance with the requirements in item C2 of this Schedule.

'Completion Date' means the day on which the Central Coast Youth Employment Solutions Centre is legally entitled to be open for operation. The Completion Date must be on or before 30 June 2014.

'Long term Job' means an employment arrangement of six months or more for a young person aged between 15 and 25. These jobs can be permanent or casual, fulltime or part time, temporary, contractors, traineeships, apprenticeships, school based apprenticeships and may relate to the construction of the or service delivery provided by the Central Coast Youth Employment Solutions Centre.

'Short term Job' means an employment arrangement of less than six months for a young person aged between 15 and 25. These job can be permanent or casual, fulltime or part time, temporary, contractors, traineeships, apprenticeships, school based apprenticeships and may re relate to the construction of the or service delivery provided by the Central Coast Youth Employment Solutions Centre.

Capital Works

C2.1 The Premises are at 3Bounty Close, Tuggerah, NSW, 2259

C2.2 The Capital Works are to construct and fit out the Central Coast Youth Employment Solutions Centre on the Premises.

C2.3 CCGT must undertake the Capital Works in accordance with the following plans and specifications:

- (a) the Guidelines;
- (b) the Project Submission and revised documentation relating to Stage 1, as approved by the Commonwealth, set out at Annexure 1 to the Funding Agreement; and
- (c) the Implementation Plan described in this item C.

C2.4 CCGT must undertake the Capital Works in a manner that maximises the training and employment opportunities for young people (ages 15 – 25), including but not limited to:

- (a) using CCGT's best endeavours to give priority to subcontracting arrangements related to the Project to business that have a demonstrated commitment to creating jobs for young people, retaining jobs for young people, and assisting in the developmental skills in young people including indigenous young people, young people with a disability or young people from disadvantaged backgrounds;
- (b) ensuring that young people who are involved with the undertaking of Capital works are

adequately mentored and supervised by appropriately qualified tradespersons; and

- (c) using CCGT's best endeavours to create Short Term Jobs and Long Term Jobs for young people.

Use of Monies on Capital Works

C2.5 CCGT must not, unless otherwise indicated in the Project Submission or approved by Council in writing, use the Monies for:

- (a) utilities expenses such as telephone bills;
- (b) staff training;
- (c) the purchase of Assets not listed in item I, computers or other consumable items;
- (d) computer maintenance costs;
- (e) security personnel or other security or surveillance costs;
- (f) insurance;
- (g) motor vehicles, fuel, tyres or other transport costs;
- (h) landscaping, gardening or cleaning costs;
- (i) professional development of any person or organisation;
- (j) resourcing of peak bodies;
- (k) the purchase of land; or
- (l) the refurbishment of any existing buildings.

Implementation Plan

C2.6 CCGT must develop an 'Implementation Plan' and provide Council with both an electronic copy in the Word document format and provide Council with a hard copy on or before the due date set out in item F3.1.

C2.7 The Implementation Plan must, at a minimum, include:

- (a) a GANTT Chart describing the construction and design activities involved with undertaking the Capital Works, and which must be updated from time to time if timing changes by more than two weeks;
- (b) a registered Quantity Surveyor reviewed cost plan for all elements of the Capital Works provided on the Quantity Surveyor letterhead. CCGT must ensure that the cost plan contains a statement

from the Quantity Surveyor that there are sufficient design and construction contingencies included in the cost plan;

- (c) final scaled plans, floor plans, sketch plans of elevations, concept plans of the site including the adjacent street/s, car parking and floor plans of each elevation;
- (d) a risk plan describing the top ten risks specific to the undertaking of the Capital Works including where young people are involved;
- (e) a list of the stakeholders, including their names, a description of their roles and importance to the Project, and method and frequency of communications which will take place between the key stakeholders to facilitate the delivery of the project for the construction and Designated Use Period;
- (f) The name and resume of the Capital Works Manager/Project Manager who will oversee the construction of the Central Coast Youth Employment Solutions Centre;
- (h) Name and position of the individual who will oversee the financial management of the costs of constructing the Central Coast Youth Employment Solutions Centre.
- (i) Details of the persons who will be responsible for the approval processes CCGT is to implement in relation to the undertaking of the Capital Works;
- (j) Details of partnership funding, the amounts, times and manner in which it will be paid between partners and a copy of the partnership financial agreement;
and
- (k) any further detail as reasonably required by Council;

C2.8 If directed by Council, CCGT must, in accordance with Council's directions, update the Implementation Plan.

Project Management Committee Board

C2.9 CCGT must actively participate in the project management committee that Council is required to establish under Item c2.9 of the Schedule to the Funding Agreement.

C2.10 CCGT must ensure that it attends each meeting of the project management committee, and that it provides to each of those meetings reports and other documents that Council reasonably directs it to provide.

C2.11 CCGT acknowledges that project management committee must, at a minimum, comprise of the

following people and must ensure, at CCGT's expense, that the persons listed at paragraphs (c) and (d) below attend each meeting of that committee :

- (a) the Capital Works Manager/Project Manager;
- (b) the General Manager, or his nominated representative, of Council;
- (c) the General Manager of Central Coast Group Training (as Project Director) or his nominated representative from time to time;
- (d) the architect who has been engaged by CCGT in relation to the undertaking of the Capital Works; and
- (e) youth members of the Project Steering Committee.

C2.12 CCGT acknowledges that Council may require Council's employees, consultants or agents to attend the project management committee meetings.

Opening Ceremony

C2.13 Council may give CCGT Notice to permit the Premises to be used for an opening ceremony, and that Notice may include conditions concerning the manner in which the Premises are to be available for the opening ceremony. CCGT must comply with the Notice given to it by Council.

C2.14 [NOT USED]

Records of Short Term Jobs and Long Term Jobs

C2.15 CCGT must make and keep records of the Short Term Jobs and Long Term Jobs for young people that are created by CCGT for the purposes of this Project. The records must include, at a minimum, the following information:

- (a) the Number of young people employed on a full-time or part-time basis as either a permanent , casual, temporary, or contracting employee, including details on:
 - their role/occupation
 - the person's background i.e. if they are Indigenous, Culturally and Linguistically Diverse Background or have a disability
 - duration of the individual's employment (long term or short term), and

- (b) Number of young people involved in the Project as trainees, apprentices or school based apprentices, including details on:
- their role/occupation
 - the person's background i.e. if they are Indigenous, Culturally and Linguistically Diverse Background or have a disability
 - duration of the individual's employment (short term, long term).

C2.16 If required by Council, CCGT must provide Council with a copy of the records described at item C2.15.

Designated Use

C2.17 CCGT must provide the Designated Use for the Designated Use Period in accordance with requirements, if any, specified in item W.

Site Visits

C2.18 Council may give Notice to CCGT to require CCGT to give access to the Premises, including to any works during and after the Capital Works, to such persons identified by Council, for the purpose of monitoring CCGT's compliance under this Deed and Council's compliance with the Funding Agreement. The persons that Council may identify in any such Notice may include, but is not limited to, any representative or delegate of Council as well as any representative, delegate or nominee of the Commonwealth.

C2.19 [NOT USED]

Material Variations

C2.20 If CCGT seeks to make a Material Variation to the Project CCGT must submit a written request to Council that includes a precise description of the proposed Material Variation. Council, in consultation with the Commonwealth, may approve (conditionally or otherwise) or decline to approve the Material Variation at its sole discretion. For the purposes of this Item C2.20, '**Material Variation**' includes:

- (a) an increase in the proportion of the Budget used for Administration Purposes;
- (b) an increase in the Budget for the Project by more than 10% (note that Council is required to make any financial or other contribution to the Project other than the Monies);
- (c) a reduction in the Budget or size of the Project by more than 10%;

- (d) any reduction in the amount to be contributed by CCGT to the costs of the Project including the construction of the Centre;
- (e) any change in the purpose for which any building or facility constructed or developed as part of the Project is to be used; and
- (f) any change in location of the Centre.

D Project Period (clause 7)

D1.1 The Project Period starts on the Start Date and ends on 30 June 2019, unless this Deed is earlier terminated, in which case the Project Period ends on the day on which this Deed is terminated.

E Budget (clause 7)

E1.1 Council and CCGT acknowledge and agree that the Budget exceeds the Monies that Council is providing to CCGT for the Project, and that CCGT will fund all costs in addition to the Project that exceed the Monies, as set out at Item F2.1. The Budget for the Project is as follows:

Description of item	Monies (excluding GST)
Builder on-site overhead (including \$40,000 design fees)	\$152,000
Earthworks	\$120,000
Concrete/Masonry work	\$374,000
Structural Steel	\$262,000
Roofing and alucobond facades	\$215,000
Internal frames and walls	\$170,000
Doors and Operable Walls	\$55,000
Wall and Ceiling Linings	\$182,000
Door Hardware	\$12,000
Aluminum Windows and commercial shopfronts	\$174,000
Fixtures and fittings	\$50,000
Floor Coverings	\$118,000
Painting	\$42,000
Plumbing, drainage and stormwater	\$185,000
Electrician	\$191,000
Mechanical	\$220,000
Telephone and Data	\$32,000
Fire and Security	\$16,000
Contingency	\$130,000
Total Funding (excluding GST)	\$2,700,000

Transfer of Monies between items in the Budget

- E2.1 CCGT must not, without Council's prior written approval, transfer Monies between the budget items set out in the table at item E1.1 if the amount of Monies that CCGT proposes to transfer is equal to or greater than ten percent of the total amount of Monies.

F Milestones and Funding (clauses 7, 8 and 9)

Milestones

- F1.1 CCGT must carry out the Project to the satisfaction of Council and the Commonwealth, and in accordance with, and by the due dates for, the Milestones set out in the table at item F3.1.

Monies provided

- F2.1 The Funding Agreement provides that total amount of Australian Government Funding for the Project is \$2.7 million (excluding GST), which is to be paid to Council, with additional contributions to be made by Council for land with a value of \$480,000, and by CCGT for the fitout with a value of \$250,000.
- F2.2 Subject to CCGT's compliance with this Deed, Council will pay the Monies in the installments set out in the table at item F3.1.
- F2.3 Council will pay CCGT the amount of each installment not later than 30 days after CCGT provides Council with a tax invoice properly rendered in accordance with item G.

Table of Milestones and installments of Funding

F3.1 The following table sets out the Milestones and installments of Monies for the purposes of items F1.1 and F2.2:

Milestone #	Description of Milestone	Due date of Milestone	Monies payable (excluding GST)
1	On Council's acceptance of the Implementation Plan, as required by Item C2.6	30 July 2013	\$500,000
2	Grant of a Building Contract and provision to Council of evidence of works approvals	31 August 2013	\$500,000
3	Construction of the Capital Works 25% complete, to comprise completion of Earthworks, Concrete footings, and the installation of structural steel and roofing sheets	In accordance with the Implementation Plan submitted to Council	\$700,000
4	Complete to Council's satisfaction Progress Reports (Item F4.1)	Within 7 days of the end of each calendar month	Nil
5	Complete construction of the Capital Works to lock up, evidenced by photographs and a statement from the Project Manager in accordance with Australian Building Standards, and as agreed and accepted by Council. Council may require an independent building consultant to provide further certification that the requirements of this Deed have been met.	On or before 24 February 2014	\$700,000
6	Construction of the Capital Works completed. CCGT must provide Council with the Final Report, a Certificate of Occupancy, and "as built" plans certified by an Architect. Council may require an independent building consultant to provide further certification that the requirements of this Deed have been met.	On or before 20 June 2014	\$300,000
7	Completion of the Financial Report, to Council's satisfaction	On or before 16 September 2014	Nil
8	Completion of Annual Reports on the Designated Use, to Council's	On or before 1 July in each year from 2015	Nil

	satisfaction	to 2019	
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G Invoice requirements (clause 8)

G1.1 Invoices forwarded by CCGT must be correctly addressed and include the:

- (a) the title of the Project: "Central Coast Youth Skills Employment Centre"
- (b) CCGT's name and ABN: 37002520176;
- (c) the name of the Council Officer;
- (d) the date of execution of this Deed;
- (e) the amount being invoiced (including a description of the deliverables or Milestones that the invoice relates to); and
- (f) CCGT's account details for payment of the invoice by electronic funds transfer.

G1.2 If an invoice relates to a taxable supply made under this Deed, the invoice must comply with the requirements for a tax invoice, as specified in the *A New Tax System (Goods and Services Tax) Act 1999*.

H Accounts (clause 10)

H1.1 The information that CCGT must provide Council pursuant to clause 10.1.5 of this Deed are the BSB number, account number, the name of the account holder (as recorded by the institution), and the full name of the institution.

H2.1 [Reserved].

I Assets (clause 12)

Description of Assets

I1.1 CCGT may use the Monies to purchase or create any Asset(s) that have been listed in the Budget and accepted by Council.

Assets register

I2.1 Not required.

J Subcontractors (clause 13)

J1.1 None specified at the Start Date.

K Specified Personnel (clause 14)

K1.1 None specified at the Start Date.

L Acknowledgement and publicity (clause 15)

L1.1 CCGT must acknowledge the support provided by the Commonwealth and Council as follows:

"This project is funded by the Australian Government through the Community Infrastructure Grants Program, with assistance from Wyong Shire Council".

L1.2 CCGT must acknowledge the financial and other support it has received from Council and the Commonwealth by erecting a plaque, funded by CCGT, which contains the words:

'This project is funded by the Australian Government through the Community Infrastructure Grants Program – Youth Commitments Program, with assistance from Wyong Shire Council'

Or if there is insufficient room on the plaque it can be reduced to:

'Funded by the Australian Government, with assistance from Wyong Council.'

L1.3 The Australian Government crest **should not** be included in any acknowledgement or publicity materials.

M Reports (clause 17)*General*

M1.1 CCGT must provide Council with the following Reports:

- (a) Financial Report;
- (b) Final Report; and

- (c) Monthly Progress Reports.
- (d) Annual Reports (relating to the Designated Use Period)

M1.2 CCGT must provide Council with the Reports electronically. If Council provides CCGT with a template for any of the Reports, CCGT use that template. Reports are to be emailed to the Council Officer.

M1.3 CCGT must provide each Report by the due date for the Report specified in the table at item F3.1.

Financial Report

M2.1 The Financial Report must **comply** with the applicable requirements of clause 17.

Final Report

M3.1 The Final Report must:

- (a) describe in detail the outcomes of the Project;
- (b) describe how the Monies were used;
- (c) provide evidence that the Project has been completed;
- (d) include the Certificate of Occupancy for the Central Coast Youth Employment Solutions Centre;
and
- (e) provide details on the total number of Short Term Jobs and Long Term Jobs this Project created for young people, including:
 - i. number of young people employed on a full-time or part-time basis as either a permanent , casual, temporary, or contracting employee, including details on:
 - their role/occupation
 - the person's background i.e. if they are Indigenous, Culturally and Linguistically Diverse Background or have a disability
 - duration of the individual's employment (long term or short term)
 - ii. number of young people involved in the Project as trainees, apprentices or school based apprentices, including details on

- their role/occupation
 - the person's background i.e. if they are Indigenous, Culturally and Linguistically Diverse Background or have a disability
 - duration of the individual's employment (short term, long term).
- (f) Any other information as required by Council, in a format as required by Council.

Monthly Progress Report

M4.1 Each Monthly Progress Report must:

- (a) describe in detail the progress on the Project to date;
- (b) provide details of CCGT's expenditure of the Monies to date;
- (c) provide a summary of the expenditure of Monies against the Budget;
- (d) provide digital photo(s) showing progress of the Capital Works from internal and external perspectives;
- (e) provide exception reporting on issues of concern and an update on project risks;
- (f) describe job creation that has occurred because of the Project;
- (g) describe, if any, the amount, nature and source of any other contributions from other sources other than Council to the Project; and
- (h) include any other information as required by Council.

Annual Reports

M5.1 Each Annual Report must:

- (a) describe the number and type of services provided in the Central Coast Youth Employment Solutions Centre;
- (b) describe in detail activities involving youth in the Central Coast Youth Employment Solutions Centre;
- (c) describe in detail how many young people have been supported by services provided by the Central Coast Youth Employment Solutions Centre (including detail of support received);

- (d) detail how the broader community (include other community organisations) have has utilised the Central Coast Youth Employment Solutions Centre.

M5.2 As part of the Annual Reporting process CCGT will be required to develop and report against Key Performance Indicators (KPIs) which align with the following Outcomes:

- (a) improved services for young people in the community;
- (b) an increase in employment and education including training opportunities and apprenticeships or involvement of young people with disabilities, Indigenous or disadvantaged Australians in the project's delivery;
- (c) economic development opportunities;
- (d) improved community services;
- (e) expansion of infrastructure to service a larger portion of young people; or
- (f) upgrades to community facilities which result in community benefits or an increase in community capacity and utilisation.

Reports General

- M6.1 CCGT must provide to Council any additional reports whether written or otherwise which Council require within 5 business days of written Notification by Council, in the format specified by Council.
- M6.2 CCGT must ensure that the content of all reports is accurate.
- M6.3 CCGT must immediately advise Council of any significant difficulties which CCGT experience or identify in fully performing the Project as specified in this Deed.
- M6.4 CCGT must provide Council with a copy of the final certificate of approval issued by the relevant building authority confirming completion of all phases of construction, renovation or refurbishment of each building constructed, renovated or refurbished for the Project in accordance with relevant building codes or regulations within 5 business days of the issue of such a certificate.

N Commonwealth Material and Council Material (clause 18)*License in Council Material – conditions*

N1.1 The licence that Council grants to CCGT in accordance with clause 18.2 is subject to the following conditions or restrictions:

- (a) the licence is revocable on 10 business days' Notice by Council;
- (b) the licence expires on the End Date.

Sub-licence in Commonwealth Material – conditions

N1.2 The sub-licence that Council grants to CCGT in accordance with clause 18.3 is subject to the following conditions or restrictions:

- (a) the sub-licence is revocable on 10 business days' notice by Council; and
- (b) the sub-licence expires on the End Date.

What You must do with the Commonwealth Material at the End Date

N2.1 [Reserved]

O Project Material (clause 19)*Ownership of Project Material and Intellectual Property Rights in Project Material*

O1.1 Council owns the Project Material and the Intellectual Property Rights in the Project Material.

If Council own Intellectual Property Rights in the Project Material – Your licence for Project Material

O2.1 The licence that Council grants to CCGT in accordance with clause 19.3 is subject to the following conditions or restrictions:

- (a) the licence is revocable on 10 business days' notice by Council; and
- (b) the licence expires on the End Date.

P Confidential Information (clause 20)

Council Confidential Information

P1.1 None specified.

Commonwealth Confidential Information

P2.1 None specified.

CCGT Confidential Information

P3.1 None specified.

Q Protection of Personal Information (clause 21)

Q1.1 Not specified

R Insurance (clause 25)

R1.1 In addition to the insurance specified in clause 25, CCGT must also maintain building and contents insurance which ensures that the Central Coast Youth Employment Solutions Centre is insured at a commercially appropriate level at all times for the Term of this Deed.

S Compliance with laws and policies (clause 36)

Compliance with Laws

S1.1 CCGT acknowledges that:

- (a) it must comply with any obligations it has under the *Equal Opportunity for Women in the Workplace Act 2012(Cth)*;
- (b) when dealing with its employees, it must comply with the *Fair Work Act 2009 (Cth)*, and obligations under relevant occupational health and safety laws;
- (c) Chapter 7 of the *Criminal Code Act 1995* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;

- (d) giving false or misleading information is a serious offence under the *Criminal Code Act 1995*;
- (e) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Deed (other than a person to whom the publication or disclosure is authorised) may be an offence under section 70 of the *Crimes Act 1914 (Cth)*, punishment for which may be a maximum of two years imprisonment;
- (f) in respect of data, including personal information, held in connection with this Deed, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this Deed is an offence under Part 10.7 of the *Criminal Code Act 1995* which may attract a substantial penalty, including imprisonment;
- (g) CCGT is aware of the provisions of section 79 of the *Crimes Act 1914 (NSW)* relating to official secrets;
- (h) CCGT is aware of any obligations it may have under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*; and
- (i) CCGT may be subject to the provisions of the *Competition and Consumer Act 2010 (Cth)* and the *Archives Act 1983 (Cth)*.

Compliance with Policies

S2.1 CCGT must:

- (a) when using Council land, premises or facilities (including information systems), comply with Council's directions and procedures relating to occupational health and safety, environmental management and security (which CCGT acknowledges may change during the term of this Deed); and
- (b) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914 (Cth)* signs an acknowledgment that he or she is aware of the provisions of that section.

Protective Security

S3.1 Not applicable.

Environmental Protection and Biodiversity

S4.1 CCGT must provide all reasonable assistance to Council to enable Council to comply

with its reporting obligations under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

T Notices (clause 38)

Departmental Officer

T1.1 The Department Officer is the person occupying or for the time being performing the duties of the position specified below:

Name of position: Branch Manager – Infrastructure Program Delivery

Office address: DEEWR, Level 8, 14 Mort Street, Canberra City 2601

Postal address: GPO Box 9880, Canberra City, 2601

Phone: (02) 6240 2606

Email: CYC@deewr.gov.au

Fax: (02) 6276 7551

T1.2 At the Start Date that person was Ms Jenny Harrison.

Council Officer

T2.1 The Council Officer is the person occupying or for the time being performing the duties of the position specified below:

Name of position: Director, Community and Recreation Services

Office address: 2 Hely Street, Wyong, NSW

Postal address: PO Box 20, Wyong 2259

Phone: (02) 4350 5590

Email: wsc@wyong.nsw.gov.au

T2.2 At the Start Date that person was Maxine Kenyon.

T2.3 Council must Notify CCGT of any changes to the details in items T2.1 or T2.2, and of any changes that it is aware of in respect to items T1.1 or T1.2.

Person who may be given Notices on behalf of CCGT

T3.1 Notices to CCGT may be given to the person occupying or for the time being performing the duties of the position specified below:

Name of position: General Manager, CCGT

Office address: Unit 6, 6 Reliance Drive, Tuggerah NSW

Postal address: PO Box 3100, Tuggerah 2259

Phone: (02) 4353 1917

Email: greg.best@ccgt.com.au

T3.2 At the Start Date that person was Greg Best.

T3.3 CCGT must Notify Council of any changes to the details in item T3.1 or T3.2.

U Capital Works Manager (clause 45)

Appointment of Capital Works Manager

U1.1 CCGT must appoint a Capital Works Manager/Project Manager.

U1.2 The Commonwealth.

U2.1 Not applicable.

U3.1 The additional requirements for the purposes of clause 45.4 are that:

- (a) the agreement with the Capital Works/Project Manager must be in writing;
- (b) CCGT must, if requested by Council, provide Council with a copy of the agreement within 10 business days of our request;

- (c) the agreement with the Capital Works Manager/Project Manager must, at a minimum, include provisions requiring the Capital Works Manager/Project Manager to:
- (i) report back to Council and CCGT about the progress of the Capital Works;
 - (ii) advise Council and CCGT if there are going to be any delays to the Capital Works;
 - (iii) advise Council and CCGT if there are going to be any problems with complying with the Budget;
 - (iv) ensure that all persons engaged in the Capital Works are suitably accredited;
 - (v) ensure that all necessary licences, certificates and approvals are obtained for the Capital Works;
 - (vi) provide CCGT and, if Council requires, Council with written certification that the necessary licences, approvals and certificates are obtained; and
 - (vii) provide CCGT with a written undertaking, when all the Capital Works have been completed, that all the relevant obligations in this Deed have been complied with; and

V Purposes Agreement (clause 46) – [Not used]

W Designated Use and liquidated damages (clause 47)

Designated Use and Designated Use Period

W1.1 The Designated Use is provision of services which support young people's wellbeing, develop skills to support them through education, training and employment. The Centre is also required to provide opportunities for young people to participate in and engage with their communities. The Central Coast Youth Employment Solutions Centre is required to ensure the long term viability of the services. The Central Coast Youth Employment Solutions Centre must provide improved access to services and activities, including those which support youth within high risk groups, transition into employment and includes any Alternative Use approved by Council as set out at Item C1.4.

W1.2 The Designated Use Period starts on the Completion Date and ends on 30 June 2019.

W1.3 CCGT must provide the Designated Use for the Designated Use Period.

W1.4 CCGT must ensure that the Designated Use is provided in accordance with the following requirements:

- (a) compliance with the laws and policies of New South Wales and the Commonwealth relating to working with children, and
- (b) any other laws and policies relating to the operation of such a centre.

Liquidated damages

W2.1 If CCGT fails to ensure that the Central Coast Youth Employment Solutions Centre is used for the Designated Use throughout the Designated Use Period, Council may require CCGT to repay, under clause 47.3, an amount calculated using the following formulae:

$$F * (1,825 - T) / 1,825$$

where:

F = One quarter of the total amount of Monies payable by Council under this Deed; and

T = the number of days from the Completion Date until the day on which the failure in clause 47.3 starts.

X Partnerships and Funding Groups (clauses 24A and 24B) – [NOT USED]