

CHARITABLE TRUST DEED BOARD OF TRUSTEES

HURUNUI KAIKOURA PRIMARY HEALTH ORGANISATION

Duncan Cotterill

LAWYERS

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THIS DEED is made the day of 2006

PARTIES

JAMES ROGER ABERNETHY of Kaikoura, Mayor

RICHARD WAYNE DAVISON of Culverden, Company Director

MIRIAMA TEAHIPUIA KAHU of Kaikoura, Chief Executive Officer

JANET PATRICIA ROBINSON of Rangiora, Medical Practitioner

DAVID ARTHUR STONE of Greta Valley, Chartered Accountant

BENITA WAINA WAKEFIELD of Kaikoura, Environmental Health Officer

(collectively together with their successors and all and any trustees in the future called “the Trustees”)

BACKGROUND

- A The parties intend to carry on activity as a Primary Health Organisation in the Hurunui Kaikoura catchment area and wish to establish a charitable trust for the purposes described in this deed and subject to and upon the terms, conditions and provisions hereunder (“the Trust”).
- B The parties will apply to the District Health Board for funding in order to carry out the charitable purposes of the trust.
- C The parties to this Deed have been appointed from various sectors of the community in order to provide a broad range of community, consumer, iwi and provider representation consistent with Ministry of Health guidelines and intend that the Trust in carrying out its purposes shall recognise the views and expectations of Tangata Whenua.
- D The parties have agreed to enter into this Deed to specify the purposes of the Trust and to provide for the control and governance of the Trust.

- E The Trustees and any subsequent Trustees will hold all the property and assets which come into their hands upon trust for the charitable purposes set out below.

TRUST DEED

This Deed Witnesses as follows:

- 1.1 The parties as settlor's of the Trust declare that they will hold all funds which come into their hands and money, investments, reinvestments, shares, property of whatsoever nature upon the Trusts declared herein, and such further monies, property or other assets as may be vested in the Trustees for the purposes of the trust are within the definition of, and will form part of "the Trust Funds".
- 1.2 The Trustees will hold the Trust Funds together with the income arising therefrom and shall apply the same in and towards charitable purposes in terms of Section CB4 of the Income Tax Act 1976 and more specifically for the purposes recorded in Appendix "A" **attached**:
- 1.3 Forthwith upon the execution of this Deed the Trustees shall apply to the Registrar of Incorporated Societies pursuant to the provisions of Part II of the Charitable Trusts Act 1957 for incorporation as a Board under the name Hurunui Kaikoura Primary Health Organisation Trust.
- 1.4 Upon incorporation as a Board, the Trustees shall adopt the powers and rules recorded in Appendix "A" hereto which together with the objectives and purposes recorded in Appendix "A" **attached** which shall become the objectives, powers and rules of the Board. Pending incorporation as a Board, the Trustees shall have recourse to and shall be bound by the said objectives, powers and rules **attached** in Appendix "A".
- 1.5 The parties named in this deed shall be the first Board in term of Appendix "A". Thereafter the Board shall be appointed (or removed) and otherwise hold office in accordance with Appendix "A".

- 1.6 For the purposes of the objective powers and rules as set out in Appendix A, the following Trustees shall for the purposes of the exercise of the power to appoint and remove trustees under clause 3.2 of Appendix A be deemed to have been appointed pursuant to the clause corresponding to that or those trustees as follows:

James Roger Abernethy	clause 3.2.3
David Arthur Stone	clause 3.2.3
Richard Wayne Davison	clause 3.2.1
Janet Patricia Robinson	clause 3.2.1
Miriama Teahipuia Kahu	clause 3.2.2
Benita Waina Wakefield	clause 3.2.2

- 1.7 The parties named in this deed declare, until 30 June 2004, the number of trustees appointed pursuant to each of clauses 3.2.1 and 3.2.2 and 3.2.3 respectively shall be limited to two trustees, and thereafter the Trustees shall facilitate an election of:

1.7.1 One further trustee pursuant to clause 3.2.1 of Appendix A; and

1.7.2 Three trustees pursuant to clause 3.2.3 of Appendix A in substitution for the trustees presently deemed to be appointed under clause 3.2.3 of Appendix A (by virtue of clause 1.6 above);

Together with one further trustee appointed pursuant to clause 3.2.2 of Appendix A to the intent that;

1.7.3 The presently deemed Community Trustees shall retire and be replaced with three newly appointed trustees (who may include the reappointment of the existing trustees)

- 1.7.4 Nothing herein shall prevent the appointment of a replacement trustee prior to 30 June 2004 pursuant to the provisions of clause 3.2 of Appendix A if a Trustee position is vacated prior to that date.
- 1.7.5 Nothing herein shall prevent the appointment of one additional trustee pursuant to clause 3.2.5 of Appendix A prior to 30 June 2004.

APPENDIX A

POWERS AND RULES OF

THE HURUNUI KAIKOURA PRIMARY HEALTH CHARITABLE TRUST

Objects & Purposes

1.1 The objects and purposes for which the Trust is established and to which the Trust Funds may be applied are as follows:

1.1.1 Primary Purpose: To hold and apply the Trust Funds, together with the income thereon in or towards charitable purposes or objects in New Zealand from time to time approved by the appropriate fiscal authority (including the Inland Revenue Department) in New Zealand as being for charitable purposes and being for:

1.1.1.1 the relief of poverty; and/or

1.1.1.2 the advancement of education; and/or

1.1.1.3 the improvement of the population's health status: and/or

1.1.1.4 any other charitable purpose beneficial to the community;

1.1.2 Secondary purposes: Without limiting the provisions of clause 1.1.1 above, to provide for the establishment of a community trust to promote advance or encourage the provision of health care to the public and in doing so have regard for the established objectives for Primary Health Organisations as follows:

1.1.2.1 To provide a set of essential primary health services to the enrolled population, to restore, maintain and improve health when people are unwell ;

1.1.2.2 To plan and prioritise service delivery processes, to remove health inequalities and work with those groups that have high health needs;

1.1.2.3 To work with other health care providers, to ensure services are coordinated around the needs of the enrolled population;

1.1.2.4 To demonstrate that the community, Iwi and consumers are involved in the governing processes and that the primary health organisation is responsive to its community;

1.1.2.5 To demonstrate that all providers and practitioners can influence the Primary Health Organisation's decision making;

1.1.2.6 To use a national enrolment system to enrol people;

1.1.2.7 To operate as a non-profitable organisation and be accountable for all public funds received.

1.1.3 Other Charitable Purpose: Without limiting the provisions of clauses 1.1.1 and 1.1.2 above, for any other charitable purpose deemed appropriate by the Trustees from time to time. PROVIDED the same are within the said Section CB4 of the Income Tax Act 1976.

Name

2.1 The name of the Trust shall be the "HURUNUI KAIKOURA PRIMARY HEALTH ORGANISATION" or such other name as the Trustees shall from time to time determine.

Appointment and Removal of members of the Board

- 3.1 Number of Members of the Board. The minimum number of members of the Board shall be six and the maximum number shall be ten.
- 3.2 Appointment of Members of the Board. Subject to the provisions of this Deed and in particular clause 3.2.7, Members of the Board shall be appointed and may be removed as follows:
 - 3.2.1 Three Provider Members of the Board shall be appointed as follows;
 - 3.2.1.1 Three provider members of the Board shall be appointed by Hurunui Kaikoura Rural Health Limited by notice in writing to the Board. Hurunui Kaikoura Rural Health Limited may, in the same manner, remove any member of the Board so appointed;
 - 3.2.2 Three Maori members of the Board shall be appointed as follows:
 - 3.2.2.1 Two Iwi members of the Board shall be appointed by Te Runanga O Ngai Tahu through its delegated authority Manawhenua Ki Waitaha, by notice in writing to the Trust, in accordance with the protocols as set out in Appendix B and in the same manner such appointees may likewise be removed.
 - 3.2.2.2 One Maori provider member of the Board shall be appointed by notice in writing to the Trust, in accordance with the protocols as set out in Appendix B and in the same manner such appointees may likewise be removed.
- 3.2.3 Three Community members of the Board shall be appointed as follows:

3.2.3.1 Subject to clause 3.2.3.2, persons who are Enrolled may pursuant to clause 3.2.6 appoint three persons as members of the Board and may in the same way and at any time remove any member of the Board so appointed, provided however that:

3.2.3.1.1 Such appointees must be Enrolled; and

3.2.3.1.2 One of such appointees must be ordinarily resident in the Territory north of the Conway River; and

3.2.3.1.3 One of such appointees must be ordinarily resident between the area south of the Conway River but North of the Hurunui River; and

3.2.3.1.4 One of such appointees must be ordinarily resident within the Territory south of the Hurunui River.

3.2.3.2 Notwithstanding clause 3.2.3.1 until the date of the third anniversary of the date of the settlement of this Trust Deed, the Community Members of the Board shall be appointed or removed pursuant to the powers for that purpose contained in Appendix "C".

3.2.4 Receipt of notice from Te Runanga O Ngai Tahu of the appointment of Iwi Board members pursuant to clause 3.2.2 shall be conclusive and final and the Trust shall not be obliged to determine whether the protocol's in Appendix B have been complied with.

3.2.5 Subject to clause 3.1 the Board may from time to time by unanimous resolution appoint any person(s) to be member of the Board either to fill a casual vacancy or as an additional member(s) of the Board who shall hold office until either that member's (or those members') replacement is appointed pursuant to clauses 3.2.1,

3.2.2 or 3.2.3 or until the next Annual General Meeting (whichever shall occur first).

3.2.6 Persons (being either Providers or persons Enrolled with the Trust) having the right to appoint or remove members of the Board under clauses 3.2.1 and 3.2.3 may prescribe and determine their own rules and procedure for nomination and appointment by election, or revocation of the exercise of any power to appoint members to the Board, including by an ordinary resolution passed at a meeting of such persons called for that purpose, by postal vote or any other method, and in the absence of such rules or procedures, the provisions of sections 121 to 124 and the first schedule of the Companies Act 1993 shall apply with all necessary modifications as if:

3.2.6.1 Every reference to a shareholder were to a person entitled to vote on the matter; and

3.2.6.2 Each person entitled to vote on the matter shall have one vote; and

3.2.6.3 Each vote may be made in person or by proxy; and

3.2.6.4 Every reference to the constitution is a reference to this deed.

3.2.7 Skills Required: If the office of the member of the Board is vacated for any reason, the Board may give notice to the persons, having the power to appoint any replacement member of the Board setting out the skills requirement, which the Board consider (if any) would be beneficial attributes in any replacement member of the Board. Such persons having the power to appoint such replacement members of the Board shall ensure that every person entitled to vote in relation to the appointment of the replacement member of the Board, is sent a copy of the notice under this clause 3.2.7.

- 3.3 Members of the Board not to represent interest groups: Members of the Board shall not represent or promote the interests of any person who appointed them if to do so would be contrary to or conflict with the interests of the Trust.
- 3.4 Notice of Appointment or Removal: No appointment or removal of a member of the Board shall be effective until a notice issued by or with the authority of the persons or group having the power to appoint shall be given to the Board in accordance with this Deed and shall take effect from the time that notice is given or such later time as the notice states it is to take effect. No notice shall be required in the case of an appointment under clause 3.2.5. Any notice of appointment or removal may be comprised in one or more written notices.
- 3.5 Natural Persons. All members of the Board must be natural persons.
- 3.6 Term. Any member of the Board so appointed shall continue to hold office until that person ceases to hold office under this Deed.
- 3.7 Cessation of membership: A member of the Board shall cease to be a member of the Board if that member:
- 3.7.1 Resigns by signing a written resignation and delivering it to the address of the office of the Trust, such resignation being effective when received at that address or at a later time specified in the notice of resignation.
- 3.7.2 Is removed pursuant to the power to remove that member pursuant to clause 3.2 above as a member of the Board under this Deed.
- 3.7.3 Dies.

- 3.7.4 Becomes disqualified from being a member of the Board in the same manner as a company director would be disqualified from being a director of a company under the Company's Act 1993.
- 3.7.5 If the period of appointment applicable to the Member of the Board shall expire without the reappointment of that person as a member of the Board pursuant to this Deed.
- 3.7.6 Is removed by a special resolution of the Board supported by not less than one hundred percent of the members of the Board other than the subject member, provided that not less than one week's notice of the proposed resolution is given to the member concerned.
- 3.8 Retirement by rotation: One third of all Members of the Board shall retire from the Board at the date of the Annual General Meeting of the Trust. The members who shall retire from the Board shall be those who have been appointed for the longest unbroken period of time since they were last appointed or reappointed and if it shall be necessary to decide between 2 or more of equal standing then in that respect the matter shall be determined by lot. A member may be reappointed to the Board successively.
- 3.9 Proceedings of the Board Meetings: Except where the Board resolve otherwise, the fifth schedule of the Companies Act 1993 shall with all necessary modifications, govern the proceedings at the meetings of the Board as if the Board were the board of a Company under the Companies Act 1993, provided that;
- 3.9.1 Meetings of the Board shall be held at such time and place as the Board shall decide or at the request of three members, provided that the Board shall meet at least four times every year.
- 3.9.2 The chairperson shall cause notice of the time and place of every Board Meeting and the business to be transacted there (other than

formal business), to be given to every member of the Board a reasonable time beforehand (having regard to the urgency of the case), but the accidental omission to give notice shall not invalidate the proceedings of any Board meeting.

- 3.10 Special Board Meetings. A special meeting of the board shall be called by the Secretary on receipt of a request in writing for such a meeting from any three members of the Board stating the reason for having the meeting.
- 3.11 Officer. The Board must appoint a Secretary and a Treasurer. These offices may be combined. The Secretary and Treasurer need not be members of the Board and need not be natural persons.
- 3.12 Chairperson. The Board shall appoint one of their members to be chairperson who shall preside at all meetings of the Board and all General Meetings at which she or he is present. The Chairperson shall be appointed or re-appointed at the commencement of each Annual General Meeting. In the absence of the chairperson the members present shall appoint one of their members to preside at that meeting.
- 3.13 Quorum. The presence of at least two Board Members appointed under clause 3.2.1, at least two Board Members appointed under clause 3.2.2 and at least two Board Members appointed under clause 3.2.3 shall be required to form a quorum at all meetings of the Board, and no business shall be transacted unless a quorum is present.
- 3.14 Voting. All questions before the Board shall be decided by consensus except as provided in clauses 18.1 and 19.1 however, where a consensus decision cannot be reached on a question, it shall, unless otherwise specified in this Deed, be put as a motion to be decided by a majority of votes. If the voting is tied, the motion shall be lost. The chairperson shall have a deliberative vote only and shall not have a casting vote.
- 3.15 Minutes. The Secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members at reasonable times.

- 3.16 A written resolution in writing signed by all members of the board entitled to receive notice of a meeting of the Board shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any written resolution may consist of several copies of the resolution, each signed or assented by one or more members of the Board. A copy of a written resolution which has been signed and is sent by facsimile or email or any other similar means of communication will satisfy this clause.
- 3.17 Irregularities: The Board may exercise any of its powers notwithstanding that any appointments to its membership may not at any time have been made and notwithstanding any vacancy in the number of its members.
- 3.18 No resolution shall be invalidated merely on the grounds that at any material time a member of the Board who voted on a matter was not qualified to do so.
- 3.19 For the purposes of this Deed contemporaneous linking by telephone of a number of the not less than the quorum, whether or not any one of more of the members of the Board is out of New Zealand, shall be deemed to constitute a meeting of the Board and all the provisions in this Deed as to meeting of the Board shall apply to such meeting by telephone as long as the following conditions are met:
- 3.19.1 All the members of the Board for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of any such meeting may be given on the telephone.
- 3.19.2 Each of the members of the Board taking part in the meeting by telephone, and the Chairperson, must be able to hear each of the other taking part at the commencement of the meeting.

- 3.19.3 At the commencement of the meeting each member of the Board must acknowledge his presence for the purpose of a meeting of the Board of the organisation to all the other members of the Board taking part.
- 3.19.4 A member of the Board may not leave the meeting by disconnecting his telephone unless he has previously obtained the express consent of the Chairperson of the meeting and a Member of the Board shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he has previously obtained the express consent of the Chairman to leave the meeting as aforesaid.
- 3.19.5 A minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.

Office

- 4.1 The office of the Trust shall initially be at the offices of Mackay Bailey Butchard, Chartered Accountants, 262 Oxford Terrace, Christchurch or at such other place as the Board of Trustees ("the Board") may from time to time determine.

Structure of the Trust

- 5.1 Subject to the terms of this Deed, the Trust's business and affairs shall be managed, controlled, supervised and administered by and under the direction of the Board.

Powers

- 6.1 General and specific powers. In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956, or the

Charitable Trusts Act 1957 the powers which the Board may exercise in order to carry out its charitable objects are as follows:

- 6.1.1 to use the funds of the Trust as the Board thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisers, agents, officers and staff as appears necessary or expedient;
- 6.1.2 to purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of attaining the objects of the Trust, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid;
- 6.1.3 to carry on any business;
- 6.1.4 to invest surplus funds in any way permitted by law for the investment of trust funds and upon such terms as the Board thinks fit and correspondingly to mortgage or charge the trust property as security for the obligations of the trust;
- 6.1.5 to borrow, guarantee or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit;
- 6.1.6 to do all things as may from time to time appear or desirable to enable the Board to give effect to and to attain the charitable purposes of the Trust.
- 6.1.7 To subscribe for and hold shares in any company incorporated in New Zealand, and specifically to hold shares in any subsidiary company (as defined under the Companies Act 1993) which company will have a purpose of providing, assisting or facilitating the provision of health services to the Hurunui Kaikoura or wider

community and to exercise all the rights of a shareholder in such companies.

- 6.1.8 To administer all grants, donations, bequests, endowments, gifts, payments, receipts or advances made to or vested in the Board for its general purposes or for the purpose of any specific objective.
- 6.1.9 To accept and carry out any trusts attached to any grants, donations, bequests, endowments, gifts, payments receipts or advances subject to their complying with the objects of the Board.
- 6.1.10 To make gifts, grants or payments to such organisations having charitable objects similar to those set out herein.
- 6.1.11 To provide financial assistance or support to persons engaged in matters directly ; beneficial to or related to the objects of the Trusts herein.
- 6.1.12 To seek and secure from the Government of New Zealand and any other body, entity or person recognition and financial support for carrying out the objects of the Trust.
- 6.1.13 To pay the costs of administration of the affairs of the Board.
- 6.1.14 To indemnify the Board and each member out of the trust funds from and against all liability to which it or they may become liable in any manner subject in connection with the carrying out of the objects of the Trust.
- 6.1.15 To appoint any person, (including any member of the Board or any employee) that the Board may consider suitable to act as a director or an officer in any other capacity with any company in which any part of the trust fund is invested and the Board may enter into any transaction with any such company.
- 6.1.16 To determine the annual finance date for the preparation of all accounts which shall be, unless expressly otherwise determined by the Board, 30 June each year.

6.1.17 To do any other matter of thing not inconsistent with the forgoing for the achievement for the objects and purposes of the Trust.

6.2 Employment. Under clause 6.1.1 the Board may employ as agents, officers and staff persons who are members of the Board.

Income, Benefit or Advantage to be Applied to Charitable Purposes

7.1 Application: Any income, benefit or advantage shall be applied to the charitable purposes of the Trust.

7.2 Influence: No member or person associated with a member of the Board shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:

7.2.1 professional services to the Trust rendered in the course of business charged at no greater rate than current market rates; or

7.2.2 interest on money lent at no greater rate than current market rates.

Accounts

8.1 True and fair accounts: The Board shall keep true and fair accounts of all money received and expended.

8.2 Audit: The Board shall, as soon as practicable after the end of every financial year of the Board, cause the accounts of the Board for that financial year to be audited by an accountant appointed at the prior Annual General Meeting (or otherwise by the Board) for that purpose and the Board shall present the audited accounts to the Annual General Meeting of the Trust together with an estimate of income and expenditure for the current year.

Power to Delegate

- 9.1 Power to delegate: The Board may from time to time appoint any committee and may delegate in writing any of its powers and duties to any such committee or to any person, and the committee or person as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.
- 9.2 Delegate bound: Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the trust.
- 9.3 Delegation Revocable: Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.
- 9.4 Delegate need not be board member: It shall not be necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a member of the Board.

Common Seal

- 10.1 The Board shall have a Common Seal which shall be kept in the custody of the Secretary, or such other officer as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only in the presence of and accompanied by the signature of two members of the Board.

Annual General Meeting

- 11.1 Time and place of meeting: The Annual General Meeting of the Trust shall be held each year in one of the months of July, August, September or October at such place, date and time as the Board shall determine.

- 11.2 Business of meeting: The Annual General Meeting shall carry out the following business:
- 11.2.1 Appoint or re-appoint a Chairperson
 - 11.2.2 receive the minutes of the previous Annual General Meeting and of any other Special General Meeting held since the last Annual General Meeting;
 - 11.2.3 receive the Trust's audited statement of accounts for the preceding year and an estimate of income and expenditure for the current year;
 - 11.2.4 receive reports from the Board and its committees;
 - 11.2.5 Appoint any auditor;
 - 11.2.6 Consider and decide any other matter which may properly be brought before the meeting.

Special General Meeting

- 12.1 Board may call meeting: A Special General Meeting of the Trust may be called by the Board stating the reason for having the meeting.
- 12.2 Notice of Meeting. The prescribed notice calling a Special General Meeting shall state in general terms the business for which the meeting is called and at that meeting only the business so stated shall be discussed.

Procedure for General Meeting

- 13.1 Definition: In these rules the term "General Meeting" includes both an Annual General Meeting and a Special General Meeting but does not include any meeting of the Board.

13.2 Notice of Meeting: At least fourteen (14) days written notice of each General Meeting shall be given to all Members of the Board, and at least seven (7) days notice of each General Meeting shall be given by advertisement in a newspaper circulating within the Territory. This notice shall state that the meeting is the Annual General Meeting or a Special General Meeting as the case may be and shall specify the place, date and time at which the meeting is to be held.

13.3 Attendance and Voting

13.3.1 Members of the Board may attend all General Meetings of the Trust and may vote there at in person or by proxy.

13.3.2 Persons who are:

13.3.2.1 Enrolled with the Trust and;

13.3.2.2 Practitioners registered with the Trust under clause 3.2.6.

Shall be entitled to attend all General Meetings of the Trust, but shall not have any right to be heard except with leave granted by the Chairperson and shall have no right to vote.

13.4 Quorum. The presence of at least two Board Member appointed under clause 3.2.1, at least two Board Members appointed under clause 3.2.2 and at least two Board Members appointed under clause 3.2.3 shall be required to form a quorum for a General Meeting. No business shall be transacted unless a quorum is present.

13.5 Chairperson: The Chairperson of the Board or the Chairperson's nominee shall chair each General Meeting.

- 13.6 Voting: All questions at a General Meeting shall be decided by a majority of votes. Each Board member shall have only one vote. Voting shall be by show of hands. If the voting is tied, the motion shall be lost. The Chairperson shall have a deliberative vote only and shall not have a casting vote.

Duties of Board: Exercise of Powers

- 14.1 A member of the Board when exercising powers of performing duties must act in good faith in what the member of the Board believes to be in the best interests of the Trust and in a manner which is committed to achieving such one or more of the objects of the Trust.
- 14.2 Nothing in Clause 14.1 limits the power of a member of the Board to make provision for the benefit of employees of the Trust in connection with the ceasing to carry on the whole or part of its business (where “employees” includes former employees and dependants of employees of former employees and extends to the employees of a company controlled by the Trust).
- 14.3 A member of the Board must exercise a power for a proper purpose.
- 14.4 A member of the Board must not act, or agree to the Trust acting, in a manner that contravenes this Deed.
- 14.5 A member of the Board must not agree to, cause or allow the business of the Trust being, or to be carried on, in a manner likely to create a substantial risk of serious loss to the creditors of the Trust.
- 14.6 A member of the Board must not agree to the Trust incurring an obligation unless the member of the Board believes at the time on reasonable grounds that the Trust will be able to perform the obligation when it is required to do so.

- 14.7 A member of the Board, when exercising powers or performing duties as a member of the Board must exercise the care, diligence and skills that a reasonable member of the Board would exercise in the same circumstances, taking into account, but without limitation, the nature of the Trust, the nature of the decision and the position of the member of the Board and the nature of the responsibilities undertaken by him or her.
- 14.8 A member of the Board, when exercising powers or performing duties as a member of the Board, may rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
- 14.8.1 An employee of the Trust whom the member of the Board believes, on reasonable grounds, to be reliable and competent in relation to the matters concerned.
- 14.8.2 A professional adviser or expert in relation to matters, which a member of the Board believes, on reasonable grounds, to be within the person's professional or expert competence.
- 14.8.3 Any other member of the Board or committee of the Board upon which a member of the Board did not serve in relation to matters within the member of the Board or Committee's designated authority. This clause 14.8.3 applies to a member of the Board only if the member of the Board acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances and has no knowledge that such reliance is unwarranted.

Transactions Involving Self Interest

- 15.1 The Trust shall establish and maintain an interest's register, for the purposes of this Deed.

- 15.2 For the purposes of this Deed, a member of the Board is interested in a transaction to which the Trust is a party if, and only if, the member of the Board:
- 15.2.1 Is a party to, or will or may derive a material financial benefit from, the transaction; or
 - 15.2.2 Has a material financial interest in another party to the transaction; or
 - 15.2.3 Is a director officer or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party of person that is wholly-owned subsidiary of the Trust or is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction or is otherwise directly or indirectly materially interested in the transaction.
- 15.3 For the purposes of this clause a member of the Board is not interested in a transaction to which the Trust is a party if the transaction comprises only the giving by the Trust of security to a third party which has no connection with the member of the Board, at the request of the third party, in respect of a debt or obligation of the Trust for which the member of the Board or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.
- 15.4 Subject to clause 15.4.2 below, a member of the Board must immediately after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, cause to be entered in the interests register and disclose to the Board:
- 15.4.1 If the monetary value of the member's interest is able to be quantified, the nature and monetary value of that interest; or

- 15.4.2 If the monetary value of the Member of the Board's interest cannot be quantified, the nature and extent of that interest.
- 15.5 Notwithstanding clause 15.4 above, a member, rather than disclosing full information to the Board, may in the interests of confidentiality, disclose the nature and extent, and if the monetary value of a member's interest can be qualified, the monetary value of that interest, to the Chairperson of the Board and the Secretary and;
- 15.5.1 Such disclosure shall be entered in the interests register but the detail not to be disclosed directly to the Board, in the interests of confidentiality; and
- 15.5.2 Such member shall disclose the general nature or fact (but not the substance) of that interest to the Board.
- 15.6 A general notice entered in the interests register or disclosed to the Board under clause 15.4 above or to the Chairperson and Secretary under clause 15.5 above shall be sufficient disclosure of interest in relation to that transaction.
- 15.7 Subject to this clause 15 a failure by a member of the Board to comply with this clause does not affect the validity of a transaction entered into by the Trust or the member. However, a failure to comply with this rule by a member of the Board shall be grounds for termination by the Board of the appointment of that member of the Board pursuant to clause 3.7.6.
- 15.8 A transaction entered into by the Trust in which a member of the Board is interested may be avoided at any time before the expiry of three months after the transaction is disclosed to all the Board (by whatever means) but cannot be avoided if the Trust receives fair value under it. If a transaction is entered into by the Trust in the ordinary course of its business and on usual terms and conditions, the Trust is presumed to receive fair value under the transaction.

- 15.9 A transaction entered into by the Trust in which a member of the Board is interested can only be avoided on the ground of the member's interest in accordance with this clause.
- 15.10 A person seeking to uphold a transaction sought to be avoided under clause 15.8 above and who knew or ought to have known of the member interest at the time the transaction was entered into has the onus of establishing a fair value. In any other case, the Trust has the onus of establishing that it did not receive fair value.
- 15.11 The avoidance of a transaction under clause 15.8 does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired from a person other than the Trust, for valuable consideration, and without knowledge of the circumstances of the transaction under which the person acquired the property from the Trust.
- 15.12 Nothing in this clause 15 applies in relation to an indemnity or insurance provided in accordance with clause 16 or remuneration or other benefit given to a member of the Board in accordance with clause 17.
- 15.13 A member of the Board who has voting rights and is interested in a transaction entered into, or to be entered into, by the Trust, may not:
- 15.13.1 Vote on a matter relating to the transaction; and
- 15.13.2 Attend a Board Meeting at which a matter relating to the transaction arises nor be included among the Board Members present at the meeting for the purpose of a quorum; and
- 15.13.3 Sign a document relating to the transaction on behalf of the Trust; and
- 15.13.4 Do any other thing in his or her capacity as a member of the Board in relation to the transaction.

- 15.14 A member of the Board who has information in his or her capacity as a Board member or employee of the Trust being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except for the purposes of the Trust or as required by law, or in accordance with clause 15.
- 15.15 Unless previously approved a member of the Board shall not disclose information to a person whose interests the member represents or a person in accordance with whose directions or instructions the member of the Board may be required or is accustomed to act in relation to the member's powers and duties and, if the member discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.
- 15.16 A member of the Board may disclose, make use of, or act on the information if particulars of the disclosure, use, or the act in question are entered in the interests register, and the member is first authorised to do so by the Board and the disclosure, use or act in question will not, or will not be likely to, prejudice the Trust.
- 15.17 A failure to comply with this clause 15 by a member of the Board shall be grounds for termination by the Board of the appointment of that member pursuant to clause 3.7.6 of this Deed.

Indemnity and Insurance

- 16.1 The Trust may indemnify a member of the Board or employee of the Trust for:
- 16.1.1 Any costs incurred by the member or employee in any proceeding that relates to liability for any act or omission of the member or employee in the capacity as a member of the Board or employee of the Trust or of any other organisation of which the member or employee is involved arising out of or directly relating to the

appointment by the Trust of the Board member or employee to that other organisation and in which judgment is given in his or her favour, or in which he or she is acquitted or which is discontinued; and

16.1.2 In respect of liability to any person other than the Trust for any act or omission of the member or employee in the capacity of Board member or employee of the Trust or of any other organisation of which the member or employee is involved arising out of or directly relating to the appointment by the Trust or the member or employee to that other organisation, or costs incurred by the member or employee in defending or settling any claim or proceeding relating to any such liability, not being criminal liability or liability in respect of a breach, in the case of a member of the Board, the duties specified in clause 16.1 or, in the case of an employee, of any fiduciary duty owed to the Trust.

16.1.3 In respect of liability to the Trust arising from the acts or omissions of the member or employee made in good faith.

16.2 The Trust may effect insurance for a member of the Board or employee of the Trust for:

16.2.1 Any liability, not being criminal liability, for any act or omission of the member of the Board or employee in the capacity as a member of the Board or employee; or

16.2.2 Costs incurred by the member of the Board or employee in defending or settling any such claim or proceeding relating to the liability specified in clause 16.2.1 above, or in defending any criminal proceedings in which the member of the Board or employee is acquitted.

16.3 The Board Members who vote in favour of authorising the provision of insurance under clause 16.2 must sign a certificate stating that, in their

opinion, the cost of providing the insurance is fair to the Trust. If this is not complied with, or reasonable grounds did not exist for the opinion in the certificate, the Board Member or employee is personally liable to the Trust for the cost of providing the insurance except to the extent that he or she proves that it was fair to the Trust at the time the insurance was effected.

- 16.4 In this clause 16.2 “effect insurance” includes pay, whether directly or indirectly, the costs of the insurance; “employee” includes a former employee; “indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and “indemnity” has a corresponding meaning.

Remuneration and Other Benefits

- 17.1 The Board may, subject to any restrictions contained in these clauses, authorise the payment of remuneration or the provision of other benefits by the Trust to a member of the Board for services as a member of the Board in any other capacity, the payment by the Trust to a member of the Board or former member of the Board for compensation for loss of office, the entering into of a contract to do any of the things set out above, if the Board is satisfied that to do so is fair to the Trust.
- 17.2 The Board must ensure that forthwith after authorising the making of the payment of the provision of the benefit or the entering into of the contract, as the case may be, particulars of the payment of benefit or contract are entered in the interests register.
- 17.3 The payment of remuneration or the giving of any other benefit to a member in accordance with a contract authorised under clauses 17.1 need not be separately authorised under that clause.
- 17.4 Board Members, who vote in favour of authorizing a payment, benefit, or contract under clause 17.1 must sign a certificate stating that, in their opinion, the making of the payment or the provision of the benefit, or the

entering into of the contract is fair to the Trust, and the grounds for that opinion.

- 17.5 Where payment is made or other benefit provided to which clause 17.1 applies and either the provisions of clause 17.1 and 17.1 have not been complied with, or reasonable grounds did not exist for the opinion set out in the certificate given under clause 17.1 of this clause, the member of the Board or former member of the Board to whom the payment is made or the benefit is provided, as the case may be, is personally liable to the Trust for the amount of the payment, or the monetary value for the benefit, except to the extent to which he or she proves that the payment or benefit was fair to the trust at the time it was made, provided or given.

Alteration of Rules

- 18.1 These rules may be altered, added to, rescinded or otherwise amended by a resolution passed by a seventy five percent of the members of the Board at a General meeting, provided that no such amendment shall:
- 18.1.1 detract from the exclusively charitable nature of the trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
 - 18.1.2 Be made to rules 18 or 19 unless it is first approved in writing by the Inland Revenue Department in New Zealand.
 - 18.1.3 Alter the charitable objects and purposes of the trust unless it is first approved in writing by the Inland Revenue Department in New Zealand.

Disposition of Surplus Assets

- 19.1 On the winding up of the Trust or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisation(s) within New Zealand as the

Board decides or, if the Board is unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

Notices

- 20.1 Any notice required to be given in terms of this deed shall be deemed to have been given if personally served on the person to whom it is given, or if given by facsimile or email shall be deemed to have been served on the date that receipt is acknowledged or if sent by post, shall be deemed to have been received when it would, in the ordinary course of post, have been delivered to such address.
- 20.2 The accidental omission to give notice to a Board member or the non receipt by any member of the Board of such notice shall not invalidate the proceedings at any meeting.

Incorporation

- 21.1 In addition to and without limiting the powers contained or implied in this Deed, the Board shall have the power to apply for incorporation under the provisions of the Charitable Trusts Act 1957.

Definitions & Interpretation

- 22.1 In this Deed

“Chairperson” means the chairperson appointed pursuant to clause 3.12.

“Enrolled” means to be enrolled as a patient with the Trust under the Ministry of Health DHB national enrolment rules for Primary Health Organisations May 2002.

“Practitioner” means a medical practitioner who is registered under the Medical Practitioners Act 1995.

“Provider” means a health professional currently being funded either wholly or partially by the Government or the Canterbury District Health Board to provide first-line primary health care services in the territory.

“Territory” means the Hurunui Kaikoura regions from the South of Tirohanga to the North of the Saltwater Creek.

APPENDIX B

Appointment Process for Iwi and Maori Provider Board Members

There shall be two Iwi representatives (appointed by Manawhenua Ki Waitaha) and one Maori Provider Board Members on the PHO Board.

Appointment of the Iwi and Maori Provider Representative shall be conducted as follows:

Appointment of the Two Iwi Members

- 1.1 The current two Iwi Board Members of the PHO Board shall inform their respective Runanga of the upcoming re-appointments after the set agreed period of appointment has expired or the need for the appointment of a new Board Member as soon as the need for such appointment arises.
- 1.2 The criteria for nomination, selection and appointment is that:
 - 1.2.1 Te Runanga O Ngai Tuahuriri shall be responsible for how their one Iwi Board Members is nominated, selected and appointed;
 - 1.2.2 Te Runanga O Kaikoura shall be responsible for how their one Iwi Board Members is nominated, selected and appointed;
 - 1.2.3 Te Runanga O Ngai Tuahuriri and Te Runanga O Kaikoura shall be responsible for informing the Iwi of their final selection of Iwi Board Members on the Board.

Appointment of the one Maori Provider Board Member

- 2.1 The one current Maori Provider Board Member of the Board shall inform all the Maori Provider Organisations based within the Hurunui/ Kaikoura region of the upcoming re-appointments after the set agreed period of

appointment has expired or the need for the appointment of a new Director as soon as the need for such appointment arises.

- 2.2 A meeting shall be called for all the Maori Provider Organisations to nominate their Maori Provider Board Member to the PHO Board. The criterion for nomination is that the Maori Provider nominees must have Mana Whenua status within the Hurunui/ Kaikoura region (ie, be a lead Provider in the Hurunui/Kaikoura region).
- 2.3 The nominated Maori Provider Board Member shall be confirmed in writing to the Board.

APPENDIX C

Appointment of Community Members of the Board: Transitional Provisions

Interpretation

- 1.1 Terms in this Appendix C have the same meaning as in the Trust Deed.
- 1.2 “Trust Deed” means the deed of declaration of trust to which this Appendix forms part.

Application

- 2.1 This Appendix C governs the appointment of Community members of the Board until the 30th June 2007, and at that time, persons appointed as members of the Board pursuant to this Appendix C shall be deemed to have been appointed pursuant to clause 3.2.3.1 of the Trust Deed.
- 2.2 Following the registration of this Deed under the Charitable Trusts Act 1953 and prior to 31st March 2004, the Board shall prescribe and determine transitional rules for the appointment of Community Members of the Board under clause 3.2.3.2 of the Trust Deed, as follows:
 - 2.2.1 Public notice as determined by the Board shall be given by means of an advertisement or advertisements in papers circulating in the Territory calling for nominations of persons interested in being appointed as members of the Board.
 - 2.2.2 Following the closing date for the receipt of nominations as determined by the Board, the Board shall facilitate an election of not more than three members to the Board from such of the names of the nominees as shall satisfy the eligibility criteria set by the Board prior to the call for nominations.
 - 2.2.3 The Board shall have the full and absolute discretion to determine the manner in which the election may proceed and for the

avoidance of doubt, such election may be by vote at a meeting held for such purpose or may be by postal vote as the Board may determine.

2.2.4 No person shall be eligible to vote unless at the time of submitting their vote such person is either;

2.2.4.1 Enrolled with the Trust; or

2.2.4.2 Registered as a patient of a Registered Medical Practitioner registered under the Medical Practitioners Act 1953 carrying on business as a Medical Practitioner in the Territory, and such patient consents in writing to the disclosure of that person's identity and address for the purposes of exercising the right to vote herein.

2.2.5 The provisions of clauses 3.2.3.1.1 to 3.2.3.1.4 shall apply to such appointment.

2.2.6 The decision of the Board in relation to the procedure for the nomination and election of Members of the Board shall be final.

2.2.7 The Board shall have the sole power to determine whether any person elected pursuant to the preceding provisions is duly elected or not.

2.2.8 The Board shall not be obliged to expand more than is reasonable in facilitating election(s) under this Appendix C.

2.3 Any appeal against the procedure or election of any person shall be made to the Board whose decisions shall be final and conclusive.

SIGNATURES

SIGNED BY)
 JAMES ROGER ABERNETHY)
 as Trustee in the presence of:) _____

Witness Signature

Witness Occupation

Witness Town/City of Residence

SIGNED BY)
 RICHARD WAYNE DAVISON)
 as Trustee in the presence of:) _____

Witness Signature

Witness Occupation

Witness Town/City of Residence

SIGNED BY)
 MIRIAMA TEAHIPUIA KAHU)
 as Trustee in the presence of:) _____

Witness Signature

Witness Occupation

Witness Town/City of Residence

SIGNED BY)

JANET PATRICIA ROBINSON)

as Trustee in the presence of:)

Witness Signature

Witness Occupation

Witness Town/City of Residence

SIGNED BY)

DAVID ARTHUR STONE)

as Trustee in the presence of:)

Witness Signature

Witness Occupation

Witness Town/City of Residence

SIGNED BY)

BENITA WAINA WAKEFIELD)

as Trustee in the presence of:)

Witness Signature

Witness Occupation

Witness Town/City of Residence