

THE HEALTHCARE OTAGO CHARITABLE TRUST

CONSOLIDATED TRUST DEED

Including:

the Deed of Trust dated 30th June 1994 made by Peter Rae, Arthur William Baylis and Glenis Elizabeth Dillon

the amendment dated 21st November 1994 made by Arthur William Baylis, Glenis Elizabeth Dillon and John Stanford Ayling

the amendment dated 26th June 2003 made by Arthur William Baylis and David Ross Black

the amendment dated 30th June 2003 made by Arthur William Baylis and David Ross Black

the amendment dated 8 June 2011 made by David Ross Black, Paul William Moodie, Norma Jean Restieaux and Richard John Thomson

This document is for reference only and does not replace or substitute for the duly executed Deed of Trust dated 30th June 1994 and its duly executed amendments.

References in this document to Southern District Health Board were inserted from 8 June 2011 in substitution for former references to Otago District Health Board.

8 JUNE 2011

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CLAUSE

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BACKGROUND:

- A.** The parties to this Deed wish to establish a Charitable Trust to be known (subject to clause 2 of this Deed) as **THE HEALTHCARE OTAGO CHARITABLE TRUST** (“the Trust”) for the objects set out in this Deed.
- B.** The Trustees shall hold the sum of **ONE DOLLAR (\$1.00)** for the purpose of establishing the Trust (that sum of \$1.00 and the property investments from time to time representing it together with any further property whether real or personal of whatsoever nature or kind which may, after the date of this Deed, be otherwise acquired or received by the Trustees from any source whatever for the purposes of the Trust and the monies, property and investments from time to time representing that property and the income from it, being referred to in this Deed as the “Trust Fund”).
- C.** The Trustees have agreed to enter into this Deed for the purpose of constituting the Trust, specifying its objects and providing for its control, government and regulation.

1. ACKNOWLEDGEMENT OF TRUST

The Trustees **ACKNOWLEDGE** that the Trustees will hold the Trust Fund upon the trusts and with the powers set out in this Deed.

2. NAME OF TRUST

As a matter of administrative convenience the Trust Fund established by this Deed will be known as **THE HEALTHCARE OTAGO CHARITABLE TRUST** but the Trustees will have power to amend or change the name by deed.

3. OBJECTS OF THE TRUST

The Trust Fund will be applied and used exclusively by the Trustees for such of the following purposes as the Trustees from time to time decide upon in their absolute discretion, namely:

[As restated on 8 June 2011]

- (a) Health services or disability support services as those terms are defined in the NZ Public Health and Disability Act 2000 which contribute in whole or in part to the wellbeing of people within the communities of the Defined Area.
- (b) Health related services or projects carried on or in conjunction with others within the communities of the Defined Area.
- (c) Health research being carried on or from or in conjunction with others within the communities of the Defined Area.
- (d) The education of any person or persons in matters related to health or health services and disability support services within the communities of the Defined Area.

- (e) Such health related purposes that may be specifically directed by donors to the Trust or such health related purposes as may already attach to funds donated to and held by the Trust within the communities of the Defined Area.
- (f) Such other health related purposes within the communities of the Defined Area.

PROVIDED THAT the services projects research and purposes set out in 3(a) to 3(f) above are of a charitable nature and purpose according to the law of New Zealand.

3.A

[As Inserted 23rd June 2003]

Without in any way derogating from the objects of the Trust as set out in clause 3, and without imposing a binding obligation on the Trustees, the Trustees shall, in considering the application of the Trust Funds, give consideration to the following:

- (a) The desirability of assisting with the funding of health and disability services which are not fully funded by the Southern District Health Board or by other Government sources.
- (b) The desirability of providing assistance to those offering voluntary health and disability services.

And shall give priority to those providers of the services referred to in (a) and (b) above having regard to their relative size and importance.

4. APPLICATION OF INCOME AND RECEIPTS

The Trustees may at any time, after payment of or provision for all costs, charges and expenses of the Trustees in respect of the establishment, management and administration of the Trust Fund, pay or apply the whole or any part of the income and receipts of the Trust Fund towards the furtherance of such of the objects of the Trust as the Trustees determine.

5. APPLICATION OF CAPITAL

The Trustees may at any time pay or apply the whole or any part of the capital of the Trust Fund towards the furtherance of such of the objects of the Trust as the Trustees determine.

6. WINDING UP

Without restricting the provisions of clauses 4 and 5, the Trustees may at any time wind up the Trust. On such winding up the Trustees will pay or apply such of the capital, income and receipts of the Trust Fund as may then remain towards the furtherance of such of the objects of the Trust as the Trustees determine.

7. RECEIPT OF CHARITABLE RECIPIENT

The receipt of the secretary or treasurer or other proper officer of any charity or charitable purpose to which all or any part of the Trust Fund is paid or applied under this Deed will constitute a sufficient discharge to the Trustees for any such payment or application.

8. RESETTLEMENT

The powers of the Trustees in relation to income, receipts and capital contained in clauses 4 and 5 will, without limitation, include the power for the Trustees in their discretion to settle or resettle **UPON TRUST** for one or more of the objects of the Trust as the Trustees determine the whole or any part of the capital, income or receipts of the Trust Fund **PROVIDED HOWEVER** that the settlement or resettlement shall not breach the rule against perpetuities as it applies to charities.

9. INVESTMENT OF THE TRUST FUND

In addition to all the powers of investment vested in the Trustees by law, the Trustees may invest the whole or any part of the Trust Fund in real or personal property of any nature whatever in New Zealand or elsewhere.

10. POWERS OF THE TRUSTEES

In addition to all the powers, authorities and discretions vested in the Trustees by law or by this Deed, the Trustees may (subject to any direction to the contrary in any instrument evidencing or conferring any gift on the Trustees or in any will or codicil conferring any legacy on the Trustees), in giving effect to the objects for which the Trust is established, in its discretion exercise the fullest possible powers and authorities as if the Trustees were the beneficial owners of the Trust Fund **AND** without prejudice to the generality of this clause the Trustees will have power (subject as aforesaid) in their discretion:

- (a) to retain any property forming part of the Trust Fund for so long as they think fit even if it is of a wasting, speculative or reversionary nature or may not produce income or not increasing in value;
- (b) to sell, call-in and convert into money or other property the whole or any part of the Trust Fund at such time in such manner and upon such terms as they think fit;
- (c) to accumulate the income and receipts of the Trust or the resulting income from the Trust or both from time to time;
- (d) to charge any property forming part of the Trust Fund for other property authorised by this Deed or otherwise by law;
- (e) to seek and receive conveyances, transfers, gifts, devises, donations and bequests of property (but with power nevertheless to accept or decline) and to

hold the same or the proceeds of the sale thereof upon the trusts to which the same are subject but otherwise subject to the terms and provisions of the Trust and in the event of any property being received by the Trust subject to reservations, trusts, liabilities or obligations nevertheless to accept and hold such property subject thereto and further to make such provision from or payments out of the Trust Fund and take any other action in respect of the same;

- (f) to set apart any portion of the Trust Fund as a sub-trust, a special endowment or for a special purpose or under any special or distinguishing name for such a term and upon such conditions as may by law be allowed and to apply to each such portion together with any accretions to it for the endowment or other purpose for which the same was set aside or for any other purpose authorised by this Deed;
- (g) to pay the premiums on any policies of insurance or assurance or on any indemnities or commitments taken out or acquired by the Trustees out of either income or capital and to surrender any such policy or policies, convert the same into fully paid up policies and to accept a new policy or policies in lieu of any policy and to agree with the insurer on any variation of the terms of any policy;
- (h) to pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any property subject to the trusts of this Deed and to manage that property and effect such repairs to such property as the Trustees may consider necessary desirable or advisable and where the Trustees are unable to charge such expenditure against income the Trustees may resort to capital;
- (i) to apply any monies for the time being forming part of the Trust Fund in improving or developing or subdividing any property for the time subject to the trusts of this Deed;
- (j) without in any way limiting the generality of paragraph (i) of this clause to add to any building and erections and to do any act in connection with any property which the Trustees consider will increase the value of it, whether or not the Trustees apart from this Deed be empowered to do such act, including but not by way of limitation the power to enter into leases, tenancy agreements, party wall agreements, easements or profits a prendre, on such terms as the Trustees think fit;
- (k) to grant leases or licences for all or any part of any property for the time being subject to the trusts of this Deed for any period upon such terms and conditions and for such rent as the Trustees think fit and make allowances to and with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies and licences and raise out of the capital or income of the Trust Fund any sum from time to time required for the exercise of any of the powers and discretions contained in this Deed and generally to deal with the property in a proper manner and in due course of management as if the Trustees were beneficially entitled to it;
- (l) to exercise any voting powers attaching to any shares, stock, debentures, debenture stock, bonds, notes, options or other securities ("securities") at any time forming part of the Trust Fund and to appoint directors in any company in which the Trustees hold securities forming part of the Trust Fund;
- (m) to consent to any reorganisation or reconstruction of any company the securities of which form part of the Trust Fund and to consent to any increase or reduction of capital or other dealing with such securities;
- (n) to employ and remunerate any financial adviser, administrator, lawyer, accountant, valuer, surveyor, auctioneer or other expert or professional person or

other personnel or entity to advise on or carry out all or any of the trusts and powers contained in this Deed and to act upon any opinion or advice or information obtained from such person **AND** the Trustees shall, except in the case of the Trustees' dishonesty or wilful and knowing breach of trust, not be responsible for any loss caused by acting or not acting in accordance with such opinion or advice or information;

- (o) to set aside out of the capital or income of the Trust Fund from time to time any sum of money to meet any debt or obligation due or accruing due;
- (p) to raise or borrow money either bearing or free of interest from any person and to secure the repayment of money so borrowed and any interest on it by mortgage or charge over all or any of the property of the Trust Fund and to apply such money for any of the purposes for which either the income, receipts or the capital of the Trust Fund is for the time being applicable under this Deed including the investment of money in any manner and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;
- (q) to enter into any contract of indemnity or act as surety or give any guarantee and to give any security in support;
- (r) to enter (either directly or through an intermediary) into any arrangement with any person, organisation, or government (referred to in this paragraph as "the other party") whereby the Trustees undertake to make payments to, or to the current account of, the other party in any currency and the other party undertakes to make payments to, or to the account of, the Trustees in the same or any other currency; and without limiting the generality of this paragraph, to enter into currency and/or interest rate swaps, asset swaps, future rate or forward rate arrangements, interest cap, collar and/or floor arrangements, option arrangements or any combination thereof or other similar transactions;
- (s) to open and maintain a bank account and to decide who shall be the signatories to such account;
- (t) to carry on any business and :
 - (i) to employ in the business any asset of the Trust Fund;
 - (ii) to form a company or partnership to carry on the business; and
 - (iii) to be a director of that company or partnership and to retain for themselves any reasonable remuneration paid;
- (u) in respect of any company in which the Trustees hold securities forming part of the Trust Fund :
 - (i) to act as director of the company and to receive and retain for themselves any directors' fees or other remuneration for so acting;
 - (ii) to provide out of the Trust Fund further capital for such company either by way of advances, loans, deposits or otherwise (with or without security) or by taking further securities in the company ; and
 - (iii) to concur in any reconstruction or amalgamation of the company or in any modification of the rights of the shareholders or others interested in the

company and generally to act in respect of any company in such manner as the Trustees think fit;

- (v) to apply the whole or any part of the Trust Fund in and towards the payment of any liabilities incurred by the Trustees under this Deed or in and towards the repayment of any monies owing as unpaid purchase money or on mortgage of any of the assets of the Trust Fund or otherwise owing or in the payment of interest or other charges properly payable in respect of such liabilities, unpaid purchase monies, mortgages or monies otherwise owing;
- (w) to determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund or the Trust;
- (x) to seek and procure the registration of the Trust in accordance with the provisions of any law from time to time in force relating to charitable trusts;
- (y) at any time and for any period to appoint any person or company to act as attorney for the Trustees in New Zealand or elsewhere for all or any of the purposes of this Deed and to appoint any person or company as manager or agent to act for and on behalf of the Trustees in all or any matters relating to the management and the control of the Trust Fund and any business owned by the Trustees or in which they are concerned and any rule of law or equity to the contrary notwithstanding the Trustees shall not be answerable or responsible for any loss occasioned to the Trust Fund by any breaches of trust or defaults of any such attorney, manager or agent;
- (z) to advertise the existence and objects of the Trust by whatever means the Trustees think fit;
- (aa) generally to do all such other lawful acts and things incidental or conducive to the attainment of the objects or purposes of the Trust and to pay any expenses incurred as a result from the Trust Fund.

11. PROHIBITION OF BENEFIT OR ADVANTAGE

In carrying on of any business under this Deed, and the exercise of any power authorising the remuneration of Trustees, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any related person where that related person, in his capacity as a related person, is able in any way (whether directly or indirectly) to determine or to materially influence the determination of :

- (a) the nature or amount of that benefit, advantage or income; or
- (b) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

12. NUMBER OF TRUSTEES

- (a) The Trust shall consist of not more than seven (7) nor fewer than three (3) Trustees. The initial Trustees to be the signatories to this Deed; and
- (b) during any period or periods when the number of Trustees falls below the minimum number provided for in this clause, the remaining Trustee or Trustees

will procure the number of trustees to be increased to such minimum number as soon as reasonably practicable,

PROVIDED THAT notwithstanding anything to the contrary in this Deed all acts and decisions of the remaining Trustee or Trustees in relation to the Trust pending the increase in the number of the Trustees will be valid and binding on all persons.

13. [Revoked 23rd June 2003]

14. [As Amended 23rd June 2003]

POWER OF APPOINTMENT OF NEW TRUSTEE

1 (a) The power of appointment of a new trustee shall be vested in the Trustees for the time being who may exercise this power by a written resolution signed by all of them whether or not occasion shall have arisen for the appointment of a new trustee or trustees **PROVIDED THAT** the Trustees for the time being shall ensure at all times one of the Trustees is the Chairperson of the Southern District Health Board or his or her nominee (and such Chairperson shall have the power to revoke such nomination at any time and to appoint another nominee or himself or herself in his or her place).

1 (b) The majority of the Trustees for the time being may at any time by notice in writing to any Trustee, but not the Chairperson of the Southern District Health Board or his or her nominee, remove that Trustee from office.

2 [Revoked]

3 Notwithstanding anything to the contrary contained in this Deed, a Trustee will cease to hold office if :

- (a) the Trustee retires from office;
- (b) the Trustee becomes bankrupt or insolvent;
- (c) the Trustee is convicted of any indictable offence;
- (d) the Trustee becomes of unsound mind;
- (e) the Trustee is liquidated or dies.
- (f) [Revoked]

15. **RETIREMENT OF THE TRUSTEES**

A Trustee may retire upon giving notice of retirement to the co-Trustee (if any). Any Trustee so retiring and any Trustee who otherwise ceases to be a Trustee under clause 14.3 will be absolutely indemnified by and out of the Trust Fund (whether as to the capital or the income of the Trust Fund) in respect of any loss or liability which such Trustee may after retirement or otherwise ceasing to be a Trustee incur by reason of the carrying out of any function, duty or power of the Trustee under this Deed, whether such carrying out took place before, during or after the period in which the Trustee so retiring or otherwise ceasing to be a Trustee was a Trustee of the Trust Fund, unless such loss or liability is attributable to that Trustee's dishonesty or to the wilful commission by that Trustee to be a breach of trust.

16. PROCEEDINGS OF THE TRUSTEES

- 1 Subject to any express provisions in this Deed to the contrary, the Trustees will dispatch business and regulate their decision-making in respect of the Trust as they think fit.
- 2 Subject to any express provisions in this Deed to the contrary:
 - (a) questions arising at any meeting of the Trustees will be decided by a majority decision. It will not be necessary to give notice of a meeting of the Trustees to any Trustee for the time being absent from New Zealand;
 - (b) the quorum necessary for the transaction of the business of the Trustees will be two Trustees.
 - (c) the chairperson appointed in accordance with this Deed will preside over meetings of the Trustees but if no chairperson is appointed or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting the Trustees present may choose one of their number to be chairperson of the meeting;
 - (d) a resolution in writing signed by all of the Trustees entitled to receive notice of a meeting of the Trustees will be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more Trustees.
- 3 The Trustees will cause to be kept full and proper minutes of their decision-making process.
- 4 [*Inserted 23rd June 2003*]
The chairperson of the Trustees shall be appointed by resolution in writing signed by the majority of the Trustees for the time being and by a similar resolution the majority may at any time remove a chairperson from office.

17. INTERESTED TRUSTEES

Any Trustee of the Trust may contract and have dealings with the Trust in respect of the Trust Fund whether as purchaser, vendor, lessor, lessee, licensor, licensee, manager, employee or otherwise howsoever **PROVIDED THAT** if any Trustee of the Trust or any other person (where that person and the Trustee are associated persons as defined in the Income Tax Act 1976) either personally or by virtue of being a Director or Shareholder of any company or as Trustee of any other Trust :

- (a) is in any way interested in any contract or dealing with the Trust ; or
- (b) shall have an interest or duty in any particular matter or matters which shall conflict with the duty of the Trustee or the terms of the Trust herein ;

then such Trustee must prior to any relevant discussion declare their interest in the matter and they shall not be entitled to participate or vote in any consideration of it by the Trustees.

18. EXECUTION OF DOCUMENTS

- 1 Whenever the Trustees in the exercise of any power authority or discretion conferred upon them need to sign or attest any deed it will be sufficient :
 - (a) if the Trustees are not incorporated as a Board under the Charitable Trusts Act 1957, for that deed, to be signed or attested by any two of the Trustees for the time being;
 - (b) if the Trustees are incorporated as a Board under the Charitable Trusts Act 1957, for that deed to be executed under the common seal of such Board attested by any two of the Trustees who for the time being are incorporated as such Board.

- 2 Whenever the Trustees in the exercise of any power, authority or discretion conferred upon them need to make any contract or agreement, it will be sufficient (and regardless of whether the Trustees are incorporated as a Board under the Charitable Trusts Act 1957) for:
 - (a) that contract or agreement (which if made between private persons would by law be required to be in writing signed by the parties to be charged with it) to be made on behalf of the Trustees in writing signed by any person who is acting under the express or implied authority of the Trustees ; and
 - (b) that contract or agreement (which if made between private persons would by law be valid although made orally and not in writing) to be made on behalf of the Trustees by any person who is acting under the express or implied authority of the Trustees.

**19. [As Amended 30th June 2003]
TRUSTEE'S REMUNERATION AND EXPENSES**

Subject to clause 11, any Trustee for the time being of the Trust being a lawyer, accountant or other person engaged in any profession, business or trade will be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by it or any of its employees or partners in connection with the trusts of this Deed including acts which a Trustee not being in any profession, business or trade could have done personally. The Trustees shall be entitled to receive such remuneration whether by way of an honorarium and/or a meeting attendance allowance as shall be determined from time to time by the Trustees and to be paid all travelling hotel and other expenses properly incurred by them in attending and returning from meetings of Trustees or in connection with the affairs of the Trust.

20. INDEMNITY

- 1 To the extent permitted by law no Trustee of the trusts of this Deed, the secretary or any other officer or servant (if any) of the Trust will be subject to any duties except the duty to act honestly and the duty not to commit wilfully any act known

by them to be a breach of trust and the duty not to omit wilfully any act when the omission is known by them to be a breach of trust **AND** no such person will be liable for the consequences of any act or omission or for any loss not attributable to that person's own dishonesty or to the wilful commission by that person of any act known by that person to be a breach of trust or to the wilful omission by that person of any act when that omission is known by that person to be a breach of trust nor shall any Trustee be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust by that co-Trustee.

- 2 The Trustees, the secretary and other officers and servants (if any) of the Trust will be absolutely indemnified by and out of the Trust Fund (whether as to the capital or the income of the Trust Fund) for and in respect of any loss or liability which that person may incur by reason of the carrying out or omission of any function, duty or power of the Trustee under this Deed and in respect of any outlay and expenses incurred by that person in the management and administration of the Trust Fund unless such loss or liability is attributable to that person's dishonesty or to the wilful commission by that person of any act known by that person to be a breach of trust or to the wilful omission by that person of any act when that omission is known by that person to be a breach of trust.

21. ACCOUNTS AND AUDIT

The Trustees will cause true and full records to be kept in such manner as they think fit of all their receipts, credits, payments and liabilities and all other matters necessary for showing the true state and condition of the Trust Fund. The annual accounts of the Trust Fund will be prepared by a chartered accountant appointed by the Trustees and will be audited at least once a year by a chartered accountant appointed by the Trustees. The books of accounts will be kept at the Trustees' office or at such other place as the Trustees think fit and will always be open to the inspection of the Trustees.

22. VARIATION OF THE TRUST

Subject to the provisions of any relevant legislation for the time being in force relating to charitable trusts, the Trustees will have power :

- (a) to amend, revoke or vary any of the provisions of this Deed unless to do so would amend, revoke or vary the objects of the Trust or would enable an application of any part of the Trust Fund in a manner inconsistent with the objects of the Trust ; and
- (b) notwithstanding paragraph (a) of this clause, to amend, revoke or vary the objects of the Trust if and to the extent it is necessary to do so for the Trust to qualify as a charitable trust in terms of the Income Tax Act 1976.

23. GOVERNING LAW

The Trust will be governed by and construed in accordance with the laws of New Zealand.

24. GENERAL [as amended 8 June 2011]

In this Deed, unless the context otherwise required:

- (a) "Defined Area" means the dark shaded area shown on map annexed hereto.

- (b) "Related Person" for the purposes of clause 11 and in relation to any business to which section 61(27) of the Income Tax Act 1976 applies, means a person specified in paragraphs (a) to (d) of the second proviso to that section, the persons currently specified being:
- (i) a settlor or trustee of the trust by which the business is carried on ; or
 - (ii) a shareholder or director of the company by which the business is carried on;
 - (iii) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on ; or
 - (iv) that person, where he or she is a settlor, trustee, shareholder or director already mentioned in this definition, are associated persons for the purpose of the Income Tax Act 1976.
- (c) "Southern District Health Board" shall mean the organisation of that name duly constituted by the NZ Public Health and Disability Act 2000 and includes any other body replacing, superseding or reconstituting the same.
- (d) reference to the Trustees includes any Trustee for the time being appointed under this Deed;
- (e) reference to clauses are to clauses of this Deed;
- (f) reference to the provisions of any Act shall, where the context so permits, be construed as a reference to such provisions as modified, extended or replaced by any statute for the time being in force;
- (g) words importing the singular include the plural and vice versa; and
- (h) words importing one gender include the others.

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