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*Parties*

WAIKATO DISTRICT HEALTH BOARD

THE UNIVERSITY OF AUCKLAND

THE INDIVIDUALS LISTED IN THE THIRD SCHEDULE

# Trust Deed



*John White*

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Date: 26 May 2001

## PARTIES

- (1) **WAIKATO DISTRICT HEALTH BOARD**, or its successor, of Hockin Building, Selwyn Street, Hamilton (*Waikato District Health Board*)
- (2) **THE UNIVERSITY OF AUCKLAND**, (*University of Auckland*)
- (3) **The Individuals Listed In The Third Schedule** (*Trustees*)

## BACKGROUND

- A. Waikato District Health Board and University of Auckland wish to establish a charitable trust to give effect to the charitable purposes referred to in this deed.
- B. On signing this deed Waikato District Health Board and University of Auckland have together paid \$100 to the Trustees to be held upon the trusts and with the powers set out in this deed.

## NOW THIS DEED RECORDS:

### 1 DEFINITIONS AND CONSTRUCTION

#### 1.1 Defined Terms

In this deed, unless the context requires otherwise:

*University of Auckland Trustee* means a trustee appointed by University of Auckland under clause 9.1;

*Balance Date* means 31 March or any other date which the Trustees adopt by resolution as the date up to which accounts are to be made in each year;

*Designated Gift* means a gift which is subject to a trust for a specific purpose that comes within the purposes of the Trust Fund;

*Waikato District Health Board Trustee* means a trustee appointed by Waikato District Health Board under clause 9.1;

*Income Year* means any year or other accounting period ending on a Balance Date;

*Related Person* for the purposes of *clause 9.5* and in relation to any business to which section CB 4(1)(e) of the Income Tax Act 1994 applies, means a person specified in paragraphs (i) to (iv) of the 2<sup>nd</sup> proviso to that section, 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) that person, where he or she and the settlor, trustee, shareholder or director already mentioned in this definition, are associated persons for the purposes of the Income Tax Act 1994;

*Teleconference Meeting* for the purposes of rule 16 in the *Second Schedule* means a meeting where the participants are contemporaneously linked by telephone or some other means of instant audio or audio and visual communication;

*Trust* means the charitable trust created by this deed;

*Trust Deed* when appearing in the rules set out in the *Second Schedule*, means this deed;

*Trust Fund* means the sum of \$100 referred to in Background B of this deed and includes any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees after this deed has been signed with the intention that it be held by the Trustees subject to the trusts and other provisions set out in this deed;

## 1.2 Construction

In the construction of this deed, unless the context requires otherwise:

- 1.2.1 a reference to "Trustees" is a reference to the trustees for the time being of the Trust Fund, whether original, additional or substituted;
- 1.2.2 a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- 1.2.3 a reference to a party to this deed shall be read as a reference to that party and its successors and permitted assigns;
- 1.2.4 the schedules form part of this deed;
- 1.2.5 headings appear as a matter of convenience and shall not affect the construction of this deed;
- 1.2.6 if there is a conflict between the rules and the other provisions of this deed the other provisions of this deed shall prevail.

## 2 CREATION OF THE TRUST

### 2.1 Declaration of Trust

Waikato District Health Board and University of Auckland direct, and the Trustees acknowledge, that the Trustees shall hold the Trust Fund upon the trusts and with the powers set out in this deed.

### 2.2 Name of Trusts

The trusts created by this deed are to be known as the "New Zealand Institute of Rural Health".

### **3 PURPOSES**

The New Zealand Institute of Rural Health is established to promote a healthy future for rural people living in New Zealand by partnering with rural communities to seek to establish a sustainable and effective health system. Such partnering will be designed to build effective relations with and develop support from the rural community. Specific objectives include:

- (a) To advocate for, and work with rural communities to promote and develop flexible and innovative models of health care that reflect local community need and circumstances;
- (b) To partner with health professionals, employers, agencies and communities to support and promote rural health as an attractive career;
- (c) To promote the development of research and teaching which advances knowledge and informs change in rural health;
- (d) To be a resource for advice on rural health issues;
- (e) To partner with Māori to promote an environment in which the health of Māori living in rural communities will be improved;
- (f) To seek ways of ensuring the efficient and effective use of the rural health workforce; and
- (g) To collaborate with other sectors, by investigating and advising on the most appropriate use of available rural health resource to create a stable rural infrastructure;

for any other relevant rural health purposes within New Zealand, whether relating to the relief of poverty, the advancement of education or any other matter beneficial to the health of rural communities which is charitable according to the law of New Zealand

### **4 INCOME TRUSTS**

#### **4.1 Power to Pay, Apply or Appropriate Income**

The Trustees may pay, apply or appropriate, or decide to pay, apply or appropriate as much of the income arising from the Trust Fund in an Income Year as they think fit for or towards one or more of the purposes of the Trust. And if the Trustees provide for more than one purpose they need not treat each purpose equally.

#### **4.2 Provisions Relating to Payments, Applications & Appropriations of Income**

- 4.2.1 The Trustees, by written resolution, may appropriate any investments for one or more of the purposes of the Trust in anticipation of a payment or application under clause 4.1.

4.2.2 In any Income Year, the Trustees may appropriate all or part of the income derived or to be derived from the Trust Fund during that Income Year even though, at the time of appropriation, they have not received the income being appropriated.

4.2.2 If the Trustees appropriate any income for any purpose of the Trust the recipient of that income shall take an absolute and indefeasible interest in that income as from the date on which it is appropriated.

#### **4.3 Power to Retain Income**

The Trustees need not distribute all of the income arising from the Trust Fund in an Income Year, but may retain or decide to retain all or part of that income 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 Fund may be used.

### **5 CAPITAL TRUSTS**

At any time the Trustees may, or may decide to pay, apply or appropriate as much of the capital of the Trust Fund as they think fit for or towards one or more of the purposes of the Trust. And if the Trustees so provide for more than one purpose they need not treat each purpose equally. 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.

### **6 RECEIPTS**

#### **6.1 Receipt of Gifts**

The Trustees may receive solicited and unsolicited gifts of any real or personal property for the purposes of the Trust or for any specific purpose that comes within the purposes of the Trust.

#### **6.2 Separate Specific Trusts**

6.2.1 If the Trustees accept a Designated Gift they must keep that Designated Gift and any income derived from it separate from the general assets of the Trust Fund, and administer it as a separate specific trust in terms of the trust under which it was given provided the separate specific trust shall at all time have the charitable purposes as outlined in clause 3 of this deed.

6.2.2 The Trustees shall not use the assets of any separate specific trust to make good any deficit, loss, damage or breach of trust relating to any other separate specific trust. Similarly, the Trustees shall not use the general assets of the Trust Fund for such purposes.

6.2.3 Each separate specific trust shall bear its own administration expenses plus a fair proportion (determined by the Trustees) of the administration expenses applicable to the general purposes of the Trust.

### **6.3 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.

## **7 INCORPORATION UNDER THE CHARITABLE TRUSTS ACT 1957**

If they consider it appropriate the Trustees may apply under the Charitable Trusts Act 1957 for incorporation as a Board under the name "New Zealand Institute of Rural Health", or under such other name approved by the Registrar of Incorporated Societies.

## **8 PATRON**

Waikato District Health Board and the University of Auckland may appoint any person to be Patron and may similarly revoke any such appointment. No more than one Patron shall hold the position at the same time.

## **9 TRUSTEES**

### **9.1 Number of Trustees**

There shall never be less than 5, nor more than 7 Trustees, with one of those trustees being appointed by Waikato District Health Board solely and one of those trustees being appointed by University of Auckland solely.

### **9.2 Appointment of New and Additional Trustees**

9.2.1 Subject to clause 9.1, the statutory power of appointment of new Trustees shall be vested jointly in Waikato District Health Board and University of Auckland.

9.2.2 Waikato District Health Board and University of Auckland may by revocable or irrevocable deed, appoint any person to exercise the power of appointment contained in clause 9.1 and 9.2.1. Waikato District Health Board and the University of Auckland may remove any such person, no matter how appointed, by giving written notice to that person of the removal.

9.2.3 When exercising their power of appointment of new Trustees, the Auckland University and the Waikato District Health Board must consider, amongst other things:

- (a) the personal skills and attributes required to advance the purposes of the Trust
- (b) the desirability of Māori representation amongst the Trustees
- (c) the desirability of the Trust achieving and maintaining significant political, commercial and public service influence.

9.2.4 Subject to clause 9.2.3, the appointed Trustees must include:

- (a) A person appointed solely by Waikato District Health Board
- (b) A person appointed solely by the University of Auckland
- (c) A person nominated by the New Zealand Rural General Practice Network or other similar organisation if the New Zealand Rural Practice Network does not exist.
- (d) A person nominated by Rural Women New Zealand or other similar organisation if Rural Women New Zealand does not exist

9.2.5 Where a Trustee is nominated the nominating organisation must be supplied with the criteria for the appointment of Trustees and asked to submit a minimum of 2 and a maximum of 3 nominees. The process of appointment will be as set out in clause 9.2.1

9.2.6 Where a Trustee, who was originally nominated prior to appointment, is eligible for reappointment, the organisation that originally nominated that Trustee must be asked again for nominations as set out in clause 9.2.5.

## **10 GENERAL PROVISIONS**

### **10.1 Alterations to Deed**

10.1.1 This Trust Deed may only be altered only by a joint resolution of the University of Auckland and the Waikato District Health Board.

10.1.2 The Trustees shall meet to make recommendations on alterations to the Trust Deed, to the University of Auckland and the Waikato District Health Board.

10.1.3 A resolution for the alteration of any part of this deed shall be effective only if the alteration does not prejudice the charitable nature of the Trust. Clauses 10.5 and 10.8 shall not be altered without first obtaining written confirmation from the Commissioner of Inland Revenue that the proposed alteration does not prejudice the charitable nature of the purposes of the Trust.

### **10.2 Advice of Counsel**

If the Trustees are in doubt over any matter relating to the administration of the Trust Fund, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister and/or solicitor of the High Court of New Zealand of at least 7 years' standing. And they may act upon the barrister's and/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 opinion, however, will not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

### 10.3 Disclosure of Interests

10.3.1 A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:

- (a) is a party to, or will derive a material financial benefit from that transaction;
- (b) has material financial interest in another party to the transaction;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
- (e) is otherwise directly or indirectly interested in the transaction.

10.3.2 As soon as a Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, he or she must disclose to his or her co-Trustees:

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

10.3.3 A disclosure of interest by a Trustee must be recorded in the minute book of the Trust.

### 10.4 Dealing With "Interested" Trustees

Subject to clause 10.3, each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee. This right to continue to act as a Trustee shall apply even though a Trustee's interest or duty in a particular matter may conflict with his or her duty to the beneficiaries of the Trust Fund.

### 10.5 Prohibition of Benefit or Advantage in Business Activity

10.5.1 In the carrying on of any business under this deed 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 or her 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.

10.5.2 A person who is in the course of, and as part of the carrying on of his or her business of a professional public practice, shall not, by reason only of him or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause 10.5.

## **10.6 Liability of Trustees**

A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

## **10.7 Indemnity**

Each Trustee, committee member, officer or employee shall be entitled to full and complete indemnity from the Trust Fund for any personal liability which he or she may incur in any way arising from his or her actions in relation to the Trust, provided such liability is not attributable to that person's own dishonesty or the wilful commission or omission by that person of an act which he or she knows to be a breach of trust. If some of the assets of the Trust are held on separate specific trusts then such a Trustee, committee member, officer or employee may be indemnified out of those assets to the extent that the Trustees in their discretion think just and equitable.

## **10.8 No Private Pecuniary Profit of any Individual and Exceptions**

10.8.1 No private pecuniary profit shall be made by any person involved in this Trust, except that:

- (a) any Trustee or committee member appointed by the Trustees shall be entitled to be reimbursed out of the assets of the Trust for all expenses (including travel and hotel expenses) which he or she properly incurs in connection with the affairs of the Trust;
- (b) the Trust may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
- (c) any Trustee is to be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust;
- (d) 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.

10.8.2 The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by clause 10.5 of this deed are strictly observed.

## **10.9 Disposition of Surplus Assets**

On the winding up of the Trust Fund or on its dissolution by the Registrar of Incorporated Societies, all surplus assets after the payment of costs, debts and liabilities shall be given to an exclusively charitable organisation within New Zealand as the Trustees shall have decided most nearly resemble the purposes of this Trust, after seeking and considering the advice of the University of Auckland and the Waikato District Health Board. If the Trustees are unable to make a decision, the said surplus assets must be disposed of in accordance with the directors of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

## **11 TRUSTEES' POWERS**

### **11.1 General Power**

It is intended that in the exercise of their discretion the Trustees shall have the fullest possible powers in relation to the Trust Fund, and that they may do anything they think necessary, expedient or desirable even though it is something which they would not normally have power to do in the absence of an express power or an order of the Court. However:

11.1.1 this general power does not authorise the Trustees to do anything which may prejudice the charitable nature of the purposes of the Trust;

11.1.2 the Trustees do not have the power to bind Waikato District Health Board or University of Auckland; and

11.1.3 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 Fund.

### **11.2 Specific Powers**

Without prejudice to the generality of clause 12, or to any of the Trustees' express or implied powers, the Trustees shall have the powers specified in the First Schedule and may exercise them either alone or with any other person(s).

## **12 RULES**

The rules (with any valid alterations) set out in the Second Schedule which govern the appointment, retirement and proceedings of the Trustees subject to the provisions of this deed, will bind the Trustees both before and after their incorporation as a Board under the Charitable Trusts Act 1957.

**FIRST SCHEDULE:  
TRUSTEES' SPECIFIC POWERS**

The Trustees have power:

**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 Fund 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 Fund, 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 Fund for as long as the Trustees think proper, even if they are not investments which could be properly made by a trustee.

**4 To Sell**

To sell any real or personal property forming part of the Trust Fund in the manner and on the terms and conditions the Trustees think fit, including (without limitation) 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 Fund for as long as the Trustees think fit without being liable for any resultant loss to the Trust Fund.

**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 Fund 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**

8.1 To carry on any business whether in partnership or otherwise, for as long as the Trustees think fit. They may use any part of the Trust Fund as capital in the business, and may also employ in the business such managers, agents, employees and other persons (including any Trustee or anyone who for the time being is the sole Trustee of the Trust Fund) as they think fit.

8.2 The Trustees shall be absolutely indemnified out of the Trust Fund for any losses which they may sustain in so carrying on any such business.

8.3 Subject to the terms and conditions on which any business is carried on by the Trustees, the net annual profits from any business shall, at the Trustees' discretion, be distributable as income in the Trustees' hands without having to be first applied in making good any earlier business losses. Any business losses for any year, unless the Trustees decide otherwise, shall be borne by the capital of the Trust Fund and not recouped out of later profits.

**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.

**11 To Act in Relation to Certain Companies**

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

11.1 to act as a director of the company and to receive and retain fees or other remuneration for so acting without having to account to the Trust Fund unless the Trustees otherwise require;

- 11.2 to provide out of the Trust Fund 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, but only insofar as the Trustees are satisfied on reasonable grounds that the provision of such further capital will contribute to the ability of the Trustees to fulfil the charitable purposes specified in clause 3;
- 11.3 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
- 11.4 generally to act in relation to the company in whatever manner the Trustees consider to be in the best interests of the Trust Fund.

## **12 To Subdivide**

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

## **13 To Maintain Property**

To maintain, manage and improve property which, or any interest in which, forms part of the Trust Fund, 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 Fund as they think fit.

## **14 To Develop**

To spend any sums out of the capital or income of the Trust Fund the Trustees think fit in developing any real property forming part of the Trust Fund, and to dedicate any roads required in respect of the development.

## **15 To Purchase Property**

To purchase as an asset of the Trust Fund any property or interest in property which the Trustees consider will benefit the Trust Fund. 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 and 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 Fund.

**17 To Make Loans and Advances**

To make any loans or advances (with or without security) for any of the purposes of the Trust Fund 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 Fund.

**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:

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

**20 Bank Accounts**

To open any bank accounts in any name(s) either on the Trustees own behalf or jointly with some other person(s), and to overdraw any such account with or without giving security. The Trustees may also make arrangements with any bank for any one or more of the following persons to operate on any of the Trustees' accounts at that bank:

- 20.1 the Trustees; and
- 20.2 any delegate(s) named in writing by all the Trustees.

**21 To Enter Into Guarantees**

To enter into, or join in entering into, any guarantee by the Trustees, alone or together with any other person, the giving of which the Trustees may decide to be in the interests of the Trust Fund and to authorise any company in which the Trustees shall hold shares, securities or other rights to enter into such a guarantee or to enter into any other arrangement whatsoever which the Trustees may decide to be in the interests of the Trust Fund and in support of, or in lieu of, any such guarantee to give security over the whole of the Trust Fund or any property comprised therein.

**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 Fund, either absolutely or on such terms as the Trustees think expedient.

**24 To Deposit Funds**

To deposit all or part of the Trust Fund 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 or any foreign exchange or other governmental restriction.

**25 To Hold the Trust Fund Uninvested**

To hold any part of the Trust Fund uninvested 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.

**27 To Exchange Property**

To exchange property, with or without payment or receipt of moneys for equality of exchange.

**28 To Subscribe for Shares**

To subscribe for or otherwise acquire the shares, securities or other rights of any company, whether or not the same may be issued with any deferred, limited or special rights and notwithstanding that any such shares, securities or other rights may not be fully paid up or may have restricted or limited rights of voting.

**29 To Employ**

To employ and discharge such managers, agents, employees, valuers, surveyors, engineers, solicitors, accountants and other persons as the Trustees may decide, and to pay such remuneration in each case at the Trustees consider expedient provided such remuneration is reasonable, and generally instead of acting personally to employ and pay any person to do any act relating to the trusts hereof, including the receipt and payment of money, without being liable for any loss incurred thereby, and any Trustee may be so employed to act.

**30 To Settle Accounts**

To agree and settle accounts with any person liable to account to the Trustees, to compromise all questions relating to the Trust Fund and to grant all necessary receipts, discharges and releases.

**SECOND SCHEDULE:****RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES****1 The Trustees**

The first Trustees shall be the individuals listed in the *Third Schedule*.

**2 Term of Office**

- 2.1 A Trustee shall hold office for a term not exceeding 4 years from the date of appointment but shall be eligible for re-appointment for a further term or terms
- 2.2 Each Trustee shall remain a member of the Board until their successor is appointed subject to clause 4 of this Schedule.

**3 Quorum**

A quorum at the meetings of the Trustees will be constituted when not less than half the number of Trustees then appointed are present provided both the Trustee appointed solely by the University of Auckland and the Trustee appointed solely by the Waikato District Health Board are present

**4 Termination of Office**

A Trustee shall cease to hold office if he or she:

- 4.1 retires from office by giving written notice to the Trustees or the secretary of the Trust;
- 4.2 completes his or her term of office;
- 4.3 refuses to act;
- 4.4 is absent without leave from 3 consecutive ordinary meetings of the Trustees;
- 4.5 becomes physically or mentally incapacitated to the extent that in the opinion of the other Trustees, expressed in a resolution, he or she is unable to perform the duties of a Trustee properly;
- 4.6 becomes bankrupt or makes any composition or arrangement with his or her creditors;
- 4.7 is convicted of an indictable offence;
- 4.8 in the opinion of the other Trustees expressed in a resolution, is for any other reason unfit to carry out the duties of a Trustee; or
- 4.9 dies.

## **5 Record of Changes of Trustees**

Upon every appointment, retirement, re-appointment or termination of office of any Trustee the Trustees will ensure that an entry is made in the minute book of the Trust to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Trustees are satisfied.

## **6 Validity of Proceedings**

- 6.1 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).
- 6.2 If at any time the Trustees number less than the minimum number of Trustees required by this Deed, anything done by the continuing Trustees in accordance with the provisions of this Deed pending the appointment of a new Trustee or Trustees shall be as valid as if the requirement for a minimum number of Trustees had been met during that period.

## **7 Appointment of Secretary and Others**

The Trustees may appoint either any one of their number or any other person to be the secretary of the Trust on such terms and conditions as they think fit. The Trustees may also remove and replace any persons so appointed.

## **8 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 four times in each Income Year.

## **9 Notice of Meetings**

- 9.1 Written notice of every meeting, shall be either hand-delivered, posted, or sent by facsimile or electronic mail to each Trustee at least 7 days before the date of the meeting. The secretary or some other person acting under the direction of the Trustees shall give the notice of the meeting. No notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.
- 9.2 Every notice of a meeting shall state the place, day and time of the meeting.
- 9.3 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.

## **10 Interested Trustee May Vote**

A Trustee who is interested in a transaction entered into, or to be entered into, by the Trust may:

- 10.1 Not vote on a matter relating to the transaction;
- 10.2 attend a meeting of Trustees at which a matter relating to the transaction arises, and be included among the Trustees present at the meeting for the purpose of a quorum;
- 10.3 sign a document relating to the transaction on behalf of the Trust; and
- 10.4 do anything else as a Trustee in relation to the transaction, as if he or she were not interested in the transaction.

## **11 Chairperson**

11.1 The Trustees shall elect one Trustee to act as chairperson for their meetings and determine the term of his or her office, provided that both Waikato District Health Board and University of Auckland approve to that Trustee being chairperson.

OR

11.2 Waikato District Health Board and University of Auckland shall jointly appoint one Trustee to be chairperson for meetings of the Trust and determine the term of his or her office.

11.3 The chairperson shall take the chair at all the meetings of the Trustees and shall have a casting as well as a deliberative vote. If the chairperson cannot be present, or is not present within 10 minutes of the time appointed for any meeting, the Trustees present shall elect another Trustee to be chairperson of the meeting.

## **12 Adjournment**

If a quorum is not present within 30 minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. The chairperson may adjourn any meeting on the adoption of a resolution for its adjournment.

## **13 Committees**

The Trustees may appoint sub-committees, ad hoc committees or executive committees as they may from time to time think expedient for carrying out the purposes of the Trust. Any such committee may co-opt any other person, whether a Trustee or not, to be a member of that committee. And subject to these rules and to any directions that the Trustees might give, each committee may regulate its own procedure.

## **14 Resolutions**

- 14.1 Except where these rules or the Trust Deed provide otherwise, a resolution is validly made when it is passed by a simple majority of those present and voting at a duly convened and conducted meeting of the Trustees, provided that the simple majority includes the Waikato District Health Board Trustee and the University of Auckland Trustee.
- 14.2 The Trustees may vary or cancel any resolution at a meeting, provided that the variation or cancellation is agreed to by the Waikato District Health Board Trustee and the University of Auckland Trustee.
- 14.3 A written resolution signed by all the Trustees shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees. Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees.

## **15 Minutes**

- 15.1 The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.
- 15.2 Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting shall be evidence of those proceedings.
- 15.3 Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.
- 15.4 Forthwith after a meeting, the chairperson of the meeting or any other suitable person appointed by the Trustees to do so, must submit a copy of the minutes of that meeting or any other reports requested by Waikato District Health Board and the University of Auckland to Waikato District Health Board and the University of Auckland.

## **16 Teleconference Meetings**

For the purposes of these rules a Teleconference Meeting between a number of Trustees or committee members who constitute a quorum, together with the secretary or another person acting as a secretary, shall be deemed to constitute a meeting of the Trustees. All the provisions in these rules relating to meetings shall apply to Teleconference Meetings so long as the following conditions are met:

- 16.1 All of the Trustees for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone;
- 16.2 Throughout the Teleconference Meeting each participant and the secretary or person acting as a secretary must be able to hear each of the other participants taking part;

- 16.3 At the beginning of the Teleconference Meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- 16.4 A participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson'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 Teleconference Meeting unless he or she leaves the meeting with the chairperson's express consent;
- 16.5 A minute of the proceedings at the Teleconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting and by the secretary or person acting as a secretary.

## **17 Financial Statements**

At their first ordinary meeting in each Income Year (other than the first Income Year) the Trustees shall present a statement of the Trust's income and expenditure during the previous Income Year and a statement of its assets and liabilities at the end of that Income Year.

## **18 Audit**

If the Trustees at any time resolve to appoint an auditor then they will ensure that the financial statements of the Trust for each Income Year are audited by a chartered accountant of no less than 7 years full time (but not necessarily continuous) experience within 2 months after the end of that Income Year. The person appointed as auditor must not be a Trustee.

## **19 Reporting to Waikato District Health Board and University of Auckland**

The Trustees shall report to Waikato District Health Board and University of Auckland from time to time but at least once every Income Year. Such reports shall include:

- (a) financial statements for the previous year audited in accordance with *rule 18*;
- (b) a summary of activities undertaken by the Trust in the previous period;
- (c) details of significant capital expenditure and borrowings anticipated to be incurred in the future period and the intended purposes of that expenditure or borrowing; and
- (d) such other matters as Waikato District Health Board and University of Auckland may from time to time require.

## **20 Control Procedures**

The Trustees shall maintain or cause to be maintained control procedures adequate for the proper operation of the Trust.

**21 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 cheques and other negotiable instruments, withdrawal slips and receipts for money shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) on behalf of the Trust in such manner as the Trustees decide from time to time.

**22 Custody and Use of Common Seal**

If the Trustees become incorporated as a board under the Charitable Trusts Act 1957 they shall have custody of the common seal, and from time to time by resolution, they may adopt any seal they think fit. The common seal must not be affixed to any document unless the Trustees have already authorised its use on that document. And when a document is to be sealed on the prior authority of the Trustees the seal must be affixed to the document in the presence of two Trustees who must sign the document.

**23 Do all Other Necessary or Desirable Things**

The Trustees may do all other lawful things that are necessary or desirable in their opinion for the carrying out of the purposes of the Trust.

**24 Compliance With Statutes**

The Trust shall at all times comply with any obligations under Statute relating to the carrying on of the Trust, including its obligations (if any) under the Official Information Act 1982.

**THIRD SCHEDULE:  
TRUSTEES**

1. Ms Robin Steed (nominee of the Waikato District Health Board)
2. Professor Gregor Coster (nominee of University of Auckland)
3. Dr Timothy Malloy (nominee of New Zealand Rural General Practice Network Inc)
4. Sir Ross Malcolm Jansen
5. Dr Paratene Ngata