

# WellSouth Primary Health Network

## Amended and Restated Constitution

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Date:

## Parties

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1. Keith Lawson Abbott
2. Nicola Joanne Burwood
3. Suzanne Marie Crengle
4. Emma Hana Wyeth
5. Paul Michael Larson
6. Susan Louise Meyer
7. Keri Tania Milne-Ihimaera
8. Erolia Leinatioletuitoga Rooney
9. Douglas James Hill

being the current Trustees of **WellSouth Primary Health Network**, a charitable trust incorporated as a Board under the Charitable Trusts Act 1957 (incorporation number 2484688) and registered as a charity under the Charities Act 2005 (registration number CC44224)

## Background

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- A. WellSouth Primary Health Network and its current Trustees agree to replace WellSouth Primary Health Network's current Trust Deed with this Deed with effect from 12 November 2024.
- B. The replacement of WellSouth Primary Health Network's current Trust Deed with this Deed has been approved by a written resolution in accordance with clause 16 of the current Trust Deed.

## This Deed records

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WellSouth Primary Health Network's Trust Deed (which it refers to as its "constitution") is replaced from 12 November 2024 with this Amended and Restated Constitution:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions**

In this deed (unless the context requires otherwise):

**Advice** means any proposal, opinion, recommendation, guidance or other advice sought and received by the Board, or by any Committee, in relation to the pursuit of the Purposes of the Trust.

**Advisor** means any person invited, consulted or appointed under clause 14 by the Board or any Committee, as the case may require, to become an advisor to the Trust.

**Advisory Group** means any Committee established under clause 13 (however it may be named in practice from time to time).

**Appointed Member** means a Member appointed by the Board to the Board or to a Committee.

**Appointing Body** means a group recognised in the Rules or elsewhere in this deed as having the authority to appoint Members.

**Associated** has the meaning given by section YA 1 of the Income Tax Act 2007.

**Bank** means any bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989.

**Board** means the Trustees acting as a board under the Charitable Trusts Act 1957.

**Chair** means, as the case requires, the Trustee who is the Chair of the Board appointed under Schedule 2, or the person who is the Chair of a Committee, and holding such office for the time being.

**Charitable Purposes** means every charitable purpose within New Zealand and includes that term as defined in the Charitable Trusts Act 1957 and that term as defined in the Charities Act 2005 provided that any such purpose is also regarded as charitable under any income tax, duty or other revenue statute for the time being in force in New Zealand.

**Committee** means, as the case may require, any committee of the Board, an Advisory Group or any other committee established by the Board.

**Community** means the people ordinarily resident in Otago and Southland.

**Consensus Advice** means Advice given to the Board by any Committee that is expressed in the Advice, or confirmed in writing by the Chair of that Committee, to represent the consensus view of the Committee.

**Constitution** means this constitution (being an amended and restated version of the Trust's Trust Deed), as may be amended or replaced from time to time in accordance with clause 21.

**Consult** means to undertake, in such manner and with such other persons or stakeholders as the Consulting Body considers appropriate in the circumstances, a process by which:

- a. the Consulting Body states its proposals and invites responses;
- b. the Consulting Body gives the consulted persons or stakeholders adequate opportunity themselves to consult with any other interested party;
- c. the process takes place within a reasonable timeframe;
- d. the Consulting Body considers the responses received in good faith and without predetermination; and
- e. in considering responses, the Consulting Body has due regard for any applicable Advice and Policy Documents,

and **Consultation** has a corresponding meaning.

**Consulting Body** means the Board and/or any Committee and/or any Chair, as the case may require.

**Co-opted Expert** means is a person co-opted by the Board under the Rules for the purpose of providing specialist expertise and/or Advice.

**Co-opted Member** means a Member co-opted as a Member of the Board or of a Committee.

**Default Rules of Procedure** means the rules set out in Schedule 3.

**Electoral Body** means an organisation that the Board considers is either:

- a. generally representative (or organisations collectively that the Board considers are generally representative) of a category of Primary Health Care Practitioner; or
- b. independent of a particular category of Primary Health Care Practitioner,

and that agrees, at the request of the Board, to undertake an electoral process involving that category of Primary Health Care Practitioner that complies with Schedule 2 of this deed to appoint a Member of

the Board.

**Eligible Person** means a person who is eligible for publicly funded health services in accordance with the current Health and Disability Services Eligibility Direction published in the New Zealand Gazette, and **Eligible People** has a corresponding meaning.

**Enrolled Person** means a person who is enrolled in accordance with the Ministry of Health's Policy Document entitled "Enrolment Requirements for Contracted Providers and PHOs" and **Enrolled Patient** and **Enrolled People** have corresponding meanings.

**General Medical Practitioner** means a Medical Practitioner who practises or has practised as a provider of personal, continuing, general primary health care services to Enrolled People.

**Income** means all net income derived in accordance with this deed or otherwise from the Trust Assets and activities.

**Iwi** means the body of people recognised as representing Tangata Whenua within Otago and Southland.

**Majority Advice** means Advice given to the Board by any Committee that is expressed in the Advice, or confirmed in writing by the Chair of that Committee, to represent the view of the majority of the Committee.

**Medical Practitioner** means a person registered as a medical practitioner by the applicable Registration Authority who holds a current annual practising certificate.

**Member** in relation to the Board, means a Trustee and, in relation to a Committee, means a member of that Committee.

**Nurse (Nēhi)** means an Enrolled Nurse, Registered Nurse or Nurse Practitioner (Mātanga Tapuhi).

**Nurse Practitioner (Mātanga Tapuhi)** means a person registered as a nurse practitioner (mātanga tapuhi) by the applicable Registration Authority and who holds a current annual practising certificate.

**Otago and Southland** means the geographical region covered by the Otago Regional Council and Environment Southland Southland Regional Council.

**Other Primary Care Practitioner** means a Primary Health Care Practitioner who is not a Medical Practitioner or Nurse (Nēhi) (for example, a Pharmacist, dental hygienist, technologist or therapist, a dentist, midwife, osteopath, chiropractor, dietitian, medical radiation technologist, medical laboratory scientist, occupational therapist, optometrist, optician, physiotherapist, podiatrist or psychologist).

**Papatipu Rūnanga** means the Papatipu Rūnanga of Ngāi Tahu Whānui within Otago and Southland:

*Papatipu Rūnanga*

*Takiwā*

Te Rūnanga o Moeraki

The takiwā of Te Rūnanga o Moeraki centres on Moeraki and extends from Waitaki to Waihemo and inland to the Main Divide.

Kāti Huirapa ki Puketeraki

The takiwā of Kāti Huirapa ki Puketeraki centres on Karitane and extends from Waihemo to Purehurehu and includes an interest in Ōtepoti and the greater harbour of Ōtākou. The takiwā extends inland to the Main Divide sharing an interest in the lakes and mountains to Whakatipu-Waitai with Rūnanga to the south.

Te Rūnanga o Ōtākou

The takiwā of Te Rūnanga o Ōtākou centres on Ōtākou and extends from Purehurehu to Te Matau

and inland, sharing an interest in the lakes and mountains to the western coast with Rūnanga to the North and to the South.

Waihōpai Rūnaka	The takiwā of Waihōpai Rūnaka centres on Waihōpai and extends northwards to Te Matau sharing an interest in the lakes and mountains to the western coast with other Murihiku Rūnanga and those located from Waihemo southwards.
Te Rūnanga o Awarua	The takiwā of Te Rūnanga o Awarua centres on Awarua and extends to the coasts and estuaries adjoining Waihopai sharing an interest in the lakes and mountains between Whakatipu-Waitai and Tawhititarere with other Murihiku Rūnanga and those located from Waihemo southwards.
Te Rūnanga o Ōraka Aparima	The takiwā of Te Rūnanga o Ōraka Aparima centres on Oraka and extends from Waimatuku to Tawhititarere sharing an interest in the lakes and mountains from Whakatipu-Waitai to Tawhititarere with other Murihiku Rūnanga and those located from Waihemo southwards.
Hokonui Rūnaka	The takiwā of Hokonui Rūnaka centres on the Hokonui region and includes a shared interest in the lakes and mountains between Whakatipu-Waitai and Tawhititarere with other Murihiku Rūnanga and those located from Waihemo southwards.

**Pharmacist** means a person registered as a pharmacist by the applicable Registration Authority who holds a current annual practising certificate.

**Policy Document** means any document recognised by the Board as expressing any policies or objectives of the Crown that the Board considers relevant to the pursuit of the Purposes of the Trust; for example at the date of this deed, the New Zealand Health Strategy (2023), Pae Tū: Hauora Māori Strategy (2023), Te Mana Ola: The Pacific Health Strategy (2023), the Primary Health Care Strategy (2001), the Provisional Health of Disabled People Strategy (2023), Rural Health Strategy (2023) and Women's Health Strategy (2023) (each as amended or replaced from time to time).

**Primary Health Care Practitioner** means a person registered by the applicable Registration Authority who holds a current annual practising certificate authorising that person to give personal, primary care to Eligible People, and includes a Medical Practitioner, Nurse (Nēhi) or Other Primary Care Practitioner.

**Purposes of the Trust** means the purposes set out at clause 3.

**Registration Authority** in relation to a Primary Health Care Practitioner, means the body empowered under the Health Practitioners Competence Assurance Act 2003 to maintain a register and issue or authorise the issue of a practising certificate for that Primary Health Care Practitioner and has the same meaning as "Authority" under sections 114 and 115 of that Act.

**Rules** means the rules governing the constitution, appointment, rotation, retirement, removal and proceedings of the Trustees, or of any Committee, as set out in the applicable Schedule to this deed.

**Tangata Whenua** means the people who hold the right and status of manawhenua, manamoana.

**Terms of Reference**, in relation to a Committee, means a document consistent with any applicable provisions of this deed and approved by resolution of the Board setting out that Committee's

membership, role, functions, boundaries and reporting requirements.

**Trust** means the charitable trust originally created by the Trust Deed dated 7 May 2010 entered into between Leonard Errol Millar and Paul Edwin Menzies as Settlers and the individuals named in that Trust Deed as the Initial Trustees.

**Trust Assets** means any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees for the Purposes of the Trust, together with any accumulations of income and all money, investments, and property representing them subject to the trusts and other provisions of this deed.

**Trustees** means the trustees for the time being of the Trust.

## 1.2 Other defined terms

Subject to this deed, words defined in the Pae Ora (Healthy Futures) Act 2022 or in the Health Act 1956 bear the same meanings in this deed.

## 1.3 Overriding requirement

All provisions of this deed are to be interpreted as being subject to the requirement that the Trust Assets may be applied only for Charitable Purposes.

## 1.4 Interpretation

In interpreting this deed, unless the context requires otherwise:

- a. a reference to any document means that document as modified, novated, supplemented, varied or replaced from time to time;
- b. a reference to an enactment or any provision of an enactment is a reference to that enactment or provision as amended from time to time, or to any enactment or provision that has been substituted for that enactment or provision and includes any regulations, Orders-in-Council or other subsidiary legislation in force pursuant to that enactment or provision;
- c. a reference to one gender includes the other genders;
- d. a covenant binding two or more persons binds them jointly and severally;
- e. a reference to a schedule is a reference to a schedule to this deed;
- f. a reference to a "person" includes any individual, corporation, partnership, joint venture, association, trust, organisation, Government department or agency of State (in each case whether or not having a separate legal personality);
- g. a reference to "health" includes disability;
- h. headings appear as a matter of convenience and shall not affect the construction of this deed;
- i. if there is a conflict between the Rules and the other provisions of this deed, the other provisions of this deed shall prevail; and
- j. the words "including" and "for example" have no limiting effect.

## 2. CREATION OF THE TRUST

### 2.1 Creation

The Trust was established by a Trust Deed dated 7 May 2010 entered into between Leonard Errol Millar and Paul Edwin Menzies as Settlers and the individuals named in that Trust Deed as the Initial Trustees.

## 2.2 Incorporation

The Trust is incorporated as a Board under the Charitable Trusts Act 1957 (incorporation number 2484688), currently under the name WellSouth Primary Health Network.

## 2.3 Registration

The Trust is registered as a charity under the Charities Act 2005 (registration number CC44224). While registered the Board shall comply with the requirements of the Charities Act, including the requirements to notify changes, and to file annual returns.

## 2.4 Declaration of Trust

The Trustees declare that they shall hold the Trust Assets upon the trusts, for the Charitable Purposes, and otherwise in accordance with and subject to the powers, discretions and duties contained or implied in this deed.

## 2.5 Name of Trust

When the Trust was created, it was known as Southern Primary Health Organisation. Its name was changed to WellSouth Primary Health Network on 7 October 2014. From the date of this deed, the Trust shall continue to be known as **WellSouth Primary Health Network** or such other name that complies with section 15 of the Charities Act 2005 and section 15 of the Charitable Trusts Act 1957 as the Trustees may from time to time determine by resolution.

# 3. CHARITABLE PURPOSES OF THE TRUST

## 3.1 Charitable Purposes

The Trust is established for exclusively Charitable Purposes. The activities of the Trust are to be carried out, and the Trust Assets are to be applied, for exclusively Charitable Purposes.

## 3.2 Purpose of the Trust

The Purpose of the Trust is to promote the health of individuals, their families and the Community through the provision or procurement of comprehensive, quality primary health care, through enhancing collaboration and co-operation between Primary Health Care Practitioners, and through working with other health care providers to enhance the integration of primary health care with other levels of health care.

## 3.3 Principles of Relationship

In pursuing the Purposes of the Trust and exercising its powers, the Board shall have due regard to any Principles of Relationship relevant to primary health care that are agreed from time to time between Health New Zealand and/or the Trust and the Papatipu Rūnanga. .

## 3.4 Policy Documents

In pursuing the Purposes of the Trust and exercising its powers, the Board shall have due regard to the contents of any applicable Policy Documents relevant to primary health care.

## 3.5 Advice

In pursuing the Purposes of the Trust and exercising its powers, the Board shall have due regard to any applicable Advice relevant to primary health care.

## 3.6 Restriction on exercise of powers

Nothing contained or implied in this deed, authorises the Board to do or suffer any act which does not further the Charitable Purposes. The Charitable Purposes shall at all times be paramount so as to exclude any act or omission which is, or may be deemed to be, not in accordance with the



Charitable Purposes.

### 3.7 **New Zealand only**

The Board shall ensure that the Trust Assets are applied wholly or mainly to Charitable Purposes within New Zealand.

### 3.8 **Partisan restriction**

The Trust shall not support or oppose a political party or candidate (e.g. by making a donation to a political party or a candidate's election campaign, endorsing a candidate or political party, allowing a political party or candidate to use charity resources without compensation or consistently inviting only one political party in an election to speak, rather than a wide spectrum of political parties). For the avoidance of doubt, this restriction does not preclude the Trust from advancing debate about the policies of political parties, or from inviting competing candidates to speak either sequentially or at the same event to discuss public policy issues, where those policies or policy issues relate to the Purposes of the Trust. If a Trustee is personally involved with a political party or candidate, this should be recorded in the Trust's interest register.

## 4. **APPLICATION OF INCOME AND CAPITAL**

### 4.1 **Discretionary power to pay, apply or appropriate income**

The Board may, at any time, pay, apply or appropriate, or decide to pay, apply or appropriate, as much of the Income arising from the Trust Assets in a financial year as it thinks fit for or towards one or more of the Purposes of the Trust, after having due regard for any contractual and other lawful obligations of the Trust.

### 4.2 **Discretionary power to pay, apply or appropriate capital**

The Board may, at any time, or pay, apply or appropriate, or decide to pay, apply or appropriate, as much of the capital of the Trust Assets as it thinks fit for or towards one or more of the Purposes of the Trust. Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of Income.

### 4.3 **Provisions relating to payments, applications and appropriations of income and capital**

In making a payment, application or appropriation of income under clause 4.1 or capital under clause 4.2:

- a. despite section 35 of the Trusts Act 2019, the Trustees may favour one or more Purposes of the Trust to the detriment of others, and need not treat each of the Purposes of the Trust equally;
- b. the Board may, by written resolution, appropriate any investments for the Purposes of the Trust in anticipation of a payment or application under clause 4.1 or 4.2.
- c. in any financial year, the Board may appropriate all or part of the Income derived or to be derived from the Trust Assets during that income year even though, at the time of appropriation, it has not received the Income being appropriated;
- d. if the Board appropriates any Income or capital for any Purposes of the Trust, the recipient shall take an absolute and indefeasible interest in that Income or capital as from the date on which it is appropriated.

### 4.4 **Powers to retain or accumulate Income**

The Board may retain, or decide to retain, all or part of the Income arising from the Trust Assets in a financial year to establish or augment any reserve fund which may be used at any later time for any purpose for which Income arising from the Trust Assets may be used.

The Board may accumulate, or decide to accumulate, all or part of the Income arising from the Trust Assets in a financial year. The accumulated Income shall be added to the capital of the Trust Assets so that it becomes part of the Trust Assets and is held on the same trusts and with the same powers. The Board may resort to the accumulated Income at any time and pay, apply or appropriate all or part of it as if it were income of the Trust Assets.

## 5. **RECEIPT OF GIFTS**

### 5.1 **Receipt of gifts**

The Board may receive solicited and unsolicited gifts of any real or personal property or money for:

- a. the general Purposes of the Trust, or
- b. any specific purpose that comes within the Purposes of the Trust (referred to in clause 5 as a **Designated Gift**).

### 5.2 **Separate specific trusts**

If the Board accepts a Designated Gift, it must:

- a. keep that Designated Gift and any income derived from it separate from the general assets of the Trust Assets, and administer it as a separate specific trust exclusively for the Purposes of the Trust in terms of the trust under which it was given (however investments of funds forming all or part of the Trust Assets may be pooled to achieve economies of scale so long as Designated Gifts are separately accounted for); and
- b. to the maximum extent possible at law, not use the assets of any separate specific trust established under clause 5.2a to make good any deficit, loss, damage or breach of trust relating to any other separate specific trust. Similarly, the Board shall not use the general assets of the Trust Assets for such separate specific trust; and
- c. ensure each separate specific trust bears its own administration expenses plus a fair proportion (determined by the Board) of the administration expenses applicable to the general Purposes of the Trust.

### 5.3 **Receipts for Payments**

The receipt of the secretary, treasurer or other person or persons appearing to the Trustees to be authorised to give receipts on behalf of the recipient of any payment made under the terms of this deed shall be a complete discharge to the Trustees for that payment.

## 6. **BOARD OF TRUSTEES**

### 6.1 **Number of Trustees**

Subject to this clause 6, there shall be a minimum of eight and a maximum of ten Trustees.

### 6.2 **Appointment, rotation, retirement and removal of Trustees**

The Rules governing the appointment, rotation, retirement and removal of Trustees are set out in Schedule 2.

### 6.3 **Board as Appointing Body**

If the number of Trustees falls below the number specified in this clause, the Board acting as an Appointing Body may appoint additional Trustees in accordance with the Rules.

### 6.4 **Advice of counsel**

If the Trustees are in doubt over any legal question relating to the administration of the Trust Assets,

or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister or solicitor of the High Court of New Zealand of at least seven years' standing selected after reasonable enquiry by the Trustees as to the barrister's or solicitor's professional reputation and relevant experience. The Trustees may act upon the barrister's or solicitor's opinion without being liable to any person who may claim to be beneficially interested in respect of anything done in accordance with that opinion. This right to obtain and act upon a barrister's and solicitor's opinion, shall not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

## **7. TRUSTEES' LIMITATION OF LIABILITY AND INDEMNITY**

### **7.1 Limitation of Liability**

Subject to clause 7.2, no Trustee or former Trustee acting or purporting to act in the execution of the trusts of this deed shall be personally liable to the Trust for:

- a. the consequence of any act or omission, or for any loss, arising, whether directly or indirectly, from the execution of the Trust; or
- b. any loss or cost caused by an attorney, adviser, delegate, manager, agent or employee engaged by the Trustees, despite any rule of law or equity to the contrary.

### **7.2 Exclusion**

Clause 7.1 does not apply where the consequence, loss or cost is attributable to the Trustee or former Trustee's:

- a. dishonesty;
- b. wilful commission or omission of any act that he or she knows to be a breach of trust;
- c. gross negligence.

No Trustee will be liable for any loss attributable to any breach of trust by any co-Trustee or former Trustee, and nor will any Trustee be bound to take, or be liable for failing to take, any proceedings against a co-Trustee or former Trustee for breach or alleged breach of trust by that co-Trustee or former Trustee for which the first Trustee is not also culpable.

### **7.3 Indemnity**

Subject to clause 7.4, any Trustee, former Trustee, officer or employee of the Trust is entitled to full and complete exoneration, indemnity and reimbursement from the Trust Fund for any liability or loss incurred by that Trustee in relation to the Trust (including in defending or prosecuting any proceedings in relation to the Trust), including a liability or loss only crystallising after the person has ceased to be a Trustee.

### **7.4 Exclusion**

The exoneration, indemnity or reimbursement conferred by clause 7.3 does not extend to a loss or liability that is attributable to:

- a. the Trustee's dishonesty;
- b. the wilful commission by the Trustee of any act known by the Trustee to be a breach of trust;
- c. the wilful omission by the Trustee of any act when the omission is known by the Trustee to be a breach of trust; or
- d. the Trustee's gross negligence.

### **7.5 Insurances**

The Board may arrange trustees' liability insurance for such cover (including defence cover) and on such terms as the Trustees think fit. The reasonable cost of premiums approved by the Trustees

under this clause is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to a Trustee.

## **8. TRUSTEES' DUTIES**

- 8.1 The Trustees' overarching duty is to hold or deal with the Trust Assets, and otherwise act, solely to further the Purposes of the Trust, in accordance with the terms of this deed. Subject to clause their overarching duty, the Trustees have the duties set out in schedule 4, and shall perform those duties having regard to the context of the Trust, the Charitable Purposes, and the terms of this deed.

## **9. TRUSTEES' POWERS**

### **9.1 General powers**

Subject to the express terms of this deed (in particular clauses 3 and 8), the Trustees have:

- a. all the powers necessary to carry out the Trust; and
- b. all the powers necessary to manage the Trust Assets, including all the powers of an absolute owner of that property.

Those powers shall not be restricted by any principle of construction or rule of law except to the extent that restriction is mandatory.

### **9.2 Specific powers**

Without limiting clause 9.1, or any of the Trustee's express or implied powers under this deed or at law, for the Purposes of the Trust, the Trustees shall have all the powers, authorities and discretions set out in Schedule 1 and may exercise them alone or jointly with any other person. The provisions are set out in Schedule 1 are merely by way of example and are not an exhaustive source or description of the specific powers of the Trustees.

### **9.3 Statutory powers**

The Trustees may exercise the powers, authorities and discretions conferred by this deed in addition to, and not so as to limit, the powers, authorities and discretions conferred upon trustees generally by the Trusts Act 2019 and (if applicable) upon boards by the Charitable Trusts Act 1957.

### **9.4 Exercise of powers**

The Trustees may exercise their powers from time to time in such manner and on such terms and subject to such conditions as they may in their absolute and uncontrolled discretion determine, provided that they do so in furtherance of the Purposes of the Trust and having regard to their duties in law and under this deed.

### **9.5 Restrictions by donors**

All the Trustees' powers, authorities and discretions shall be subject to any direction to the contrary in any instrument evidencing or conferring a gift accepted by the Trustees, whether the gift is a Designated Gift or is generally for the Purposes of the Trust.

## **10. RESTRICTIONS ON PRIVATE PECUNIARY PROFIT**

### **10.1 Charitable Purposes of the Trust only**

All income, benefits and advantages must be used to advance the Purposes of the Trust. No private pecuniary profit may be made by any person involved in the Trust, and no portion of the Trust Assets shall be paid or transferred directly or indirectly to any Trustee, or to any person Associated with a Trustee, except that:

- a. a Trustee, Committee member or other officer of the Trust is entitled to be reimbursed out of the Trust Assets for all expenses which they reasonably and properly incur in connection with the affairs of the Trust;

- b. a Trustee, Committee member or other officer of the Trust may be paid reasonable and proper remuneration for services as Trustee or Committee member if and as agreed by the Board from time to time;
- c. the Board may employ, as agents, officers or staff, persons who are members of the Board, and any Trustee may be paid reasonable and proper remuneration for services rendered to the Trust, other than acting as Trustee, if and as agreed by the Board from time to time;
- d. any other person may be paid reasonable and proper remuneration for services actually rendered to the Trust;
- e. if a Trustee, or person Associated with a Trustee, is engaged in a profession or business, that person may be paid reasonable and proper fees for work done by that person (or by any firm or entity of which that person is a member, employee or associate), in connection with the affairs of the Trust on the same basis as if that Trustee were not one of the Trustees but had been employed to carry out the work on their behalf; and
- f. any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

## 10.2 Trustee not to take part in deliberations

The Trustees, in determining all reimbursements, remuneration and fees payable in terms of clause 10.1 shall ensure that the restrictions imposed by this clause 10, clause 11, and clause 16 of Schedule 2 are strictly observed. Any such reimbursement, remuneration or fees must be approved in writing by the Board. In addition, any payments made must be for goods or services that advance the Purposes of the Trust and must be reasonable and commensurate with payments that would be made between unrelated parties.

## 11. PROHIBITION OF BENEFIT OR ADVANTAGE IN BUSINESS ACTIVITY

### 11.1 Trustee not to take part in deliberations

In the carrying on of any business under this deed, no Related Person shall derive any amount, benefit or advantage from the business where they are able, in any way, whether directly or indirectly, to determine, or materially influence the determination of, the nature or extent of that amount, benefit or advantage, or the circumstances in which that amount, benefit, or advantage is, or is to be, given or received, except where:

- a. that amount, benefit or advantage is derived from professional services to the Trust, or to any company by which any business of the Trust is carried on, rendered in the course of business charged at no greater than current market rates; or
- b. otherwise permitted by section CW 42 of the Income Tax Act.

In this clause 11, Related Person means a person specified in paragraphs (i) to (iv) of subsection 5(b) of section CW 42 of the Income Tax Act, the persons currently specified being:

- a. a settlor or trustee of the trust by which the business is carried on; or
- b. a shareholder or director of the company by which the business is carried on; or
- c. a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- d. a person Associated with a settlor, trustee, shareholder or director already mentioned in this definition; and

for the avoidance of doubt, includes any other person with some control over the business that is

able to direct or divert, to their own benefit or advantage, an amount derived from the business.

## **12. PROCEEDINGS OF BOARD AND COMMITTEES**

The Rules governing the proceedings of the Board are the Default Rules of Procedure, as modified or augmented by:

- a. the Rules governing proceedings set out in the Schedule 2; and
- b. any further rules adopted by the Board in exercising its power to regulate its own procedure.

The Rules governing the proceedings of any Committee are the Default Rules of Procedure as modified or augmented by any further rules adopted by that Committee in exercising its power to regulate its own procedure.

## **13. ADVISORY GROUPS**

### **13.1 Establishment of Advisory Groups**

The Board may establish Advisory Groups (however named) to seek Advice and to Consult with the Trust on any issue or matter to be considered by the Trust from time to time.

### **13.2 Terms of Reference**

The Trust shall provide (in writing) Terms of Reference to an Advisory Group regarding any issue and matter to be considered by that Advisory Group from time to time. The Board may involve an Advisory Group as an integral part of the Trust's activities by Consulting with and seeking Advice from the Advisory Group about the Trust's activities in accordance with its Terms of Reference.

### **13.3 Advice of an Advisory Group**

The Board shall regard Consensus Advice of an Advisory Group as being highly persuasive and Majority Advice as being persuasive. If at any time the Board passes a resolution that is inconsistent with the Consensus Advice of an Advisory Group, the Board shall state its reasons for doing so in writing. If the Board so resolves, Members of the Board may be a Member of an Advisory Group.

## **14. ADVISORS**

### **14.1 Advisors to the Trust**

In pursuing the Purposes of the Trust, the Board may:

- a. invite persons who wish to support or take an interest in the purposes of the Trust, or who are representative of Communities, providers, consumers or other communities of interest, to become Advisors to the Trust; and
- b. Consult and/or seek Advice from such Advisors individually and/or as a group or groups regarding any matter as the Board thinks fit.

### **14.2 Advisors to Committees**

With the prior approval of the Board acting on Advice from any Committee, a Committee may:

- a. invite persons who wish to support or take an interest in the purposes of the Committee, or who are representative of Communities, providers, consumers or other communities of interest, to become Advisors to the Committee; and
- b. Consult and/or seek Advice from such Advisors individually and/or as a group or groups regarding any matter as the Committee thinks fit.

## **15. ANNUAL REPORT AND FINANCIAL STATEMENTS**

The Board shall cause the annual financial (and non-financial, if required) statements for the Trust, for the financial year, to be prepared in compliance with any financial reporting standards applicable to the Trust.

## **16. ANNUAL GENERAL MEETING**

The Trustees shall hold an annual general meeting within 5 months of the end of the previous financial year. The annual general meeting shall be open to whoever wishes to attend.

The business of the annual general meeting shall include the presentation of the audited accounts for the preceding financial year, including a statement of the assets and liabilities of the Trust and the presentation of the annual report, detailing the performance of the Trust against the business plan objectives and the expected outcomes for that year.

The Trustees, the Trust's contracted providers, the Members of the Committees, the Appointing Bodies and the Electoral Bodies shall be notified of the annual general meeting no less than 10 days prior to the meeting date. Such notice of the annual general meeting shall also be publicly notified.

## **17. AUDIT**

The Trustees shall ensure that the financial statements of the Trust for each financial year are audited by a chartered accountant in public practice within four months after the end of that financial year. The person appointed as auditor must not be a Trustee.

## **18. FULL AND PROPER FINANCIAL AND BUSINESS RECORDS**

The Trustees shall ensure the maintenance of full and proper financial and business records in accordance with generally accepted accounting principles, procedures and practices and best business practice generally and any legal obligations applicable to the Trust.

## **19. CONTROL OF FUNDS**

All money received by or on behalf of the Trust shall be paid immediately to the credit of the Trust in an account or accounts with a Bank or Banks selected from time to time by the Trustees. All negotiable instruments, withdrawal slips, receipts for money and electronic bank transfers shall be signed, drawn, accepted, endorsed or otherwise executed or effected (as the case may be) on behalf of the Trust in such manner as the Trustees decide from time to time.

## **20. EXECUTION OF DOCUMENTS**

The Trustees may by deed appoint an attorney or attorneys or by resolution authorise officers, agents, employees, or other representatives to execute documents for the Trust. A copy of a resolution for such authorisation signed by the Chair and another Trustee, or by any three Trustees, may be relied on as evidence of such authorisation by any person without good reason to doubt the validity of any purported authority.

If the Charitable Trusts Act 1957 requires the Trust to have a common seal, the Board shall have custody and control of the common seal. The common seal shall not be affixed to any document unless the Trustees have already authorised its use on that document. When a document is to be sealed on the prior authority of the Trustees, the sealed document must be countersigned by two Trustees.

## 21. ALTERATIONS TO TRUST DEED

Any provision of this deed may be revoked, replaced or otherwise amended by a resolution passed by at least 75% of the Trustees entitled to vote at a properly-convened meeting of Trustees provided. No alteration shall be made that would affect the charitable nature of the Trust. Any purported variation that has that effect will be invalid. Written notice shall be given to each of the Trustees of any proposed resolution for the alteration of this deed at least 14 days before the date of the meeting at which it is to be considered. Any variation of the Trust Deed shall be notified as required by the Charitable Trusts Act and the Charities Act.

## 22. DISTRIBUTION ON WINDING UP

Upon the Trust being dissolved or wound up or the Trustees determining that it is impossible, impracticable or inexpedient for the Trust to continue in operation, all Income, capital and other property in the Trust Assets (after the payment of all costs, debts and liabilities of the Trust) shall be:

- a. distributed for such Charitable Purposes within Otago and Southland that are substantially similar to and consistent with the Purposes of the Trust as the Trustees may by resolution determine at, before or during the winding up, liquidation or dissolution (as the case may be); or,
- b. in the event that the surplus assets cannot be distributed in accordance with this clause, in accordance with Part 3 of the Charitable Trusts Act 1957.

## 23. EXECUTION

This deed may be signed in separate counterpart copies (including scanned and other electronic copies). When each party has signed at least one copy (including by electronic signature inserted via means that complies with Part 4 of the Contracts and Commercial Law Act 2017) and delivered it to the other parties, the separately signed documents when brought together will constitute one and the same document and a binding and enforceable agreement between the parties. Any electronic signatures inserted in accordance with this clause may be relied on by the other party and will be deemed equivalent to original signatures.

## Execution

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**SIGNED** by **Keith Lawson Abbott** as Trustee in the presence of:

\_\_\_\_\_ K L Abbott

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address



**SIGNED by Nicola Joanne Burwood** as Trustee  
in the presence of:

\_\_\_\_\_  
N J Burwood

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED by Suzanne Marie Crengle** as Trustee in  
the presence of:

\_\_\_\_\_  
S M Crengle

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED by Emma Hana Wyeth** as Trustee in the  
presence of:

\_\_\_\_\_  
E H Wyeth

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED by Paul Michael Larson** as Trustee in  
the presence of:

\_\_\_\_\_  
P M Larson

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** by **Susan Louise Meyer** as Trustee in the presence of:

\_\_\_\_\_  
S L Meyer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** by **Keri Tania Milne-Ihimaera** as Trustee in the presence of:

\_\_\_\_\_  
K T Milne-Ihimaera

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** by **Erolia Leinatioletuitoga Rooney** as Trustee in the presence of:

\_\_\_\_\_  
E L Rooney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** by **Douglas James Hill** as Trustee in the presence of:

\_\_\_\_\_  
D J Hill

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

## Schedule 1: Powers of the Trustees

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Subject to this deed, the Trusts Act, the Charities Act (if applicable), the Charitable Trusts Act, the general law, the Trustees have the power to undertake any of the following specific powers on such terms as the Trustees think fit, in furtherance of the Purposes of the Trust:

1. ***To Raise Funds***

To raise money for any of the Purposes of the Trust by all lawful means, including the conduct of fundraising campaigns.

2. ***To invest***

To invest the Trust Assets and the Income from it in any form of investment, and to vary any such investment from time to time. Where, for the time being, there is more than one person acting as a Trustee of the Trust Assets, and one or more, but not all, of them is or are engaged in a profession, employment or business which is or includes acting as a Trustee or investing money on behalf of others, then in exercising any power of investment, that Trustee or those Trustees (as the case may be) shall not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that Trustee or those Trustees (as the case may be) shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

3. ***To retain investments***

To retain any investments coming into the Trustees' hands as part of the Trust Assets for as long as the Trustees think proper, even if they are not investments which could properly be made by a Trustee.

4. ***To sell***

To sell any real or personal property forming part of the Trust Assets in the manner and on the terms and conditions the Trustees think fit, including power to allow such part of the purchase price as the Trustees think fit to remain on loan with or without security or to be payable by instalments.

5. ***To postpone sale***

To postpone the sale of any real or personal property forming part of the Trust Assets for as long as the Trustees think fit without being liable for any resulting loss to the Trust Assets.

6. ***To let***

To let any real and personal property at such rent and on such terms and conditions (including an option to purchase) as the Trustees think fit and to accept surrenders of any leases and tenancies.

7. ***To borrow***

To borrow any money at whatever rate of interest and upon whatever other terms and conditions the Trustees may think fit. For this purpose the Trustees may give security for repayment over the entire Trust Assets or any part of it, whether or not any part over which the security is given benefits from the borrowing.

8. ***To carry on business***

a. To carry on any business in New Zealand, whether in partnership or otherwise, for as long as the Trustees think fit. They may use any part of the Trust Assets as capital in the business, and may also employ in the business such managers, agents, employees

and other persons (including any Trustees or anyone who for the time being is the sole Trustee of the Trust Assets) as they think fit.

- b. The Trustees shall be absolutely indemnified out of the Trust Assets for any losses, which they may sustain in so carrying on any such business in good faith.

9. ***To accept payment in company securities***

In the sale of any business to a company, to accept payment for all or part of the purchase price in ordinary deferred or preference shares (whether fully paid or partly contributory) or debentures or debenture stock of such company. In exercising this power the Trustees shall not be taken to be exercising a power of investment.

10. ***To promote a company***

To promote a company or companies for the purpose of acquiring any business or the assets of any business or for any other purpose conducive to Purposes of the Trust.

11. ***To act in relation to certain companies***

In respect of any company in which the Trust Assets holds or is the beneficial owner of shares, notes, stock or debentures:

- a. to act as a director of the company (either collectively or through any one or more of the Trustees) and to receive and retain fees or other remuneration for so acting without having to account to the Trust Assets unless the Trustees otherwise require;
- b. to provide out of the Trust Assets on such terms as the Trustees think fit further capital for the company either by way of advances, loans, deposits or otherwise (with or without security) or by taking further shares in the company;
- c. to concur in the winding up, reconstruction or amalgamation of the company or in the modification of its regulations, on whatever terms the Trustees think fit; and
- d. generally to act in relation to the company in whatever manner the Trustees consider to be in the best interests of the Trust Assets.

12. ***To subdivide***

To subdivide any real property forming part of the Trust Assets and to meet the costs of subdivision out of the Trust Assets.

13. ***To maintain property***

To maintain, manage and improve property which, or any interest in which, forms part of the Trust Assets, in whatever manner the Trustees think fit. For those purposes, the Trustees may pay and apply any of the capital and income of the Trust Assets as they think fit.

14. ***To develop***

To spend any sums out of the capital or Income of the Trust Assets the Trustees think fit in developing any real property forming part of the Trust Assets.

15. ***To purchase property***

To purchase as an asset of the Trust Assets any property or interest in property that the Trustees consider will benefit the Trust Assets. In exercising this power the Trustees shall not be taken to be exercising a power of investment.

16. ***To grant and acquire options***

To grant acquire, dispose of or exercise any option to purchase, lease or exchange any interest in real or personal property of any value, whether the option is incidental to, or independent of, any sale, lease, exchange or other disposition. An option may be granted acquired or disposed of on such terms and conditions as the Trustees think fit, and in respect of a grant, may be granted at a price determined at the time of the grant or at such later date as the Trustees think fit. The Trustees shall not be personally liable for any loss arising from their exercise of this power and shall be indemnified accordingly out of the Trust Assets.

17. ***To make loans and advances***

To make any loans or advances (with or without security) for any of the Purposes of the Trust Assets in such manner and on such terms and conditions as the Trustees think fit.

18. ***Capital, income and blended funds***

To determine whether any money is to be considered as capital or income, and which expenses should be paid out of capital and out of income respectively, and also to apportion blended funds. Each determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Assets.

19. ***Depreciation or replacement funds***

To set up and maintain any depreciation or replacement funds for any purpose the Trustees may consider advisable, and in this regard to determine in their discretion:

- a. the amount of income to be credited from time to time to any of those funds;
- b. whether those funds are income or capital

20. ***Bank accounts***

To open an account or accounts at any bank and to overdraw any such account with or without giving security and to make arrangements with any bank for the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate any account at that bank.

21. ***To guarantee obligations***

To guarantee the liability of any person or corporation and to give security in support of any such guarantee.

22. ***To insure***

To insure any building or other insurable property to any amount up to its full insurable value, or at the Trustees' option, up to its full replacement value, against destruction or damage by fire, earthquake, fire following earthquake and such other risks as the Trustees think fit. The Trustees may pay the premiums out of Income or capital as they think fit.

23. ***To waive debts***

Without being liable for loss, to waive any debts due to the Trust Assets, either absolutely or on such terms as the Trustees think expedient.

24. ***To deposit funds***

To deposit all or part of the Trust Assets in any currency in a savings or other interest or non-interest bearing account with any bank, trust, company or other financial or investment institution in any jurisdiction in the world. In making any deposit the Trustees shall not be liable for any loss due to devaluation of any foreign exchange or other governmental restriction.

25. ***To hold the Trust Assets un-invested***

To hold any part of the Trust Assets un-invested and in any currency for as long as the Trustees think fit without being liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

26. ***To protect or enhance assets***

To enter into any type of contract whatever to protect, maintain or enhance the value of any assets acquired or held by the Trustees or which they have the right to acquire or hold.

For the avoidance of doubt, the powers of the Trustees may only be exercised to further the Charitable Purposes of the Trust.

## Schedule 2: Rules Governing the Constitution, Appointment, Rotation, Retirement, Removal and Proceedings of the Board

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### PART I — CONSTITUTION OF THE BOARD OF TRUSTEES

#### 1. Composition of the Board

##### *Number of Trustees*

- 1.1 It is intended that at all times the Trust shall have a high functioning Board, representing a cross-section of the community of Otago and Southland, with the appropriate skills and experience to deliver the Trust's strategic plan. There shall be a minimum of eight and a maximum of ten Trustees, of whom:
- a. one shall be nominated by an Electoral Body following an electoral process involving General Medical Practitioners that complies with clause 2 of this Schedule;
  - b. two shall be nominated collectively by the Papatipu Rūnanga acting as an Appointing Body;
  - c. one shall be a nominated by an Electoral Body following an electoral process involving Nurses (nga Nēhi) that complies with clause 2 of this Schedule;
  - d. two shall be appointed by the Board as representatives of health professionals with primary care clinical experience. No more than one of the Trustees appointed under this clause 1.1d can be a General Medical Practitioner or Nurse (Nēhi); and
  - e. a minimum of two and a maximum of four additional Trustees shall be appointed by the Board. When appointing a Trustee under this clause 1.1d, the Board shall aim to ensure the Trust has a high functioning Board, representing a cross-section of the community of Otago and Southland, with the appropriate skills and experience to deliver the Trust's strategic plan at all times.
- 1.2 Notwithstanding clause 1.1 of this Schedule, if the number of Trustees reduces below the minimum number, the remaining Trustees shall be entitled to act until the number of Trustees is restored to the minimum number and no act or decision of the Trustees shall be called into question on such account.

##### *Qualifications of Trustees*

- 1.3 There shall be no residential, geographical, territorial, occupational or professional qualification for any Trustee. For avoiding doubt, a Trustee nominated by an Electoral Body need not be a member of that Electoral Body or of any other Electoral Body or of any organisation generally representative of a category of Primary Health Care Practitioner.

##### *Competencies expected of Trustees*

- 1.4 Prior to each occasion on which a process for the nomination of a Trustee or Trustees is to commence, the Board shall communicate with the relevant Appointing Body or Electoral Body drawing its attention to the competencies, skills and experience that the Board requires from the Trustee(s).

##### *Candidate evaluation process*

- 1.5 The Board may, from time to time, set additional rules relating to the election, nomination and appointment of Trustees, for example:
- a. requiring each candidate to go through a candidate evaluation process set by the Board in order to be eligible for election, nomination or appointment; and
  - b. allowing the Board to endorse any one or more election candidates as a candidate that the Board considers would make a suitable Trustee, whether based on the results of any candidate

assessment process set by the Board or otherwise.

*Replacement*

- 1.6 When the term of appointment of a Trustee expires, or a Trustee dies, resigns, or is removed from office, the vacancy so created shall be filled by a person nominated by the same Appointing Body or Electoral Body whose nominee is being replaced (or, if the Board has appointed a new Electoral Body to undertake an electoral process involving a category of Primary Health Care Practitioner, by that Electoral Body).
- 1.7 A Trustee whose term has expired shall continue in office until the Trustee's successor comes into office notwithstanding the expiry of the original term of appointment.

*Interim Appointments*

- 1.8 In the case of a Trustee who dies, resigns or is removed from office, the Board may appoint an interim replacement Trustee. In the case of a Trustee nominated by an Electoral Body or by the Papatipu Rūnanga, the replacement Trustee shall hold office until the Appointing Body or Papatipu Rūnanga nominates a replacement Trustee. Nothing in this clause shall preclude an Electoral Body from nominating a reserve Member to be available to take office in the event of the death, resignation or removal from office of a Trustee nominated by that Electoral Body (in which case that reserve Member nominee shall be the interim replacement Member).

*Vacancies*

- 1.9 The powers of the Trustees shall not be affected by any vacancy in their number as long as a quorum of Trustees is present at a meeting.

*Co-opted Experts*

- 1.10 The Board may from time to time co-opt up to three experts to the Board for the purpose of providing such specialist expertise and/or Advice as the Board may require, for such period and on such terms as the Board may determine. A Co-opted Expert shall not have any voting rights.
- 1.11 In appointing a Co-opted Expert, the Board shall specify in writing the purpose for which the appointment is made and the terms and duration of the appointment, which shall not exceed 12 months.

*Appointment of officers and others*

- 1.12 The Trustees may appoint any other officers (e.g. a Deputy Chair) or employees that the affairs of the Trust may require on such terms and conditions as they think fit. The Trustees may also remove and replace any persons so appointed.

**2. Appointment Process**

*Validity*

- 2.1 A Trustee shall be validly appointed when the procedure outlined in this Schedule 2 has been followed.

*Appointment of Electoral Bodies*

- 2.2 The Board shall appoint the Electoral Bodies and notify each Electoral Body of a reasonable period (being not less than two months) within which an electoral process needs to be completed.

*Requirements for Electoral Process*

- 2.3 Each Electoral Body shall determine its own process for nomination of a Member provided that:
- a. the process is fair and transparent;
  - b. the process complies with any rules set under clause 1.5 of this Schedule;



- c. the process includes an electoral process in which all persons registered by the relevant Registration Authority who are practising or ordinarily resident in Otago and/or Southland and who are either actively involved or have a direct interest in the pursuit by the Trust of its charitable purposes are entitled to participate; and
- d. the Electoral Body distributes to each person entitled to participate in the process for nomination of a Trustee a statement provided by the Board of the vision and Purposes of the Trust (as prescribed in this Deed), of the personal competencies expected of an effective Trustee as set out in clause 1.4 of this Schedule (as may be amended from time to time), of the results of any candidate assessment process that the Board requires each candidate to go through, and such other information as the Board may determine from time to time.

*Other Aspects*

- 2.4 Provided that the requirements in clause 2.3 are satisfied and the electoral process is completed within the reasonable timeframe determined by the Board, all other aspects of the nomination and electoral process are for the Electoral Body to determine.

*Certificate from Electoral Body*

- 2.5 Provided the Board receives, with the Trustee's nomination, a certificate signed by an authorised officer or authorised officers of the relevant Electoral Body that the Trustee has been nominated pursuant to an electoral process that complies with clauses 2.3 and 2.4, the Board shall have no obligation to make any enquiry regarding that electoral process.
- 2.6 A letter from the authorised officer of an Appointing Body or Electoral Body delivered to the Trust two weeks prior to the Trust's Annual General Meeting providing the details of the nominee, and accompanied in the case of an Electoral Body by the certificate required under clause 2.5, shall be sufficient evidence of the appointment of the particular Trustee. The list of all appointed Trustees will be noted at the Trust's Annual General Meeting.
- 2.7 If an Appointing Body or Electoral Body fails to nominate a Trustee by the date of the Trust's Annual General Meeting, the Board may appoint a person to hold the office of that Trustee and the person so appointed shall hold office until the relevant Appointing Body or Electoral Body nominates a Trustee.

**3. Term of Office**

*Term*

- 3.1 A Trustee nominated under clause 1.1a, 1.1b or 1.1c shall hold office for a term of four years from the date of nomination. A Trustee appointed by the Board under clause 1.1d or 1.1e shall hold office for a term set by the Board of up to four years.
- 3.2 A retiring Trustee may be re-nominated or reappointed, subject to clause 3.3.
- 3.3 The maximum number of terms that a Trustee may hold office shall be two consecutive terms, unless the Board, by resolution approved by 75% of the Trustees entitled to vote and voting on the question, resolves that due to exceptional circumstances a Trustee who has held office for two consecutive terms may be re-nominated or re-appointed for one further term set by the Board of up to four years.
- 3.4 A Trustee that has held office for the maximum term under clause 3.3 may be re-nominated or re-appointed following a two year stand-down period.
- 3.5 Despite clause 3.3, Douglas James Hill may hold office until the 2025 annual general meeting.
- 3.6 Trustees nominated by an Appointing Body or Electoral Body:
  - a. prior to an Annual General Meeting of the Trust;

- b. within 3 months after an Annual General Meeting to replace a Member continuing in office under clause 1.6; or
- c. within 3 months after an Annual General Meeting to replace an interim Member appointed under clause 2.7,

shall be deemed to have been appointed on the day of the Annual General Meeting.

*Termination of office*

- 3.7 A Trustee shall cease to hold office if he or she:
- a. retires from office by giving written notice to the Chair;
  - b. completes his or her term of office (subject to clause 1.7);
  - c. becomes bankrupt or makes any composition or arrangement with his or her creditors;
  - d. is convicted of an offence punishable by imprisonment; or
  - e. dies.

*Removal from office*

- 3.8 A Trustee may be removed from office by resolution of the other Trustees if the Trustee:
- a. refuses to act;
  - b. is absent without leave from 3 consecutive notified meetings of the Board;
  - c. becomes physically or mentally incapacitated to the extent that, in the opinion of all the other Trustees, he or she is unable to perform the duties of a Trustee properly;
  - d. has acted (or failed to act) in such a way as to demonstrate that the Trustee does not possess sufficient appropriate personal competencies; or
  - e. is for any other reason unfit to carry out the duties of a Trustee,
- provided that:
- i. before a Member is removed from office under this clause, the relevant Appointing Body or Electoral Body has been advised of the proposed removal; and
  - ii. the grounds for removal shall be specified in the resolution.

*Record of changes of Trustees*

- 3.9 Upon every appointment, retirement, re-appointment or termination of office of any Trustee, the Trustees shall ensure that an entry is made in the minute book of the Trust to that effect.

*Validity of proceedings*

- 3.10 Where, for any reason, a Trustee is not properly appointed or is disqualified from holding office, anything done by that Trustee (or by a meeting at which he was present as a Trustee or Committee Member) before discovery of the irregularity, shall be as valid as if that Trustee had been duly appointed or had not been disqualified (as the case may be).

## **PART 2 — PROCEEDINGS**

### **4. *Election of Chair***

At their first meeting after the Annual General Meeting of the Trust in each year, the Trustees shall

elect the Chair, who shall hold office until the election of the Chair the following year. The Chair shall be eligible for re-election.

5. **Ordinary meetings**

The Trustees shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Trust, but in any event at least six times in each financial year.

6. **Special meetings**

A special meeting may be called at any time by the Chair or by 3 or more Trustees.

7. **Electronic addresses**

Every Member shall provide an email address or other electronic address for the receipt of notices regarding Board meetings, unless the Chair agrees otherwise. A notice or other communication shall be deemed to have been delivered if it is sent to the email address or other electronic address designated by a Member for that purpose.

8. **Notice of meetings**

8.1 The Chair shall convene meetings of the Board.

8.2 Written notice of every ordinary or special meeting shall be sent by email (or, with the approval of the Chair, posted) to each Trustee at least 7 days before the date of the meeting.

8.3 Written notice of each such meeting shall also be given to the Chair of any Advisory Group.

8.4 The notice of a special meeting shall also state the subject matter of the meeting.

8.5 The requirement for notice of a meeting may be waived if all of those Trustees who are for the time being in New Zealand give their written consent to such a waiver.

9. **Chair**

The Chair shall chair all meetings of the Board. If the Chair cannot be present, or is not present within fifteen minutes of the time appointed for any meeting, the Trustees present shall elect one of their number to be Chair of the meeting or until the Chair arrives.

10. **Quorum**

10.1 A majority of currently appointed Trustees shall constitute a quorum at a meeting of the Board. No business shall be transacted at a Board meeting unless a quorum is present.

*Committee Chairs' right of attendance*

10.2 A Chair of an Advisory Group, if not already a Member of the Board, is entitled (but not obliged) to attend every meeting of the Board at which a material matter within the Terms of Reference of the Advisory Group is to be discussed and shall not be counted for the purposes of establishing a quorum.

11. **Adjournment**

If a quorum is not present within 30 minutes after the time appointed for any meeting, the Trustees present (in person or electronically) may adjourn the meeting to such place, day and time as they determine and notify to the other Trustees. The Chair may adjourn any meeting on the adoption of a resolution for its adjournment. No new notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be dissolved.

12. **Committees**

- 12.1 The Board may appoint Committees for carrying out the Purposes of the Trust. Each Committee shall include at least one Trustee.
- 12.2 Subject to these Rules and to any directions that the Board might give, each Committee may regulate its own procedure.
- 12.3 The Board may delegate decision-making for certain tasks but shall not delegate its accountability, or its governance responsibilities, to any Committee or other party.

### 13. **Resolutions**

- 13.1 Each Trustee present (in person or electronically) at a duly convened meeting of the Trustees shall be entitled to one vote.
- 13.2 A Chair of an Advisory Group, if attending, shall be entitled to participate in discussion, and shall be subject to the same responsibilities and restriction, as any Member of the Board, but shall not be entitled to vote.
- 13.3 Subject to clause 13.4 and except where these Rules or the deed provide otherwise, a resolution is validly made when it is passed by a simple majority of Trustees present and entitled to vote at a duly convened and conducted meeting of the Trustees.
- 13.4 A written resolution signed by all the Trustees or by all the Members of a Committee shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees or of that Committee, as the case may be. Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees or Members of the Committee, as the case may be and may be provided by electronic or digital transmission.

### 14. **Minutes**

- 14.1 The Board shall ensure that minutes are kept of every meeting of Trustees including the names of those present, all decisions taken and business transacted at every meeting of the Board. The minutes shall include a record of any Advice sought and received by the Board from any Committee regarding the business transacted at the meeting.
- 14.2 Any minute of the proceedings at a meeting which is purported to be signed by the Chair of that meeting or by the Chair of the next succeeding meeting shall be evidence of those proceedings.
- 14.3 Where minutes of the proceedings at a meeting of the Board have been made in accordance with the provisions of this clause then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

### 15. **Audio or audio/visual meetings**

- 15.1 For the purposes of these Rules, an audio or audio/visual meeting between Trustees or Committee Members who constitute a quorum shall be deemed to constitute a meeting of the Trustees or the Committee Members, as the case may be. All the provisions in these rules relating to meetings shall apply to audio or audio/visual meetings so long as the following conditions are met:
  - a. all of the Trustees or Committee Members, as the case may be, for the time being entitled to receive notice of a meeting shall be entitled to notice of an audio or audio/visual meeting including instructions for how to connect to the meeting and to be linked for the purposes of such a meeting;
  - b. throughout the meeting each participant must be able to hear each of the other participants;
  - c. at the beginning of the meeting, each participant must acknowledge his or her presence for the purpose of that meeting to the others;
  - d. a participant may not voluntarily leave the meeting by disconnecting from the meeting without

first obtaining the Chair's express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she leaves the meeting with the Chair's express consent;

- e. a minute of the proceedings at the meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chair of that meeting.

## 16. **Conflicts of interest**

### *Identifying potential conflicts*

16.1 A Trustee will be interested in a matter (being a contract, arrangement or understanding made or entered into, or proposed to be made or entered into, by the Board, or the exercise or proposed exercise of powers or the carrying out or the proposed carrying out of activities under this deed), if the Trustee:

- a. is a party to, or may derive a financial benefit from, the matter;
- b. has a material financial interest in another party to the matter;
- c. is the parent, child, or spouse (including de facto partner) of a person who is a party to, or may derive a financial benefit from, the matter; or
- d. may have a financial interest in a person to whom the matter relates;
- e. is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the Matter relates, not being a person that is wholly-owned by the Trust; or
- f. is otherwise directly or indirectly interested in the matter in a manner which may be seen as a possible influence on their deliberations and voting as Trustee, including being employed by any organisation offering or purchasing services to or from the Trust,

provided that a Trustee is not be interested in a matter:

- i. solely by virtue of being a member of the community that will derive a benefit from the transaction; or
- ii. if the Trustee is solely acting as a director, officer or trustee of another party to the matter for the purposes of representing the Trust.

### *Trustee declaration of interest*

16.2 As soon as a Trustee becomes aware of the fact that they are, or may be, in any capacity whatsoever, interested in a matter, they must disclose at a meeting of the Trustees all relevant details of the Interest, including:

- a. the nature and monetary value of that Interest (if the monetary value of the Trustee's Interest is able to be quantified); or
- b. if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.

16.3 After considering the views of the other Trustees, the chairperson of the meeting may rule that the affected Trustee is not interested in relation to a disclosure, where no conflict in fact exists. A disclosure by a Trustee, and the chairperson's ruling in respect of that disclosure, shall be recorded in the Board minutes.

16.4 Failure to do so shall not disqualify the Trustee or invalidate a contract or transaction entered into.

- 16.5 A general notice by a Trustee that he or she is a member and/or an officer of a specified body and is to be regarded as interested in all transactions with or affecting that body shall be sufficient disclosure regarding such Trustee and such transaction and after such general notice it shall not be necessary for such Trustee to give a special notice relating to any particular transaction with or concerning that body.

*Interests Register*

- 16.6 The Board shall maintain an Interests Register, being a register of disclosures made by Trustees under this clause. If a Trustee is determined to be interested in a matter, all relevant details of the nature and extent of the interest (including any monetary value of the Interest if that can be quantified) shall be recorded in the Interests Register.

*Disabilities of interested Trustees*

- 16.7 An Interested Trustee shall not:
- a. attend a Board meeting during the consideration of any matter in which they are interested;
  - b. be counted in a quorum for the consideration of any matter in which they are interested; or
  - c. vote on a resolution for any matter in which they are interested.
- 16.8 Despite clause 16.7, an Interested Trustee may attend a Board meeting during the consideration of, be counted in a quorum for the consideration of, and vote on a resolution for, a matter in which that Trustee has an interest, if:
- a. the matter relates to the granting of an indemnity or effecting insurance in accordance with clause 7.3 or 7.5 of this deed;
  - b. the matter relates to the setting Trustees' remuneration in accordance with clause 10.1;
  - c. the Trustee is a General Medical Practitioner, Nurse (Nēhi) or health professional and the matter affects a wide number of providers, General Medical Practitioners, Nurses (ngā Nehi) or health professionals generally, and not just that Trustee; or
  - d. to the extent invited the Board invites them to do so. The Board may, for example, invite an interested Trustee to state their position, answer questions or comment on matters of fact or may invite an interested Trustee to fully participate. The interested Trustee may still volunteer to withdraw from at least part of the meeting to facilitate full and frank discussion of the conflict matter by the other Trustees.
- 16.9 Where proposals are under consideration affecting the interests of two or more Trustees, such proposals may be divided and considered in relation to each Trustee separately and in such cases each of the Trustees concerned shall be entitled to vote in respect of each resolution except that concerning his or her own interests.

## Schedule 3: Default Rules of Procedure

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### 1. **Electronic addresses**

- 1.1 Every Member shall provide an email address or other electronic address for the receipt of notices regarding Board/Committee meetings, unless the Chair agrees otherwise. A notice or other communication shall be deemed to have been delivered if it is sent to the email address or other electronic address designated by a Trustee/Member for that purpose.

### 2. **Committee meetings**

- 2.1 Any Member may convene a meeting of the Committee by giving notice in accordance with clause 2.2.
- 2.2 Not less than 7 days' notice of the meeting must be sent to every Member, and the notice must include the date, time and place of, or teleconference for, the meeting and the matters to be discussed.
- 2.3 An irregularity in the notice of a meeting or a failure to give notice is waived if all Members entitled to receive notice of the meeting attend the meeting without objection as to the irregularity or if all Members entitled to receive notice of the meeting agree to the waiver.
- 2.4 The Chair shall chair all meetings. If the Chair is not present within 15 minutes of the time appointed for a meeting, the Members present may choose one of their number to be chair of the meeting.

### 3. **Methods of holding meetings**

- 3.1 A meeting of the Committee may be held either by a quorum of Members:
- a. being together at the place, date and time appointed for the meeting;
  - b. participating by means of audio and/or audio-visual communication; or
  - c. participating by a combination of the methods in paragraphs (a) and (b).

### 4. **Quorum**

- 4.1 No business may be transacted at a meeting of the Committee if a quorum is not present (in person and/or or by means of audio and/or audio-visual communication).
- 4.2 A quorum for a meeting of the Committee is a majority of Members.

### 5. **Voting**

- 5.1 Every Member of the Committee has one vote.
- 5.2 The chair shall not have a casting vote.
- 5.3 A resolution of the Committee is passed if it is agreed to by all Members present without dissent or if a majority of the votes cast on it are in favour of it.
- 5.4 A Member present at a meeting of the Committee is presumed to have agreed to, and to have voted in favour of, a resolution of the Committee unless the Member abstains from or votes against the resolution at the meeting.

### 6. **Minutes**

- 6.1 The Committee must keep minutes of all proceedings of the Committee.
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**7. Unanimous resolution**

- 7.1 A resolution in writing, signed or assented to by all Members of the Committee then entitled to receive notice of a meeting, is as valid and effective as if it had been passed at a meeting of the Committee duly convened and held.
- 7.2 Any such resolution may consist of several documents (including scanned or other similar means of communication) in like form each signed or assented to by one or more Members of the Committee.
- 7.3 A copy of any such resolution must be entered in the minute book of the Committee's proceedings.

**8. Reimbursement and remuneration**

- 8.1 Each Committee Member shall be entitled out of the Trust Assets:
- a. to be reimbursed for all reasonable expenses which he or she properly incurs in fulfilling his or her role on the Committee;
  - b. personally or to or for the benefit of his or her employer, to be remunerated or reimbursed, as the case may be, by way of fees, salary, or allowances at such reasonable rate or rates as the Trustees determine from time to time, after taking expert external advice, provided that:
    - i. any meeting fee shall be payable only to a Member who attends the relevant meeting;
    - ii. any meeting fee shall not be payable to any Member who is also an employee of the Trust,
- 8.2 However, a Committee Member that is a Trustee shall instead only be remunerated, remunerated or reimbursed in accordance with clause 1.B.10.

**9. Other proceedings**

- 9.1 The Committee may otherwise regulate its own procedure.
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## Schedule 4 – Trustees' Duties

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### **Mandatory duties**

1. Each Trustee is subject to duties imposed on trustees by law, including:
  - a. a duty to know and act in accordance with the terms of this deed;
  - b. a duty to hold or deal with the Trust Assets and otherwise act to further the Purposes of the Trust in accordance with the terms of this deed;
  - c. a duty to act honestly and in good faith; and
  - d. a duty to exercise the Trustee's powers for a proper purpose.

### **Modification of the duty of care**

2. In administering the Trust (other than when exercising a discretion to distribute Trust property under clause 4 (Application of income and capital)), a Trustee must exercise the care and skill that is reasonable in the circumstances. A Trustee who has, or holds themselves out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. This is a modification of section 29 of the Trusts Act (General duty of care).

### **Modification of duty to invest prudently**

3. Section 30 of the Trusts Act (Duty to invest prudently) does not apply. Instead, when exercising the power of investment of Trust Assets, a Trustee must ensure all decisions are made in the best interests of the Purposes of the Trust. A Trustee who has, or holds themselves out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee.

### **Modification of duties not to exercise power for own benefit, to avoid conflicts of interest, not to profit and to act for no reward**

4. The following duties are modified:
  - a. the duty in section 31 of the Trusts Act not to exercise a power of the Trustee directly or indirectly for the Trustee's own benefit;
  - b. the duty in section 34 of the Trusts Act to avoid conflicts of interest;
  - c. the duty in section 36 that a Trustee must not make a profit from the Trusteeship of the Trust; and
  - d. the duty in section 37 that a Trustee must not take any reward for acting as a Trustee,
5. Each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in their personal capacity or in any other capacity as if they had not been appointed as a Trustee and receive reimbursement, remuneration, fees or other profit to the extent provided in clause 10 (Restrictions on private pecuniary profit) and clause 16 of schedule 2 (Conflicts of interest), provided the Trustee acts honestly, in good faith, in furtherance of the Charitable Purposes and otherwise in accordance with the terms of this deed.

### **Modification of duty to consider exercise of power**

6. Subject to Schedule 2, a Trustee must actively and regularly consider whether the Trustee should be exercising one or more of the Trustee's powers having regard to the nature of the power, the context
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of the Trust, the Purposes of the Trust, the nature of the investments of the Trust and any other matters the Trustee considers relevant. This rule is a modification of section 32 of the Trusts Act.

**Modification of duty not to bind or commit Trustees to future exercise of discretion**

7. The Trustees may, in their discretion, commit the Trust to multi-year disbursement of funds.
8. Subject to clause 7 of this Schedule, the Trustees have a duty not to bind or commit Trustees to a future exercise or non-exercise of a discretion. This is a modification of section 33 of the Trusts Act (Duty not to bind or commit trustees to future exercise of discretion).

**Duty to keep Core Documents**

9. Each Trustee must keep, so far as is reasonable, the following Core Documents relating to the Trust:
  - a. this Deed and any other document that contains the terms of the Trust;
  - b. any variations made to the Trust Deed or Trust;
  - c. records of the Trust property that identify the assets, liabilities, income, and expenses of the Trust and that are appropriate to the value and complexity of the Trust property;
  - d. any records of Trustee decisions made during their Trusteeship;
  - e. any written contracts entered into during their Trusteeship;
  - f. any accounting records and financial statements prepared during their Trusteeship;
  - g. documents of appointment, removal, and discharge of Trustees (including any court orders appointing or removing Trustees);
  - h. any other documents necessary for the administration of the Trust;
  - i. any documents referred to in this clause that were kept by a former Trustee during that person's Trusteeship and passed on to the current Trustee; and
  - j. any other documents required by law.
10. If each Trustee holds at least:
  - a. this deed and any other document that contains the terms of the Trust; and
  - b. any variations made to the Trust deed or Trust or copies of those documents,

the Trustees agree that one or more of their number holds all other Core Documents above, provided the Trustees are satisfied that those documents (or copies of them) will be made available to the other Trustees on request.

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