



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2019-005

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	42
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD FOI](#)
Subject: Freedom of Information request
Date: Wednesday, 9 January 2019 11:33:09 AM

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title:

First Name:

Last Name:

Business/Organisation:

Address:

Suburb:

Postcode:

State/Territory:

Phone/mobile:

Email address:

Request for information

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

All documents relating to the establishment and operation of the Chief Minister's Charitable Fund. Such documents may include, but are not limited to, briefs, correspondence, deeds of agreements, contracts and financial reconciliations and acquittals.

I do not want to access the following documents in relation to my request::

Thank you.
Freedom of Information Coordinator




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2019-005



via email: 

Dear 

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 9 January 2019, in which you sought access to:

- All documents relating to the establishment and operation of the Chief Minister's Charitable Fund. Such documents may include, but are not limited to, briefs, correspondence, deeds of agreements, contracts and financial reconciliations and acquittals.

On 21 January 2019 an Intention to Refuse letter was sent to you with a due date for reply of 12 February 2019. You responded on 12 February 2019 with a refined scope of:

- Operational documents related to the funding and distribution of funds related to the Chief Minister's Charitable Fund.

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 6 February 2019. Following the rescope of your request on 12 February 2019 the decision and response is due by 14 March 2019.

Decision on access

Searches were completed for relevant documents and 5 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant full access to 4 documents and partial access to 1 document. The documents released to you are provided as **Attachment B** to this letter.

Please note that information can also be found publicly at <https://www.cmtedd.act.gov.au/functions/chief-ministers-charitable-trust>

Material considered

In reaching my access decision, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;

Exemption claimed

My reasons for deciding not to grant access to components of these documents are as follows:

Contrary to the public interest information under schedule 1 of the Act

Pages 2-3 contain advice provided by the Government Solicitor Office (GSO). I consider the advice is subject to legal professional privilege as it was brought into existence for the dominant purpose of providing a legal opinion in relation to those decisions. I am satisfied that the communications were made in circumstances of confidentiality and were provided by an independent legal adviser satisfying the requirements to attract legal professional privilege. For this reason, I have decided to exempt from release this information.

I am satisfied it is in the public interest to release the remaining information to you in full.

Charges

Processing charges are not applicable for this request because the number of pages being released is less than 50.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 15 March 2019. Your personal contact details will not be published. You may view the CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in the CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) pursuant to an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Sarah McBurney
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

12 March 2019



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
	Operational documents related to the funding and distribution of funds related to the Chief Minister's Charitable Fund.	2019-005

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-4	Ministerial Brief	21/06/2018	Partial release	Sch 1.2	Yes
2	5	Certificate of Registration of a Company	27/06/2018	Full release	N/A	Yes
3	6-8	Minute	28/06/2018	Full release	N/A	Yes
4	9-27	Funding Deed	28/06/2018	Full release	N/A	Yes
5	28	Invoice	29/06/2018	Full release	N/A	Yes
Total No of Docs						
5						

**Chief Minister, Treasury and Economic
Development Directorate**

UNCLASSIFIED

To: Chief Minister
Deputy Chief Minister

Tracking No.: CMTEDD2018/3297

Date: 21 June 2018**CC:** Attorney-General
Head of Service**From:** Executive Director, Policy and Cabinet**Subject:** Chief Minister's Charitable Fund establishment**Critical Date:** 25 June 2018**Critical Reason:** To finalise the agreed parameters of the Chief Minister's Charitable Fund**Purpose**

1. To seek your agreement to the final design parameters and terms and conditions for the establishment of the Chief Minister's Charitable Fund Ltd (CMCF).

Recommendations

2. That you agree to the parameters of the CMCF as outlined in this brief.

Agreed / Not Agreed / Please Discuss

Andrew Barr, MLA  25/6/18

Agreed / Not Agreed / Please Discuss

Yvette Berry, MLA  27/06/18

UNCLASSIFIED

Minister's Office Feedback


Background

1. In the 2018-19 budget, the government agreed to establish a charitable fund to support Canberrans in need. Funding of \$5 million has been committed from 2017-18 unspent funds for this purpose (18/329/BUD – CMTEDD-CM E12).
2. On 12 June 2018 Cabinet subsequently agreed:
 - to the establishment of the CMCF as an independent non-government entity, to provide additional help to the most vulnerable members of the ACT community;
 - that the current Board of Directors of Hands Across Canberra Ltd be invited to be the inaugural board of the CMCF; and
 - the final parameters and terms and conditions for the establishment of the CMCF be agreed by the Chief Minister and Deputy Chief.

Issues

3. In determining the proposed arrangements for the CMCF, advice has been sought from the ACT Government Solicitor's Office (GSO) regarding an appropriate entity structure and instrument for the provision of funding.
4. Accounting advice was also sought from Ernst and Young regarding the treatment of grant monies, which was found to be dependent upon the issue of control of the recipient entity. This advice has substantially influenced the proposed arrangements for the CMCF's establishment to ensure protective, but not substantive rights for the Territory over the CMCF's operations.
5. It was resolved that in order to ensure the entity could achieve charitable status and to avoid the requirement for financial consolidation in the Territory's accounts, that the CMCF would not be established as a Territory entity. This means that the Territory would not have substantive control over the organisation.

6. Schedule 1.2
- 

- 
7. GSO has supported development of a Deed of Grant (Attachment B). The Deed of Grant will be the Territory's main avenue for oversight of the dispersed funds.
8. Key features of the Deed of Grant include:
- requirements for the Development of an Annual Business Plan that must be approved by the Territory;
 - regular reporting requirements including an Annual Report for each financial year;
 - a requirement to invest all funds not otherwise required for the annual operations of the CMCF in accordance with the Annual Business Plan;
 - an Annual Program of Charitable donations and activities to be agreed under the Annual Business Plan;
 - a condition requiring provision of Board papers and allowing a Territory representative to be an observer at Board meetings;
 - a condition requiring that criteria be established to ensure the appropriate mix of skills on the Board of Directors to competently manage the funding; and
 - provision of a mechanism for the Territory to terminate the funding at any time and seek reimbursement of unspent monies should any management issues arise.
9. Cabinet decided that limits on general administrative expenses should be in line with industry 'best practice'. Given the diversity of charitable organisations there is not an accepted industry standard, and in fact, the Australian Charities and Not-for-profits Commission indicates that the level of administrative costs is a poor indicator of the impact of a charity.
10. Notwithstanding the limitations of benchmarking, in 2015 Philanthropy Australia undertook a study of 158 funds and found an average 28 percent Expense to Disbursement Ratio (EDR) of funds similar in nature to the CMCF. Although this was caveated that significant variation existed between funds.
- On this basis I recommend a 30 per cent EDR be adopted for the first 3 years. This equates to a limit of \$125,000 per annum for general administrative expenses (disbursements are expected to be \$417,000 per annum).
 - There will also be additional expenses in the first year of the operation of the fund due to the need to establish the necessary governance arrangements, systems, procedures, and marketing strategy. I recommend an additional \$100,000 be allowed for these expenses in the first year.
11. The proposed Board of the CMCF has indicated that they would agree to these financial limits.

Financial Implications

12. \$5 million has been committed from 2017-18 unspent funds for this purpose (18/329/BUD – CMTEDD-CM E12) and will be provided to the CMCF upon its incorporation and establishment of accounts to receive the funding.

Consultation

Internal

13. Treasury’s Economic and Financial Group have provided input in relation to the accounting treatment.

14. Strategic Finance have been consulted in relation to the payment arrangements.

Cross Directorate

15. Community Services Directorate Corporate Services has supported the negotiations between the proposed Board and CMTEDD.

16. GSO has provided advice on the corporate structure of the CMCF and the Funding Deed.

External

17. Policy and Cabinet has discussed the potential Funding Deed and constitutional arrangements for the CMCF with the proposed Board members (i.e. the current Board of Hand Across Canberra).

Benefits/Sensitivities

18. The CMCF will seek to grow the available pool of funds in the ACT for giving for charitable and social welfare purposes and support a culture of private sector philanthropy in the ACT.

19. The CMCF will, in conjunction with the work of HAC, support development and growth in capacity of the charitable sector in the ACT.

Media Implications

20. CMTEDD Communications is working with the Chief Minister’s Office to manage the public announcement of the CMCF arrangements.

Signatory Name: Sam Engele Phone: x50230
Action Officer: Stacey Matthews Phone: x53337

Attachments

Attachment	Title
Attachment A	(Draft) Constitution of the Chief Minister’s Charitable Fund Ltd
Attachment B	(Draft) Funding Deed for the CMCF

Certificate of Registration of a Company

This is to certify that

**THE CHIEF MINISTER'S CHARITABLE FUND
LIMITED**

Australian Company Number 627 111 700

is a registered company under the Corporations Act 2001 and
is taken to be registered in ACT.

The company **is limited by guarantee.**

The company is a **public** company.

The day of commencement of registration is
the twenty-seventh day of June 2018.



ASIC

Australian Securities & Investments Commission

Issued by the
Australian Securities and Investments Commission
on this twenty-seventh day of June, 2018.

A handwritten signature in black ink that reads 'James Shipton'.

James Shipton
Chair

CERTIFICATE



ACT
Government

Chief Minister, Treasury and
Economic Development

Date	28 June 2018	TRIM No: CMTEDD2018/3599 File No:
To	Deputy Director-General, Strategic Policy and Cabinet CC Head of Service	
From	A/g Senior Manager, Intergovernmental Relations	
Subject	Payment to Chief Minister's Charitable Fund Ltd	

Critical date and reason

1. **Thursday 28 June 2018** to seek your agreement to sign the attached Deed of Grant to enable payment of \$5 million to the Chief Minister's Charitable Fund Ltd.

Recommendation

2. That you agree to sign the attached Deed of grant and authorise payment of \$5 million to the Chief Minister's Charitable Fund Ltd.

Leesa Croke..... / /
AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Background

3. In the 2018-19 budget, the government agreed to establish a charitable fund to support Canberrans in need. Funding of \$5 million has been committed from 2017-18 unspent funds for this purpose (18/329/BUD – CMTEDD-CM E12).
4. In 12 June 2018 Cabinet subsequently agreed to the establishment of the CMCF as an independent non-government entity, to provide additional help to the most vulnerable members of the ACT community (CAB2018-389).

Issues

1. The Chief Minister's Charitable Fund Ltd (CMCF) has been registered under the Corporations Act 2001 with the Australian Securities and Investments Commission, as a public company limited by guarantee (Attachment A).
2. GSO has supported development of a Deed of Grant (Attachment B). The Deed of Grant will be the Territory's main avenue for oversight of the dispersed funds.
3. Key features of the Deed of Grant include:
 - a. requirements for the Development of a Business Plan that must be approved by the Territory;
 - b. regular reporting requirements including an Annual Report for each financial year;
 - c. a requirement to invest all funds not otherwise required for the annual operations of the CMCF in accordance with the Annual Business Plan;
 - d. an Annual Program of Charitable donations and activities to be agreed under the Annual Business Plan;
 - e. a condition requiring provision of Board papers and allowing a Territory representative to be an observer at Board meetings;
 - f. a condition requiring that criteria be established to ensure the appropriate mix of skills on the Board of Directors to competently manage the funding; and
 - g. provision of a mechanism for the Territory to terminate the funding at any time and seek reimbursement of unspent monies should any management issues arise.
4. In line with industry norms, the funding deed provides for a 30 per cent Expense to Disbursement Ratio be adopted for the first 3 years. This equates to a limit of \$125,000 per annum for general administrative expenses (disbursements are expected to be \$417,000 per annum).
5. There will also be additional expenses in the first year of the operation of the fund due to the need to establish the necessary governance arrangements, systems, procedures, and marketing strategy. I recommend an additional \$100,000 be allowed for these expenses in the first year.

Consultation

Internal

6. Treasury's Economic and Financial Group have provided input in relation to the accounting treatment.
7. Strategic Finance have been consulted in relation to the payment arrangements.

Cross Directorate

8. Community Services Directorate Corporate Services has supported the negotiations between the proposed Board and CMTEDD.
9. GSO has provided advice on the corporate structure of the CMCF and the Funding Deed.

External

10. Policy and Cabinet has discussed the potential Funding Deed and constitutional arrangements for the CMCF with the proposed Board members (i.e. the current Board of Hand Across Canberra).

Financial

11. Funding of \$5 million will be paid to the CMCF Ltd upon signing of the funding deed and receipt of an invoice from the company.

Benefits/Sensitivities

12. The CMCF will seek to grow the available pool of funds in the ACT for giving for charitable and social welfare purposes and support a culture of private sector philanthropy in the ACT.
13. The CMCF will, in conjunction with the work of HAC, support development and growth in capacity of the charitable sector in the ACT.

Media Implications

14. A public launch announcement of the CMCF will occur on Tuesday 2 July. Policy and Cabinet is working with CMO and the CMCF to finalise arrangements for the launch.

Action Officer: Stacey Matthews

Phone: x53337



ACT
Government

FUNDING DEED



Dated

28 June 2018

Parties

AUSTRALIAN CAPITAL TERRITORY

CHIEF MINISTER'S CHARITABLE FUND LIMITED

Prepared by

ACT Government Solicitor
Level 6, 12 Moore Street
Canberra City ACT 2601

Version

28 June 2018

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

CHIEF MINISTER'S CHARITABLE FUND LIMITED ACN 627 111 700 (**Recipient**).

BACKGROUND

The Territory has agreed to make and the Recipient has agreed to accept the Funding for the purpose of the Funded Activities on the terms and conditions of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires.

Business Plan	means the business plan to be submitted by the Recipient to the Territory for approval in accordance with clause 5 .
Annual Report	means the report prepared in accordance with clause 8.2 .
Associate	means, in relation to a person, any officer, agent, adviser, consultant, contractor, or employee of that person.
Claim	means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made: (1) under or in connection with this Deed; or (2) at Law, or for specific performance, restitution, payment of money (including damages) or any other form of relief.
Contact Officer	means in relation to each party, the representatives whose names and contact details are specified in Item 5 Schedule 1 , or as notified in writing from time to time by one party to the other.
Deed	means this deed and includes all schedules, annexures and amendments made from time to time.
Financial Year	means a period of 12 months starting on 1 July and ending on 30 June.
Funding	means the amount specified in Item 2 Schedule 1 and any accretions to the Funding resulting from investment of the Funding and all interest accruing on that amount, after it has

been paid to the Recipient.

Funded Activities means the activities in the categories and for the objectives described in **Schedule 2**, and for each Financial Year the Funded Activities approved to be undertaken by the Recipient are those Funded Activities set out in the Annual Business Plan approved by the Territory for that Financial Year together with any incidental activities contemplated in **Schedule 2**.

Contract Material means:

- (1) all reports, documents, information or other records created, written or otherwise brought into existence by the Recipient as part of, or for the purpose of performing the Funded Activities and includes the Annual Business Plan, Annual Report, Quarterly Reports;
- (2) all other information required to be provided to the Territory in accordance with this Deed (whether in draft or final form) and stored by any means; and
- (3) all intellectual property created as a result of or subsisting in any of the materials listed in subparagraphs (1) and (2).

GST has the same meaning as it has in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means,

- (1) in respect of a natural person:
 - (a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the *Bankruptcy Act 1966* (Cth); or
 - (b) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or
- (2) in respect of all other entities:
 - (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the *Corporations Act 2001* (Cth) occur in respect of the entity; or
 - (b) any other event occurs which, in the reasonable opinion of the Territory is likely to result, or has resulted, in the:
 - (i) insolvency;

- (ii) winding up; or
- (iii) appointment of a controller (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of part or all of the property,

of the entity.

For the purpose of subparagraph (2)(a), subsections 459C(2)(a) to (f) *Corporations Act 2001*(Cth) are to be read as if applying to all incorporated entities.

Invoice

means, an invoice that:

- (1) if GST is payable in respect of any taxable supply made under this Deed, is a valid tax invoice for the purposes of the GST Act;
- (2) clearly sets out the details of the Funded Activities undertaken or to be undertaken and the amount that is due for payment, is correctly calculated and is in respect of the Funded Activities;
- (3) sets out or is accompanied by any other details or reports required under this Deed; and
- (4) is rendered at the times specified in **Item 2 Schedule 1** (if any) and addressed to the Territory's Contract Officer.

Law

means:

- (1) those principles of common law and equity established by decisions of courts; and
- (2) all legislation, statutes, rules, regulations, by-laws, ordinances, and subordinate legislation of the Commonwealth or the Territory.

Liability

means any debt, obligation, claim, action, cost (including legal costs, deductibles, or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (1) actual, prospective, or contingent; or
- (2) currently ascertainable or not,

and whether under or arising out of or in any way in connection with this Deed or arising at Law.

Regular Reports

means the reports prepared in accordance with **clause 8.1**.

Special Condition

means any provision set out in **Schedule 4**.

Term	means the period specified in Item 1 Schedule 1 , and if extended, the initial period and the extended period.
Territory	means, when used: <ol style="list-style-type: none"> (1) in a geographical sense, the Australian Capital Territory; and (2) in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).

1.2 General

In this Deed, unless a contrary intention is expressed:

- (1) reference to any legislation or legislative provision includes any statutory modification, or re-enactment of, or legislative provision substituted for, and any determinations, notifiable instruments, or other subordinate legislation issued under that legislation or legislative provision;
- (2) the singular includes the plural and vice versa;
- (3) a reference to any gender includes all genders;
- (4) a reference to a recital, clause, schedule, annexure, or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Deed;
- (5) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- (6) where an expression is defined anywhere in this Deed, it has the same meaning throughout;
- (7) headings are for convenience only and do not affect the construction or interpretation of this Deed;
- (8) an obligation imposed on more than one person binds them jointly and severally; and
- (9) the word "include" and any derivation is not to be construed as a word of limitation.

2. Term

This Deed is for the Term unless earlier terminated or extended in accordance with this Deed.

3. Funding

- 3.1 Subject to the Territory being satisfied in its absolute discretion with the Recipient's compliance with this Deed, the Territory will pay the Recipient the Funding following

its receipt of an Invoice and otherwise in accordance with **Item 2 Schedule 1**.

- 3.2 If, after payment, an Invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Recipient, as the case may be and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Territory to the Recipient.
- 3.3 The Territory may, without limiting any other right it may have:
- (a) defer or withhold payment of the Funding (or any part thereof) to the Recipient until such time as the Recipient has fulfilled its obligations under this Deed to the reasonable satisfaction of the Territory; or
 - (b) deduct from the Funding, an amount the Territory considers proportionate to those obligations under this Deed not performed by the Recipient to the satisfaction of the Territory.

4. Use and accounting of Funding

- 4.1 The Recipient must:
- (a) use the Funding only for Funded Activities and in a manner that is consistent with the Annual Business Plan; and
 - (b) undertake the Funded Activities diligently and otherwise in accordance with this Deed.
- 4.2 The Recipient must, within its accounting system, account for the Funding separately from any other funds of the Recipient.

5. Annual Business Plan

- 5.1 The Recipient must provide to the Territory for approval an Annual Business Plan at the time and in the manner specified in **Schedule 3**.
- 5.2 The Annual Business Plan must include at the minimum:
- (a) the program of identified activities, opportunities and goals that will comprise the Funded Activities for the coming Financial Year, including how those Funded Activities will be achieved;
 - (b) a proposed investment plan for any funds that are surplus to requirement for the relevant 12 month period, ensuring that as far as practically possible the capital of the Funding is preserved but that there is some opportunity for growth in the capital of the Funding as well as income;
 - (c) the projected itemised budget in respect of all proposed administrative fees and costs (see Item 2 Schedule 2 for the definition of administrative fees and costs) and proposed charitable donations to be charged to the Funding in order to achieve the specific Funded Activities; and
 - (d) performance indicators which will enable the progress being made towards achieving the Funded Activities to be monitored and measured.
- 5.3 The Territory may request the Recipient amend the Annual Business Plan if in the

Territory's opinion the proposed Funded Activities are insufficient to provide adequate value to the Territory, or the Recipient has not provided sufficient information on the proposed Funded Activities.

- 5.4 If the parties have failed to agree an Annual Business Plan by 30 June in respect of the next immediately following Financial Year during the Term of this Deed, the Territory may in its absolute discretion, terminate this Deed in accordance with **clause 12.1**. For the avoidance of doubt, despite the previous provisions of this clause 5.4, if the parties have failed to agree the first Annual Business Plan by 31 July 2018 in respect of the Financial Year commencing 1 July 2018, the Territory may in its absolute discretion, terminate this Deed in accordance with **clause 12.1**

6. GST

If the Recipient is registered under the GST Act, the Territory will, on receipt of an Invoice, pay to the Recipient an amount equal to the GST under the GST Act lawfully payable by the Recipient in respect of supplies to the Territory that are taxable supplies under the GST Act.

7. Records

7.1 Obligation to keep records

The Recipient must:

- (1) keep all records necessary to substantiate expenditure of the Funding in compliance with applicable laws; and
- (2) retain the records referred to in this clause for at least 7 years following the expiration or termination of this Deed, whichever occurs first.

7.2 Access

- (1) To audit the Recipient's compliance with this Deed, the Territory may, at reasonable times and on reasonable notice, enter the Recipient's premises and inspect the records kept by the Recipient and the progress of the Funded Activities.
- (2) The Recipient must:
 - (a) give the Territory access to those facilities and such assistance as may reasonably be necessary to enable the Territory to conduct an audit under **clause 7.2(1)**; and
 - (b) permit the Territory, at its own cost, to take copies of any records which it reasonably considers relevant to its audit.

7.3 Territory's Auditor-General

Any of the Territory's rights under this **clause 7** may be exercised by the Territory's Auditor-General, their delegate or any relevantly qualified person engaged to perform any functions of the Auditor-General and nothing in this clause or Deed effects the rights of the Auditor-General in accordance with the Law.

8. Reporting of progress and expenditure

8.1 Regular Reports

- (1) The Recipient must provide the Reports to the satisfaction of the Territory in the manner and at the times required in **Schedule 3**.
- (2) The Reports must include at a minimum:
 - (a) a summary of the progress of the Funded Activities against the Annual Business Plan and expenditure of the Funding against budgets identified in the Annual Business Plan;
 - (b) a summary of the Recipient's performance against performance indicators identified in the Annual Business Plan;
 - (c) interim year to date accounts in respect of the Funding in a form approved by the Territory and certified by an accountant who is a certified practising accountant or a chartered accountant.

8.2 Annual Report

- (1) The Recipient must provide the Annual Reports to the satisfaction of the Territory in the manner and at the times required in **Schedule 3**.
- (2) The Annual Report must include at a minimum:
 - (a) details of all activities undertaken by the Recipient in relation to the Funding (including investment activities);
 - (b) details of the Recipient's performance against performance indicators identified in the Annual Business Plan; and
 - (c) an independently audited financial report by a registered auditor that complies with the Australian Accounting Standards (Financial Report) including an audited statement of receipts and expenditure in respect of the Funding for the Financial Year which must include a definitive statement made by the auditor that the statements of receipts and expenditure are fair and true.

8.3 Other notifications

The Recipient must keep the Territory reasonably informed about all matters which are likely to materially and adversely affect the timing, scope or cost of the Funded Activity or the Recipient's ability to carry on or complete the Funded Activity in accordance with this Deed.

9. Acknowledgement of Funding

The Recipient must in relation to the Funded Activities:

- (1) acknowledge the support of the Territory in any public event, media release or media coverage; and
- (2) include an acknowledgement in the form set out in **Item 6 Schedule 1** in all

documents, brochures, books, articles, newsletters, other artistic works or literary works or advertising.

10. Intellectual Property Rights

10.1 Ownership of Contract Material

Ownership of all Contract Material, including any intellectual property rights, vests on its creation in the Territory.

10.2 Licence to Recipient

The Territory grants to the Recipient an irrevocable, non-exclusive, royalty-free licence to use the Contract Material for the Term.

10.3 Meaning of 'use'

For the purpose of this **clause 10.2**, "use" means to supply, reproduce, publish, perform, communicate, broadcast, adapt and copy for the purposes of carrying out the Funded Activities but does not include the right, without the prior written consent of the Territory, for the Recipient to use (or permit any third party to use) any logo, design, or trademark owned by the Territory.

11. Insurance and Indemnity

11.1 Recipient's insurance

The Recipient must effect and maintain for the Term all insurance coverage required to be effected by it by law, and insurance of the types and in amounts not less than the amounts (if any) specified by **Item 4 Schedule 1**, with an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.

11.2 Indemnity

(1) The Recipient indemnifies the Territory from and against any Claim or Liability suffered or incurred by the Territory or any of its Associates in connection with:

- (a) any loss or damage to or of property, including any real or personal property, including property belonging to the Territory or its Associates;
- (b) any injury to, illness or death of, any person; or
- (c) any third party actions brought against the Territory or its Associates,

to the extent directly caused or contributed to by the Recipient or any of its Associates in connection with this Deed.

(2) The Recipient must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 11.2(1)** and the Territory may deduct the amount from any moneys due or becoming due to the Recipient under this Deed.

12. Termination

12.1 Default

The Territory may terminate this Deed at any time by written notice to the Recipient, if the Recipient:

- (1) is the subject of an Insolvency Event;
- (2) fails to perform its obligations or to meet any timeframes specified in this Deed;
or
- (3) is in breach of a provision of this Deed, where that breach:
 - (a) if capable of being remedied, is not remedied within the period specified in a written notice by the Territory, or
 - (b) is not capable of being remedied.

In addition to any other rights the Territory may have, if the Territory terminates this Deed in accordance with this **clause 12.1** (or otherwise in accordance with this Deed) the Territory may recover all sums paid in advance to the Recipient in terms of this Deed as a debt due and payable to the Territory.

12.2 Termination or reduction of funding for any reason

The Territory may, at any time by written notice to the Recipient, terminate this Deed or reduce the funding for the Funded Activities for any reason, and in that event the Recipient must:

- (1) in the event of termination, comply with the notice and **clause 12**; or
- (2) in the event of a reduction in funding, continue to undertake the its obligations under this Deed in accordance with the notice.

12.3 No prejudice

Nothing in this **clause 12** prejudices any other rights or remedies of the Territory in respect of any breach of this Deed.

12.4 12.4 Change of Name & Association with the Territory

Unless with the written consent of the Territory, upon the expiry or earlier termination of this Deed, the Recipient must promptly change its name so that the words "Chief Minister" no longer appear and must ensure it does not in any way represent it has any connection to the Chief Minister or the Territory".

13. Refund of Grant

13.1 Repayment of unacquitted funds

At the end of the Term, or earlier termination of this Deed, the Recipient must:

- (1) unless otherwise required under this Deed, within 30 days, provide the

Territory with a statement of expenditure of the whole of the Funding; and

- (2) promptly repay any or all of the Funding that remains unacquitted.

13.2 Meaning of unacquitted funds

For the purposes of **clause 13.1**, the Funding remains unacquitted if it:

- (1) is not spent and is not contractually committed to be spent; or
- (2) has been spent in breach of this Deed,

provided that on no account will the Recipient be entitled to claim as committed funds any administrative fees or costs (see Item 2 Schedule 2 for the definition of administrative fees and costs) including premises or equipment leases that relate to a period after termination or expiry of this Deed. For the avoidance of doubt, upon expiration or earlier termination of this Deed, the Recipient will only be entitled to a pro-rata proportion of the administrative expenses set out in the then current Annual Business Plan and subject to the cap set out in Item 2 Schedule 2.

14. Dispute Resolution

- 14.1 If a difference or dispute (**Dispute**) arises in relation to this Deed, then any party may give written notice to the other that a Dispute exists and giving details of the Dispute. The parties may agree that, following the issue of such a notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons who have authority to intervene and direct some form of resolution.
- 14.2 If the Dispute has not been resolved pursuant to **clause 14.1** within 28 days of the notice of the Dispute, then the parties may agree to undertake a mediation process. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of the Resolution Institute, ACT Chapter. Unless otherwise agreed, the parties will share the costs of the engagement of the mediator.
- 14.3 Nothing in this clause will prejudice the rights of either party to institute proceedings to enforce the Deed or to seek injunctive or urgent declaratory relief in respect of any Dispute.

15. Variation

15.1 Variation to Funded Activity

The Recipient must notify the Territory of any proposed change to the Funded Activity, including:

- (1) the Funded Activity, its objectives, outcomes or work programs; or
- (2) variation of more than 10% in expenditure for a specified item of the approved budget that forms part of the Recipient's application for a grant for the Funded Activity.

15.2 Variation & Extension of Term

This Deed may only be varied or the Term extended by the written agreement of the parties prior to the expiration of the Term.

16. General

16.1 No assignment or subcontracting

The Recipient must not subcontract the performance of any of their respective obligations under this Deed or assign the whole or part of this Deed without the prior written consent of the Territory. If the Territory grants its consent, it may do so on the conditions it sees fit. Notwithstanding any consent of the Territory to subcontract, the Recipient remains primarily liable under this Deed.

16.2 Conflict of interest

The Recipient warrants that at the start of the Term no conflict of interest exists or is likely to arise in the performance of the Funded Activities and of its other obligations under this Deed and must, if a conflict or risk of conflict of interest arises during the Term, notify the Territory immediately in writing and comply with any requirement of the Territory to eliminate or otherwise deal with that conflict or risk.

16.3 No employment, partnership or agency relationship

Nothing in this Deed constitutes the Recipient, or its employees, agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and the Recipient must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

16.4 Entire agreement

This Deed comprises the entire agreement between the parties in relation to the Funding and the Funded Activities and supersedes any prior representations, negotiations, writings, memoranda and agreements.

16.5 Severability

Any provision of this Deed that is illegal, void or unenforceable will not form part of this Deed to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Deed will not be invalidated by an illegal, void or unenforceable provision.

16.6 No waiver

Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Deed will not affect or impair that provision in any way or the rights of the Territory to avail itself of the remedies it may have in respect of any such provision.

16.7 Compliance with laws and governing law

This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Recipient must comply with the laws from time to time in force in the Territory in performing its obligations under this Deed.

16.8 Notices

Any notice, including any other communication, required to be given or sent to either

party under this Deed must be in writing and given to the relevant Contact Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on whichever of the following occurs first:
 - (c) the other party's acknowledgment of receipt by any means,
 - (d) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address, or
 - (e) expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (1) to (4) occurring.

16.9 Forms and statements

The Territory may reasonably require any form, record or statement required under this Deed to be in a particular form.

16.10 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Deed then, to the extent of any inconsistency, the Special Condition will prevail.

16.11 Survival of clauses

Clauses 7, 11.2, 12.1 and 13 will survive the expiration or earlier termination of this Deed.

SCHEDULE 1

GRANT DETAILS

- Item 1. Term**
See clauses 1.1 and 2
- From 1 July 2018 until 30 June 2023.
- Item 2. Funding**
See clauses 1.1 and 3.1
- (1) \$5,000,000 (GST exclusive) and such other amounts as the Territory may determine from time to time in its absolute discretion.
- (2) The Funding is payable on or about execution of this Deed.
- (3) Except if otherwise stated in this Deed, the Funding is:
- (a) payable within 30 days of receipt by the Territory of an Invoice; and
- (b) exclusive of GST and all other taxes, duties and charges.
- Item 3. Reporting and Acquittal**
See clause 8
- See Schedule 3.
- Item 4. Other insurance requirements**
See clause 11.1
- (1) Public Liability Insurance: \$20 million (in the annual aggregate).
- (2) Professional Indemnity insurance: \$5 million (in the annual aggregate).
- Item 5. Contact Officers**
See clauses 1.1 and 16.8
- For the Territory:
- Sam Engele, Executive Director, Strategic policy and Cabinet
- For the Recipient:
- Diane Kargas Bray, Board Member, Chief Minister's Charitable Fund Limited
- Item 6. Form of Acknowledgement**
See clause 9
- "This Fund is assisted by funding from the ACT Government"

SCHEDULE 2

THE FUNDED ACTIVITY

The Funded Activities and each Annual Plan should meet the following objectives:

1. To efficiently and effectively manage a fund to be known as the Chief Minister's Charitable Fund (Fund) in order to:
 - (1) protect the Funding and maximise the amount of funds available for charitable donations;
 - (2) comply with all Laws and conduct all of the affairs of the Recipient including in respect of the Funded Activities to the highest standards of probity;
 - (3) ensure the Fund is appropriately promoted and that as far as reasonably possible:
 - (a) potential recipients of assistance from the Fund are aware of its' existence; and
 - (b) potential donors to the Fund are aware of the benefits of making a contribution to the Fund.
2. Subject to each Annual Business Plan apply no more than \$225,000 of the Funding in the first year and then no more than \$125,000 per annum of the Funding in subsequent years towards any administrative fees and costs of the Recipient in managing the Fund (for the avoidance of doubt administrative fees and costs includes all amounts other than amounts paid out of the Fund for charitable purposes).
3. To invest all funds not otherwise required for the annual operations of the Recipient in accordance with the Annual Business Plan.
4. To implement a prudent investment policy for the Funding that as far as is practically possible preserves the capital of the Funding but also allows for some capital growth and income to accrue to the Funding.
5. Propose a program of charitable donations and activities that will, as far as is reasonably practicable, assist those in need in the Territory to be agreed by the Territory in each Annual Business Plan.
6. Ensure the Recipient does nothing that does or may be likely to cause embarrassment or criticism of the Territory or the Chief Minister.
7. The Recipient must not undertake any other functions other than the Funded Activity or mix any other moneys with the Funding without the prior written consent of the Territory.

SCHEDULE 3

REPORTING REQUIREMENTS

The Recipient agrees to:

- (1) create the following plans and reports in the form as may be required by the Territory from time to time; and
- (2) provide the plans and reports to the Territory Contact Officer at the times specified below:

Details	Due Date
Business Plan	<p>Within 30 days of signing of this Deed the Recipient must provide to the Territory for its approval a Business Plan in respect of the 2018-19 Financial Year.</p> <p>On or before 30 May 2019 the Recipient must provide to the Territory a Business Plan in respect of the forthcoming two years.</p> <p>Detailed annual planning requirements will be developed during the first year of operation.</p>
Regular Reports	<p>At each Board meeting the Recipient must provide a written report with respect to the Funded Activities undertaken in the period. The report may take the form of a Board paper.</p>
Annual Report	<p>Commencing on 31 August 2019 on or before each 31 August during the Term and upon expiration of the Term, the Recipient must provide to the Territory an Annual Report for the previous Financial Year.</p>


SCHEDULE 4

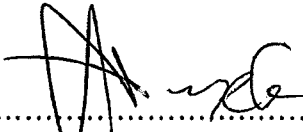
SPECIAL CONDITIONS

1. The Recipient must provide a set of Board papers and allow a representative of the Territory to attend as an observer at all Board meetings of the Recipient provided that the Territory may be excused by the Board from any discussion or from the provisions of any Board papers where the Board acting reasonably considers there is an unacceptable conflict in having the Territory representative privy to that discussion or those papers.
2. The recipient must establish a set of criteria (Board Selection Criteria) providing for the relevant set of skills required to competently manage the funding and to be a guide for the recommendation of Board members by a Nominations Committee.

EXECUTED AS A DEED ON 28 June.....2018

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY)
in the presence of:)

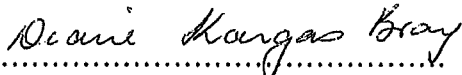

.....
Signature of Territory delegate


.....
Signature of witness

LEESA CROKE
.....
Print name

Samuel Engle
.....
Print name

SIGNED for and on behalf of)
CHIEF MINISTER'S CHARITABLE)
FUND LIMITED in accordance with s127 of)
the *Corporations Act 2001* (Cwth):)


.....
Signature of Director


.....
Signature of Director/Secretary

DIANE KARGAS BRAY AM
.....
Print name of Director

Charles Cramer
.....
Print name of Director/Secretary

Chief Minister's Charitable Fund Ltd

INVOICE

Chief Minister's Charitable Fund
ACN: 627111700
PO Box 5519
KINGSTON ACT 2604

Invoice Reference: CMCF 1

Invoice Date: 29 June 2018

Contact: Peter Gordon 0417 064 767

Client details :

Chief Minister, Treasury and Economic
Development Directorate | ACT Government
Nara Centre | GPO Box 158 Canberra City ACT
2601

Services Provided :

Establishment of the Chief Minister's Charitable Fund

DESCRIPTION	AMOUNT
Establishment of the Chief Minister's Charitable Fund. As per the Funding Deed as executed by the parties, being CMDTED and directors of the Chief Minister's Charitable Fund Ltd. ACN 627111700	\$5,000,000
GST payable	Nil
TOTAL	\$5,000,000

Make all cheques payable to CMCF Ltd.

Electronic Funds Transfer to **CMCF BSB: 032729 Account: 349123.**

Please quote Invoice Reference on remittance.

THANK YOU FOR WORKING WITH THE CHIEF MINISTER'S CHARITABLE FUND LTD.