

**DEED OF CHARITABLE TRUST
GOLDEN BAY COMMUNITY HEALTH –TE HAUORA o
MOHUA TRUST**

between
“Settlers”
and
IMG members

‘Trustees’

Deed of Charitable Trust

Date:

Parties

1. ("Settlor")
2. ("the Trustees")

This deed records

1. Interpretation

1.1 In this Deed unless the context otherwise requires:

"Balance Date"	means 30 June or any other date adopted from time to time by the Trustees as the end of the Trust's Financial Year.
"the Board"	means the Board of Trustees of the Golden Bay Community– Te Hauora o Mohua Health Trust established by this Deed to be known as Golden Bay Community Health – Te Hauora o Mohua Trust (GBCH Trust) .
"Charitable Purpose"	means every purpose which in accordance of the law of New Zealand is charitable and includes every charitable purpose within the meaning of that term in the Charitable Trusts Act 1957 provided however that any such purpose is also regarded as charitable under every statute, regulation or ordinance relating to income tax or gift duty for the time being in force in New Zealand.
"Chairperson"	means the Trustee who is the Chairperson appointed by the Trust Board.
"Community"	means all persons normally residing or located in the Golden Bay geographic region of Tasman District.
"Financial Year"	means any year or other accounting period ending on the Balance Date.
LEADR	LEADR is an Australasian, not-for-profit membership organisation that promotes alternative dispute resolution including mediation.
Manawhenua ki Mohua	means the umbrella entity for Ngati Tama, Te Atiawa and Ngati Rarua in Golden Bay/Mohua.
"Maori Community"	means all natural persons claiming or recognising themselves as being of New Zealand Maori descent who normally reside in the Golden Bay geographic region of Tasman District.
"Month"	means calendar month.
Purpose	means the charitable purpose of the Trust as set out in clause 5 of this Deed.
"Ordinary Resolution"	is a resolution that is approved by a simple majority of the votes of the Trustees entitled to vote and voting on the question.
"Property"	means any real and personal property of the Trust.
Provider of integrated health and disability	Means the integrated service for provider primary health care after-hours, acute care, maternity and residential aged care

services	services in Golden Bay.
Special Resolution”	means a resolution passed by not less than seventy per cent of the Trustees at a meeting of the Board where not less than 21 clear days prior written notice of the resolution is given to all the Trustees provided this requirement of 21 days notice is not required where all of the Trustees sign the resolution, which resolution may be in several copies it not being necessary that all Trustees have signed the same copy. A Special Resolution is defined as any action which may change the purposes of the Trust and the powers and limitations as identified in the Trust Deed or involve the long term commitment of trust funds either through property or other acquisitions or borrowings.
"the Trust"	means the charitable trust established by this Deed and known as Golden Bay Community Health Te Hauora o Mohua Trust .
"the Trustees"	means the trustee or trustees of the Trust for the time being whether original, additional or substituted.
"the Trust Fund"	means such sum as is received by the Board from (<i>name the Settlers</i>) and such further money or property as may from time to time be added to it by way of capital or income to be held by the Board upon the trusts, for the charitable purpose and with the powers as set out in this Deed.

- 1.2 Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Deed;
- 1.3 References to parties are references to parties to this Deed;
- 1.4 References to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, estates, agencies of state, government departments, crown entities, state-owned enterprises and municipal authorities in each case whether or not having separate legal personality;
- 1.5 Expressions defined in the main body of this Deed bear the defined meaning in the whole of this Deed including the recitals;
- 1.6 References to clauses and recitals are references to clauses and recitals of this Deed;
- 1.7 References to the singular include the plural and vice versa;
- 1.8 Any obligations not to do anything shall be deemed to include any obligation not to suffer, permit or cause that thing to be done;
- 1.9 References to statute include references to any regulations, orders or notices for the time being in force made under or pursuant to such statute, and references to a statute include references to all amendments to that statute or otherwise, and references to a statute or provision thereof include references to any statute or provision for the time being in force passed in substitution for that statute or provision thereof.

2. Establishment

- 2.1 The Settlor directs and the Trustees acknowledge and agree that the Trustees stand possessed of the Trust Fund to achieve the charitable purpose set out in this Deed.

3. Name of Trust

3.1 The Trust and the Trust Fund shall be known as "Golden Bay Community Health – Te Hauora o Mohua Trust".

4. **Office**

4.1 The office of the Trust and the Board shall be at Takaka or such other place as the Board from time to time decides.

5. **Purpose**

5.1 The purposes of the Trust shall be to:

a. provide such property and other equipment as may be required to support the provision of a range of integrated health and disability services to the people of Golden Bay. The services for which such property and other equipment shall be provided shall include:

- i. primary health care services,
- ii. after-hours and acute care services,
- iii. residential care for older people; and
- iv. maternity services.

b. use or invest any surplus funds, or the interest thereon, in the provision of health and disability services as agreed from time to time with the provider and/or funder of integrated health services for Golden Bay; and

c. provide any advisory, supervisory, planning, administrative and support services as are incidental or conducive achieving that purpose.

5.2 In interpreting the terms of this trust deed and undertaking the rights, powers and duties:

- a. The purpose in clause 5.1 shall take precedence;
- b. The range of services in clause 5.1 is not exclusive and may be varied at the discretion of the trustees in consultation with the provider.
- c. All other items shall be pursued to further that purpose.

6. **Limitation on Purpose**

6.1 The purpose of this Trust may not extend to any matter or thing which is not charitable within the meaning of the Income Tax Act 1994 or not carried out within New Zealand.

7. **Powers**

7.1 The Trustees shall in addition to all other powers conferred by law have the powers set out in Schedule A, which shall be exercised prudently to promote the purpose.

7.2 None of the powers conferred on the Trustees by this clause or otherwise shall be deemed subsidiary or ancillary to any other power or authority and the Trustees shall be entitled to exercise all or any of the said powers and authorities independently of any other or others of them. In the event of any ambiguity this provision shall be construed so as to widen and not restrict the powers of the Trustees provided however that at no time shall any provision be construed so as to detract from the charitable purpose of the Trust.

7.3 Special Trusts: When property is accepted by the Trustees upon special trusts to be declared by the donor all the powers and provisions of these presents shall be deemed to be incorporated in the deed declaring such special trusts except insofar as the same shall be expressly excluded or modified or be inconsistent with such special trusts.

7.4 Bare or Passive Trusts: Where property is accepted by the Trustees on bare or passive trusts they shall from time to time apply such property according to the lawful directions of the Trustees or managers to whom the management and administration thereof may have been confided.

8. Appointment and Removal of Trustees

8.1 The number of initial Trustees shall be thirteen who shall be current members of the Golden Bay Integrated Health Services, Interim Management Group (GBIHS IMG) as at the date of the establishment of the Trust, one of whom shall be appointed chairperson by Trustees. .

8.2 The number of Trustees may be changed by the Trustees by Special Resolution.

8.3 Trustees named in the title to this Trust deed shall serve until the sooner of 31st December 2010 or such time as a majority determine their appointment should otherwise terminate, when their term shall expire.

8.4 New appointments of Trustees shall follow pursuant to the following procedures:

a. The Trust shall have a minimum of 5 and maximum of 8 Trustees, be incorporated as a Board of Trustees and constituted as follows:

- i. one person appointed by the Nelson Marlborough District Health Board;
- ii. one representative appointed by the 6 elected members of the community, being the two elected Tasman District Councillors from Golden Bay and the four Golden Bay Community Board members, from one of those 6 elected members;
- iii. one person appointed by Manawhenua ki Mohua;
- iv. two persons representing the Golden Bay community chosen by a clear and transparent selection process by the three trustees from i to iii above;
- v. up to three persons co-opted by the Trust Board for their particular skills, experience; and

b. The Chairperson shall be appointed by the Board of Trustees. In the event that the Trustees are unable to agree on appointment of the Chairperson there shall be:

- i. a secret ballot of Trustees to elect the chairperson; and
- ii. if this does not result in the appointment of a Chairperson, they shall be seek the assistance of a mediator from LEADR NZ to help the Trustees in the appointment of a Chairperson

8.5 Subject to sub clauses 8.6 to 8.13 of this rule, every Trustee shall hold office for a term of 3 years expiring at the end of the annual general meeting held in the third calendar year after the calendar year in which the Trustee was elected, unless the Trustee sooner dies or resigns or is sooner removed from office.

8.6 Notwithstanding sub-clause 8.5 of this rule, the Trustees may, by Special Resolution, determine that the term of office of any Trustee shall expire at such other date as will provide for the rotation of retirement dates.

8.7 If in any calendar year the annual general meeting at which a Trustee is due to retire is not held for any reason, the term of office of that Trustee shall expire at the end of that calendar year.

8.8 Every Trustee who is elected to fill any extraordinary vacancy caused by death, resignation, or removal from office of any Trustee shall hold office for the remainder of the term for which his or her predecessor was elected.

- 8.9 On a Trustee's position becoming vacant by retirement or otherwise, a replacement Trustee shall be selected in accordance with rule 8.4.
- 8.10 If no replacement Trustee is selected by the process to replace a vacancy within 3 months of the position becoming vacant the remaining Trustees within that group may appoint a person to fill the vacancy (the Interim Trustee).
- 8.11 Any Trustee appointed pursuant to 8.10 shall hold office for the balance of the term the Trustee whose position the Interim Trustee fills.
- 8.12 A Trustee shall cease to hold office if the Trustee:
- a. Retires in accordance with rule 8.5;
 - b. Resigns as Trustee;
 - c. Dies while holding office as a Trustee;
 - d. Fails to attend three consecutive Board meetings without being granted written leave of absence by the Board;
 - e. Is adjudged bankrupt;
 - f. Is convicted of an indictable offence and has exhausted all rights of further appeal;
 - g. Becomes of unsound mind.
- 8.13 Upon every appointment, reappointment, removal or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.

9. Duties and Functions of the Board

- 9.1 The Board shall conduct the business and activities of the Trust in an open and transparent manner.
- 9.2 The Board will set policies and resolve on courses of action and means of implementing the same so as to achieve the purpose of the Trust.
- 9.3 The Board will monitor the activities of the Trust to ensure its funds are used as effectively as possible to achieve the purpose of the Trust and to demonstrate to the Golden Bay community and those bodies and agencies which fund and support the Trust's activities that the funding and support provided is being effectively applied and utilised.

10. Proceedings of the Board

- 10.1 All meetings of the Board shall be chaired by the Chairperson, if present. Should the Chairperson not be present, those of the Trustees present shall elect an acting chairperson from their number to chair that meeting.
- 10.2 As far as possible the Trustees will endeavour to make decisions by consensus but should that not be possible, a vote is required, voting at meetings of the Board shall be by simple majority of those Trustees present except for decisions requiring a Special Resolution. In the event that there is not a clear majority in any vote then the Chairperson is entitled make a casting vote subsequent to a deliberate vote by all Trustees.
- 10.3 Voting shall be by show of hands or oral indication unless a ballot is directed by the Chairperson or required by any two of the Trustees present at the meeting.
- 10.4 Written notice of the date, time and place of each meeting shall be posted by ordinary mail or sent by email or fax transmission to all of the Trustees so that it is received in the ordinary course of the post or email or fax transmission not less than 7 clear days prior to

the meeting. This procedure will not apply to meetings called by the Chairperson pursuant to clause 11.4.

10.5 A meeting of the Trustees may be impeached or called into question in any way solely on the ground that the requisite notice has not been given, but only by a Trustee.

10.6 A proper written record of all decisions and business transacted at every meeting of the Board shall be kept. The minutes may include notice of the next meeting if fixed at the meeting.

10.7 A resolution in writing signed by all members of the Board shall be valid as if it had been passed at a meeting of the Board duly called and held. Any such resolution may consist of several documents in like form each signed by one or more members.

11. Meetings

11.1 Within three months of the end of each Financial Year a meeting ("the annual meeting") shall be called to:

- a. Receive and consider the annual report and review the Board's activities during the preceding year;
- b. Receive, consider and adopt the audited income and expenditure account and balance sheet;
- c. Report on the statement of corporate intent for the following year;
- d. Appoint an Auditor who shall not be a Trustee;
- e. Consider any resolution notice of which shall have been given in writing to the Secretary of the Board at least 14 days before the meeting;

11.2 The Trustees shall otherwise meet together for the conduct of the affairs of the Trust from time to time and shall regulate and conduct their meetings as they think fit and for such purpose they may make such rules and regulations as they consider desirable, including, without limitation, rules and regulations relating to the conduct of telephone meetings and video conferencing.

11.3 Until otherwise decided by Special Resolution, a quorum for meetings of the Trustees shall be at least 70% of Trustees.

11.4 The Chairperson may call a special meeting of the Board (other than one at which it is proposed to move a resolution affecting a matter requiring a Special Resolution) by any means (including by telephone) at any time provided that the Chairperson in so doing gives at least 7 clear days notice which must include advice of the matters to be considered at the special meeting to each of the Trustees then within New Zealand.

11.5 A Trustee may not appoint another Trustee to be a proxy.

11.6 A Trustee may not delegate to another person his or her position as Trustee.

11.7 All meetings of trustees shall be open to members of the Golden Bay community who shall be provided with reasonable advance notice of such meetings except where trustees where the trustees are dealing with matters that are:

- a. commercially sensitive; or
- b. covered by the provisions of the Privacy Act and/or the Official Information Act.

Such matters shall be dealt by the Trustees in Committee.

12. **Bank Accounts and Property**

- 12.1 The Trust Fund will be held by and in the joint names of the Trustees until the Board is incorporated as a Board under the provisions of the Charitable Trusts Act 1957, in which case it will be held by and in the name of the Board.
- 12.2 The bank accounts of the Trust shall be managed as the Trustees determine.
- 12.3 The Board shall have the power to receive and give receipts for all legacies, donations, subscriptions or other moneys bequeathed, made or given to the Trust and every such receipt shall be an effective discharge for the money or other money stated to have been received.

13. **Execution of Documents**

- 13.1 If the Trustees are not incorporated as a Board under the Charitable Trusts Act 1957, documents to be executed by or for the Trust shall be signed by any two of the Trustees, one signatory to be the Chairperson.
- 13.2 When the Board is incorporated under the Charitable Trusts Act 1957, documents to be executed by the Board shall be executed under its common seal and attested by any two of the Trustees, one of whom shall be the Chairperson.

14. **Incorporation**

- 14.1 The Trustees shall immediately apply for incorporation under Part II of the Charitable Trusts Act 1957 as a Board under the name "Golden Bay Community Health – Te Hauora o Mohua Trust".

15. **Accounts**

- 15.1 The Board will cause complete and accurate records to be kept in a proper manner of all its receipts payments assets liabilities and other matters necessary for showing the true state and condition of the Trust Fund.
- 15.2 The annual accounts of the Trust shall be prepared in accordance with generally accepted accounting practices by such person or organisation appointed for that purpose by the Trustees. To avoid any doubt the accountant may be an accountant or organisation employed by the Board.
- 15.3 The books of account shall be kept at the office of the Trust and shall be open at all reasonable times to inspection and copy by any of the Trustees and members of the Golden Bay community.
- 15.4 The Board will have the Trust's accounts audited each year by an independent auditor appointed by the Trustees.
- 15.5 The Board will properly receive all payments and property paid or transferred to the Trust, will properly meet all liabilities and responsibilities incurred or undertaken by it, and will properly administer the Trust Fund.

16. **Tax Returns**

- 16.1 The Trustees shall cause to be prepared or filed with the Inland Revenue Department all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations and other information required to be prepared or filed so as to allow the Trust to retain its charitable status for taxation purposes and to meet all of its obligations under the Acts administered by the Inland Revenue Department.

17. **Declarations of Interest**

- 17.1 No Trustee shall vote on any matter in which he or she has any personal or pecuniary interest or in which any company or other body in which the Trustee has a personal or financial interest has any pecuniary interest.
- 17.2 Any Trustee shall declare any such interest in writing as soon as the Trustee concerned becomes aware of the existence of the interest, the declaration to include all relevant detail needed to result in a full and fair disclosure. All Trustees shall act in good faith in all such matters.

18. **Remuneration of Trustees and Payments of Expenses**

- 18.1 Each Trustee shall be entitled to such expenses incurred in that capacity as the Trust Board may from time to time authorise or ratify by resolution.
- 18.2 Subject to clause 18.3, any Trustee shall be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by him or her or any employee or partner of his or hers in connection with the trusts of this Deed, other than acting as a Trustee, provided that any such remuneration shall be no more than that which would have been paid in an 'arm's length' transaction (being the open market value).
- 18.3 No Trustee receiving any remuneration referred to in sub-clause 18.2 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid. Any such remuneration must be approved in writing by the Trust Board.

19. **No Private Pecuniary Profit**

- 19.1 Nothing expressed or implied in this Deed shall permit the activities of the Trust or any business carried on by or on behalf of or for the benefit of the Trust to be carried on for the private pecuniary profit of any individual with the exception of payments expressly authorised under clauses 18.2 and 18.3 above.

20. **Alterations and Additions**

- 20.1 Subject to clauses 20.2 and 20.3, the Board may resolve by Special Resolution to amend any provisions of this Deed.
- 20.2 No amendment may be made to the Trust Deed in any respect which would have the effect of causing the Trust to cease to be a charitable trust or to amend the purpose to include any purpose which is not a charitable purpose consistent with or similar to the principal purpose of the Trust or one to be achieved outside New Zealand and no alteration to this Deed shall be made without prior confirmation from the Commissioner of Inland Revenue or other appropriate authority that the alteration does not prejudice the charitable nature of the purpose of the Trust.
- 20.3 Notwithstanding anything set out in clauses 20.1 or 20.2 the Board shall amend this Deed to comply with any requirement of the Commissioner of Inland Revenue or other appropriate authority or to comply with the Income Tax Act 1994.

21. **Liability of Trustees**

- 21.1 The Trustees are expressly authorised to exercise the powers of investment expenditure and acquisition conferred upon them notwithstanding that the Trust Fund may be subject to any liability or liabilities and the Trustees shall not be liable for any loss occurring on the realisation of any asset which pursuant to the exercise of those powers comprises part of the Trust Fund.

- 21.2 To the extent permitted by law no Trustee of the trusts of this Deed shall be subject to any duties except:
- a. The duty to act honestly and the duty not to commit wilfully any act known to be a breach;
 - b. The duty not to omit wilfully any act when the omission is known by the Trustee to be a breach of trust;
 - c. For the consequences of any act or omission or for any loss attributable to the Trustee's own dishonesty, or for the wilful commission by the Trustee of any act known by the Trustee to be a breach of trust.
- 21.3 No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust by that co-Trustee.
- a. A Trustee shall be indemnified by and out of the Trust Fund (whether as to the capital or the income thereof) for and in respect of any loss or liability incurred by the carrying out or omission of any function duty or power of the Trustees under this Deed unless such loss or liability is attributable to such Trustees dishonesty or to the wilful commission by such Trustee of an act known by such Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission is known by the Trustee to be a breach of trust.
 - b. The Board may effect insurance for the Trustees and will meet all costs associated with such insurance.

22. Winding Up

- 22.1 The Trust may be wound up on a unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose.
- 22.2 In the event of the Trust being wound up the Board shall in the following order:
- a. Give the Nelson Marlborough District Health Board, or its successor organisation, a first option to purchase all assets remaining on winding up ; and
 - b. After all liabilities of the Trust have been discharged either vest in trust for the same general purposes as the Trust, all remaining funds and assets comprising the Trust Fund equally in the organisations created or approved by the Trust; or;
 - c. In the absence of any of those trusts or organisations, some other organisation within New Zealand having purposes which are exclusively charitable and include purposes which the Trustees consider are compatible with and substantially similar to the principal purpose of the Trust, as contained in clause 5.1, and shall transfer the said funds and assets to such trusts or organisations or organisation for their or its general purposes and the receipt of the Treasurer or Secretary or other proper officer of such trusts or organisations or organisation shall be a sufficient discharge to the Board and the Board will not be bound to further see to the application of those funds and assets.
- 22.3 If the Board is unable to make such decisions the Trust Fund shall be disposed of in accordance with the directions of the High Court under section 27 of the Charitable Trusts Act 1957.
- 22.4 That the price at which the offer to purchase under clause 22.2.a shall be the market price of those assets less the inflation adjusted original contribution of the District Health Board as measured by the consumer price index with December 2010 as the baseline.

23. Governing Law

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

Signed by by:

Settlor's signature

Settlor's signature

Settlor's full name

Settlor's full name

Signed by in the presence of:

Signature of witness

Name of witness

Occupation

Address

Signed by in the presence of:

Signature of witness

Name of witness

Occupation

Address

Schedule A

- a. To collect funds and raise money by all lawful means and to receive, accept and encourage financial and other contributions, subscriptions, donations, legacies, endowments or bequests from any source and to conduct fundraising campaigns in order to further the charitable purpose of the Trust;
- b. To promote and further the purpose of the Trust by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any other means;
- c. To enter into any arrangements with any government or municipal or local authority that may seem conducive to the purpose and to obtain from any such government or authority any rights, privileges or concessions which the Trustees may think is desirable to obtain, and to carry out and to comply with any such arrangements, privileges, rights and concessions;
- d. To acquire, dispose of, lease, or otherwise deal with property on such terms and conditions as the Trustees think fit for the furtherance of the purposes of the Trust;
- e. To maintain the property;
- f. To provide such amenities as considered necessary;
- g. To operate any lawful trading activity that is consistent with the purposes of the Trust;
- h. To borrow money on such terms, conditions or security (including mortgages) as the Trustees consider prudent and appropriate for the furtherance of the purposes of the Trust;
- i. To invest funds that are surplus to short term operational requirements in registered banks or building societies in NZ dollars on such terms as the Trustees decide and to vary such investments from time to time provided that the risk of capital losses from such investments is minimised and investment returns maximised;
- j. To employ and act as a good employer towards any person engaged to carry out the services of the Trust with power to dismiss such person as necessary;
- k. To receive from the New Zealand Government or any council, board or body under the jurisdiction thereof or any other government, state or national body or any international organisation, any grant, subsidy or payment whatsoever in order to further the charitable purposes of the Trust;
- l. To charge any person for use of the property or services such charges as may be fixed by the Trust;
- m. To join with any other person, group, body or organisation under such arrangement as the Trustees think fit to further the purposes of the Trust;
- n. To pay all or any of the reasonable expenses incurred in and in connection with the establishment, incorporation and running of the Trust;
- o. To insure against loss or damage by any cause whatsoever any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if he were acting for himself, for such amounts and on such terms as the Trustees may from time to time think fit;
- p. To appoint such committees as are expedient to carry out the purposes of the Trust. Members of any committee need not be Trustees;
- q. To do the above things as principal, agent, contractor, trustee or otherwise and by or through agents, trustees or otherwise and either alone or in association with others;
- r. To do such other lawful acts and things as in the opinion of the Trustees are conducive to the attainment of the purposes of the Trust.