RELATIONSHIP AGREEMENT

BETWEEN

THE UNIVERSITY OF OTAGO

AND

SOUTHERN DISTRICT HEALTH BOARD
RELATIONSHIP AGREEMENT

Between Southern District Health Board ("the DHB") and The University of Otago ("the University")
(collectively "the Parties")

1. INTRODUCTION

1.1 The DHB is a Crown Entity created under section 19 of the New Zealand Public Health and
Disability Act 2000. Its mission is among other things to improve, promote, and protect the
health of people and communities.

1.2 The University is a body created under the University of Otago Ordinance 1869 and the
University of Otago Amendment Act 1961 and pursuant to section 162 of the Education Act
1989. Its mission is among other things to attain the highest standards of excellence in
education, training, and research and ensuring proper standards of integrity, conduct, and
concern.

1.3 The DHB has under its control extensive facilities and personnel which the University wishes
to utilise in order to achieve its objectives. The University has under its control educational,
research and training facilities, personnel and students which the DHB wishes to utilise in
order to achieve its objectives.

1.4 The Parties acknowledge that the sharing of facilities, personnel, students and access to
patients has mutual benefits. The University personnel and students contribute to the clinical
services provided by the DHB, and to the research and training activities of the DHB.
Personnel employed by the DHB contribute to the undergraduate and post-graduate
education and clinical training of students and the performance of research initiatives by the
University.

1.5 The Parties have mutually advantageous objectives and wish to encourage a closer working
relationship with each other to enhance business, educational and social results. Improving
the interaction and engagement between health and education sectors is an important part
of creating greater alignment between the education and health priorities and their
respective strategic directions.

1.6 The Parties have agreed to formalise their working relationship by entering into this
Agreement.

AGREED:

2. EFFECT OF THIS AGREEMENT

2.1 This Agreement shall, with effect from the date of this Agreement, supersede the
Memorandum of Understanding between the University and the DHB (then known as Health
Care Otago) dated 21st December 1999 ("the 1999 MOU") and the Memorandum of
Understanding between the University and the DHB dated 1 December 2010.

2.2 This Agreement is intended to be legally binding.
3. PURPOSE, PRINCIPLES, OBJECTIVES AND INTENDED OUTCOMES OF THIS AGREEMENT

Purpose

3.1 The purpose of this Agreement is to facilitate a good working relationship between the Parties and to contribute to the pursuit of their common objectives.

Principles

3.2 The Parties agree that their relationship must be founded on underlying principles of collaboration, integrity, good communication, co-operation, accountability, transparency, respect, innovation, quality improvement, and sustainability.

Primary objectives

3.3 The Parties acknowledge that the primary objectives of their relationship are to attain and maintain:

(a) best clinical practice,
(b) excellence in teaching,
(c) delivery of quality health and disability services,
(d) continuing improvements in health and disability service delivery,
(e) research excellence,
(f) effective learning environments,
(g) continuing education of health professionals,
(h) the recruitment of high quality teaching and research personnel, and
(i) continued co-operation between the Parties.

Effective collaboration

3.4 The Parties shall work together to achieve and maintain:

(a) high quality services, world class teaching and research, training and health and disability service delivery that is informed by the academic and clinical expertise of the University of Otago;
(b) the identification and progression of opportunities that are mutually beneficial and co-operation in relation to funding for joint activities;
(c) policies and practices conducive to recruiting high quality personnel; and
(d) health and service provision planning that is informed by the expertise of relevant staff.
**Intended outcomes**

3.5 The Parties shall work together to:

(a) increase their co-operation and collaboration on matters critical to achievement of the objectives of both Parties,

(b) continue to provide access to facilities as described in clause 8;

(c) continue any current, formally documented arrangements between the Parties, with appropriate modifications to take account of:

(i) any changed structures or requirements of this Agreement; and

(ii) any future agreements entered into pursuant to this Agreement; and

(d) establish agreed processes for:

(i) entering into more detailed agreements relating to specific subject matter;

(ii) resolving disagreements arising from such detailed agreements and/or from any current, formally documented arrangements between the parties; and

(iii) resolving disagreements arising from such detailed agreements and/or from any current, informally documented arrangements between the parties.

4. **CO-OPERATION**

4.1 Not less than six monthly during the Term (or more often if agreed), representatives of each Party¹ shall meet to identify any strategic issues that have arisen for the Parties’ relationship and to determine the following for the next six month period:

(a) opportunities for joint development, and risks to the sustainability, of academic and clinical specialisation;

(b) the management of relevant academic, clinical, and general personnel of both Parties;

(c) joint planning for teaching and research;

(d) joint planning and collaboration regarding the use and development of relevant facilities;

(e) the terms of more detailed agreements contemplated by the Parties including those referred to in clause 6; and

(f) any other relevant matters on which the parties agree to focus under this Agreement,

in each case, taking into account the underlying purpose, principles and objectives of the

¹ See clause 5.7.
relationship between the Parties in clause 3.

4.2 At least 14 days before each such meeting, each party shall advise the other of agenda items for discussion or determination at the meeting.

4.3 At least 14 days prior to each meeting, each Party shall advise the other in general terms of its proposals as to how the notified items should be dealt with during the next six month period.

4.4 At each such meeting, the Parties shall use their best endeavours to approve a plan for dealing with the notified items during the next such period.

4.5 The parties shall comply with any such approved plan until such time as the plan is amended or a new plan adopted. Amendments to any such plan will be in writing.

5. REPRESENTATION AND CONSULTATION

The Joint Relations Committee (JRC)

5.1 The Parties agree to continue the JRC as the ultimate, joint governance body for the purposes of this Agreement. The JRC shall have the terms of reference, procedures and membership set out in Schedule 1.

5.2 Significant strategies, actions, and financial matters that are common to, or hold implications for, both Parties shall be reflected in the strategic plans and annual business plans of the Parties, a summary of which shall be presented to the JRC.

Joint Operational Committee (OC), Joint Clinical Committee (CC), Health Research South (HRS)

5.3 The Parties have established the following sub-committees:

a) A joint OC to discuss and resolve operational matters relevant to the Parties’ relationship. The OC shall comprise representatives from Human Resources, Finance, Information Technology Services, Property Services, Planning and Funding and Corporate Services, Clinical Directorate representation and any other nominees of the DHB and the University as determined by the JRC to ensure that each Party is fairly represented and that the OC is fairly balanced.

b) A Joint CC to discuss strategic clinical issues of common interest. The CC will comprise representatives at the executive levels relevant to clinical service delivery, teaching and clinical placements, as determined by the JRC. The CC will meet to discuss matters referred to it by the JRC.

c) HRS, which provides governance (Board) and management (Research Office) of the shared research environment (the research space, property, people, patients and all resourcing used when University staff, or Southern DHB staff, or Southern DHB contracted providers, conduct research).

5.4 The OC and CC shall meet at least bi-annually or more often as agreed by the Parties and submit a written bi-annual report of the matters dealt with under this Agreement via the CEO, Southern District Health Board and Pro-Vice-Chancellor, Health Sciences to place before
the JRC. The written reporting for the OC will also go to the COO, University of Otago. HRS shall meet regularly, and matters relevant to health research will be advised through to the Dean of Dunedin School of Medicine, and the CEO of Southern DHB.

Consultation at operational levels

5.5 The Parties shall establish mutually agreed, formal processes to facilitate active engagement and consultation between their respective personnel and/or representatives on operational issues potentially affecting the other Party. The OC shall be responsible in the first instance for developing such formal processes, for approval by the JRC within six months of the date of this Agreement.

5.6 Neither Party shall, without first following the applicable, agreed consultation process, make significant operational changes or other significant decisions that would reasonably be considered as potentially affecting the other Party in relation to a matter covered by this Agreement or the relevant Specific Agreement, as the case may be.

Selection of representatives

5.7 Each Party agrees to appoint representatives (to the JRC, the OC and any other relevant committee or body) capable of promoting the efficient operation of this Agreement and the underlying purpose, principles and objectives of the relationship between the Parties as described in clause 3.

Specific University representation arrangements

5.8 The University shall be represented by at least one of its personnel (such representative(s) to be selected by the University in consultation with DHB) in the following areas:

(a) applicable DHB medical appointments committees when dealing with the appointment of senior medical and health professional personnel to the DHB who are or will be involved in clinical education for the University;

(b) the credentialing committee of the DHB; and

(c) the monthly strategic executive management team meeting.

Specific DHB representation arrangements

5.9 The DHB shall be invited to participate in:

(a) education committees established by the University of any relevant clinical discipline;

(b) committees appointing senior academic and other health personnel at the University who are or will be involved in health service delivery for the DHB; and

(c) membership or attendance (at the discretion of the University) at the executive or management group of the relevant school.
5.10 Each Party shall keep the JRC informed on an on-going basis of the details of all representative appointments of the kind referred to in clauses 5.7, 5.8 and 5.9. Any issue arising in relation to any such representative appointment shall be referred to the JRC.

Conflicts of interest

5.11 The Parties recognise that their representatives under clause 5 may have a conflict of interest. Each Party shall ensure that its representatives declare the existence and nature of any conflict of interest to the relevant committee. Such individual may continue to act as a representative while taking into account the applicable conflict of interest, subject to the approval or directions of the relevant committee.

5.12 If either Party considers that a representative of the other Party has not appropriately managed a conflict of interest, it may raise the matter directly with the other Party rather than via the relevant committee, either via senior management in the first instance or via the JRC.

Structural and operational changes

5.13 The representation arrangements in this clause 5 may be varied by written agreement if either Party reasonably considers that structural or operational changes to the other Party's organisation have affected governance in a way not foreseen by this Agreement.

6. DEVELOPMENT OF SPECIFIC AGREEMENTS

Specific Agreements

6.1 The Parties shall develop and enter into agreements regarding:

(a) the matters identified in Schedule 2;

(b) any arrangements of the kind referred to in clause 8 or other arrangements, whether current at the date of this Agreement or arising after the date of this Agreement, that are not the subject of a formal agreement; and

(c) any other matters agreed on by the Parties from time to time.

each a “Specific Agreement”.

Consistency

6.2 This Agreement prevails as the founding document for ensuring the Parties' mutual expectations of their working relationship are met. To that end:

(a) each Specific Agreement must be consistent with this Agreement;

(b) any provision of a Specific Agreement that is in conflict with any provision of this Agreement shall be deemed to be of no effect unless the JRC expressly agrees otherwise;

(c) accordingly, any Specific Agreement may be made subject to the approval of the JRC either generally or in relation to any identified matter or provision;
(d) the provisions of this Agreement specified in clause 6.3 shall be deemed to be incorporated into every Specific Agreement, with such variations (if any) that either:

(i) are not in conflict with those provisions of this Agreement and are agreed by the Parties at the appropriate operational level (which, in the event of doubt, is the CEO Southern DHB and the [Vice Chancellor/COO] of the University); or

(ii) are in conflict with those provisions of this Agreement and are approved by the JRC.

Provisions automatically incorporated by reference

6.3 The provisions of this Agreement that are deemed to be incorporated into every Specific Agreement in accordance with clause 6.2(d) are:

(a) clause 3.2 (principles);
(b) clause 3.3 (primary objectives);
(c) clause 3.4 (effective collaboration);
(d) clauses 5.5 and 5.6 (consultation at operational levels);
(e) clause 5.11 and 5.12 (conflicts of interest);
(f) clause 9 (legal relationship); and
(g) clause 10 (dispute resolution).

Variation of existing formal agreements

6.4 Any existing formal arrangement of the kind referred to in clause 3.5(c) shall be deemed to be varied, from the date of this Agreement, in accordance with clauses 6.2 and 6.3.

Cross-referencing

6.5 Each Specific Agreement shall record that it is entered into pursuant to this Agreement.

Other content of Specific Agreements

6.6 Subject to this clause 6, each Specific Agreement shall set out or incorporate it by reference the agreed rights, obligations and processes that are specific to the subject matter of that Specific Agreement.

7. AFFILIATION

7.1 Subject to the approval of the Council of the University, the DHB shall be entitled to be formally recognised as affiliated to the University as a proper place for the conduct of clinical education and practice in a specified discipline and for the conduct of research and training.
7.2 The parties shall work together to establish and record the legal and other requirements that apply to the DHB obtaining and retaining affiliation to the University.

7.3 The affiliation of the DHB under this clause 7 is an important feature of this Agreement. The DHB shall, once so approved, be entitled to represent itself to third parties as affiliated with the University.

7.4 In addressing the requirements of affiliation, the parties shall recognise that teaching involves clinical practice, education and assessment.

7.5 Affiliation shall terminate at the expiry or termination of this Agreement.

8. ACCESS TO FACILITIES

8.1 University personnel and students shall be afforded facilities for teaching, training and research work at the DHB in accordance with access arrangements that are in place at the date of this Agreement or such additional or replacement arrangements as may be subsequently determined in accordance with this Agreement.

8.2 Members of the DHB who are approved by the CEO or nominee of the DHB shall be offered facilities for teaching, training and research work at the University in accordance with access arrangements that are in place at the date of this Agreement or such additional or replacement arrangements as may be subsequently determined in accordance with this Agreement.

9. LEGAL RELATIONSHIP OF THE PARTIES

9.1 Neither Party shall have the authority to bind the other Party in any way and neither Party shall hold itself as representing the other Party.

9.2 This Agreement does not override any legal right or obligation that either Party may have by law to carry out its lawful powers and functions.

9.3 Nothing in this Agreement is intended to limit or affect the independence of each party or each party’s ability to act to fulfil its own legal functions and obligations.

9.4 Nothing in this Agreement shall be interpreted as constituting either Party the partner, agent or trustee of the other Party or to create any trust.

10. DISPUTE RESOLUTION

Local Dispute Notice

10.1 Where any dispute arises concerning this Agreement or its performance (the “Dispute”), the Party initiating the Dispute shall give notice to the other Party setting out particulars of the Dispute and nominating its local representative with authority to resolve the Dispute by negotiation at a local operational level (the “Local Dispute Notice”). The other Party shall then forthwith give written notice nominating its local operational representative to resolve the Dispute by negotiation.

Dispute Escalation
10.2 If the local representatives of the Parties do not resolve the Dispute by negotiation within 14 days of receipt of the Local Dispute Notice, either Party may refer the Dispute to negotiation by senior management representatives of each Party. The Party wishing to take the Dispute to the senior management level shall give notice to the other Party setting out particulars of the Dispute and nominating its senior management representative with authority to resolve the Dispute by negotiation at the senior management level (the “Dispute Escalation Notice”). The other Party shall then forthwith give written notice nominating its senior management representative to resolve the Dispute by negotiation. If no other senior management representative is nominated, the senior management representatives shall be deemed to be the CEO of the DHB and the Pro-Vice Chancellor (Health Sciences) of the University.

Further Escalation to JRC

10.3 If the senior management representatives of the Parties do not resolve the Dispute by negotiation within 14 days of receipt of the Dispute Escalation Notice, either Party may refer the Dispute to the JRC for resolution.

Mediation

10.4 If after 28 days of the operation of clause 10.3 of this Agreement the Dispute is not resolved, either Party may refer the matter to mediation and the following mediation procedure apply:

(a) the mediation shall take place in Dunedin, New Zealand;

(b) if the Parties do not agree on a mediator within 14 days, the mediator shall be nominated by the President of the New Zealand Law Society (or the President’s nominee) and the Parties shall accept that nomination;

(c) if the Dispute is settled by mediation, the Parties shall sign a copy of the terms of the settlement, which shall be binding, shall override the terms of this Agreement or the relevant Specific Agreement (as the case may be) to the extent of any conflict between the two and may be tendered in evidence in any subsequent mediation or arbitration or Court proceedings;

(d) if the Dispute is not resolved within 28 Days after the mediator has been appointed, or within any extended time agreed between the Parties, the mediation shall cease;

(e) each Party shall pay an equal share of the mediator’s fee and costs;

(f) subject to applicable law, statements made and discussions held between the Parties or between the Parties and the mediator during the mediation process shall not be admissible in any arbitration or Court proceeding without both Parties’ consent; and

(g) when mediation ceases as set out above, either party may either commence Court proceedings or seek the other Party’s agreement to refer the Dispute to arbitration.

10.5 If the Parties agree to refer a Dispute to arbitration, the arbitration shall proceed in accordance with the Arbitration Act 1996 and the following provisions:
(a) the Dispute shall be determined by a sole arbitrator;

(b) the parties "otherwise agree" under the First Schedule that:

Article 3 – in addition to the stated methods of giving notice, email transmission is also permitted to an email address notified by the other party for that purpose;

Article 11(2) – in the absence of agreement, the arbitrator (who shall not be the mediator) shall be appointed by the President of the New Zealand Law Society or the President’s nominee;

Article 26 – the arbitrator may not appoint any expert to advise except with the written consent of the parties to the Dispute.

10.6 Pending resolution of any Dispute, the parties shall continue to perform their obligations under this Agreement.

10.7 Nothing in this clause shall preclude a party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

11. REVIEW

11.1 The Parties shall review this Agreement no less frequently than every 36 months from the date of signing. The OC shall review the operation of the Agreement in the first instance and report, in accordance with clause 5.4, via the senior management representatives named in that clause (who may add their comments) to the JRC.

11.2 The undertaking of a review shall not affect the on-going scope, application and effect of this Agreement during the course of the review.

11.3 After considering the report, the JRC shall be responsible for determining any amendments to this Agreement required to achieve the objectives of the Parties.

12. TERMINATION

Termination of this Agreement

12.1 Either Party may terminate this Agreement by giving 12 months’ notice in writing to the other Party. This Agreement shall terminate on expiry of the notice period unless the parties have agreed otherwise during the notice period.

Prior consultation

12.2 Termination of this Agreement is necessarily a significant decision affecting the other Party. The Parties record their mutual expectation that termination will not occur without prior consultation in accordance with this Agreement.

Consequences of termination

12.3 Termination of this Agreement shall not affect any rights, obligations or liabilities of either
Party accrued to the date of termination.

12.4 Notwithstanding termination of this Agreement, clause 10 of this Agreement shall continue to apply in relation to any unresolved dispute as at the date of termination and to any dispute arising after the date of termination relating to any accrued right, obligation or liability of either Party.

12.5 Clauses 14.2 to 14.4 shall also continue to apply after the date of termination.

Effect on Specific Agreements

12.6 Termination of this Agreement shall not have the effect of terminating any then current Specific Agreement unless the relevant Specific Agreement provides otherwise.

13. VARIATION

13.1 Except as stated in this Agreement, the terms of this Agreement may only be modified by written agreement signed by persons authorised to sign on behalf of the respective Parties.

14. GENERAL

14.1 Neither Party may assign or otherwise dispose of the benefit of any part of its interest in this Agreement.

14.2 No delay or failure to exercise a right under this Agreement prevents the exercise of that or any other right on that or any other occasion. A waiver must be express and in writing and applies only to the right and on the occasion specified in it.

14.3 If a final decision is made by a Court or arbitrator that any term of this Agreement is unlawful and unenforceable, it shall be severed from this Agreement to the extent that it is unlawful and unenforceable and the rest of this Agreement will remain in force.

14.4 Each Party shall bear its own costs incurred in connection with the negotiation, performance and enforcement of this Agreement.

14.5 Each party acknowledges that it has received independent legal advice as to the meaning and effect of this Agreement before signing it.

14.6 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

SIGNED AS AN AGREEMENT

Signed for and on behalf of the Southern District Health Board: 

Signed for and on behalf of the University of Otago:
Carol Heatly
Chief Executive Officer

In the presence of:

(Signature)

Name (print): Kate Lilley
Occupation: CEO Office Manager

Date: 9.6.2015

Professor Harlene Hayne
Vice-Chancellor

In the presence of:

(Signature)

Name (print): Moree Watson
Occupation: PA/Administrator to the Vice-Chancellor

Date: 28.5.2015
Schedule 1

The Joint Relations Committee of Southern District Health Board and the University of Otago

Membership

Chair of the Board, Southern District Health Board
Chief Executive, Southern District Health Board
Executive Director Patient Services, Deputy CEO, Southern District Health Board
Chief Operations Officer, University of Otago
Vice-Chancellor, University of Otago
Pro-Vice-Chancellor, Health Sciences, University of Otago
Dean, Otago Medical School, Health Sciences, University of Otago
Dean, Dunedin School of Medicine, University of Otago
Chair of the Hospital Advisory Committee, Southern District Health Board
Co-Chairs of the Joint Operational Committee

Terms of Reference

To assist and advise the District Health Board and the University of Otago in respect of the terms, conditions, preparation and completion of such agreements, contracts and protocols as may be deemed necessary to ensure the implementation of their common objectives having particular regard to clinical education, training and research, the provision of health services, and the employment of professional staff for these purposes.

To provide a forum for the discussion of strategic issues, reports and the formulation of policy relating to matters of common interest and to make recommendations thereon where appropriate to the respective Chief Executives and/or governing bodies.

To establish such sub-committees or working parties as may be deemed necessary to assist in the implementation of the terms of reference set out above.

Meetings

The Committee will usually meet no less than 6 monthly on an agreed day and at an agreed time.

Ad hoc meetings will be called by the convenor at the request of one of the parties.

The Committee will be convened in alternate years by each of the parties, or as may be mutually agreed.

When a member of the Committee is unable to attend a scheduled meeting, a deputy or other nominated person may attend in his or her place.

Representation, from either party, can be invited to attend the JRC at the discretion of the CEO, Southern District Health Board and the Vice Chancellor, University of Otago.
Schedule 2
Matters to be Developed and Agreed Upon

In accordance with clause 6.1 the Parties undertake to develop further the details of the overall relationship between them which may include developing agreements in relation to the following matters and any other matters agreed on by the parties:

- Employment
- Infrastructure, property and facilities
- Research
- Teaching and clinical placements
- Health, Safety and Environmental matters
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1.3 The DHB has under its control extensive facilities and personnel which the University wishes to utilise in order to achieve its objectives. The University has under its control educational, research and training facilities, personnel and students which the DHB wishes to utilise in order to achieve its objectives.

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(i) entering into more detailed agreements relating to specific subject matter;

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in each case, taking into account the underlying purpose, principles and objectives of the

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relationship between the Parties in clause 3.

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**Consultation at operational levels**

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5.6 Neither Party shall, without first following the applicable, agreed consultation process, make significant operational changes or other significant decisions that would reasonably be considered as potentially affecting the other Party in relation to a matter covered by this Agreement or the relevant Specific Agreement, as the case may be.

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5.7 Each Party agrees to appoint representatives (to the JRC, the OC and any other relevant committee or body) capable of promoting the efficient operation of this Agreement and the underlying purpose, principles and objectives of the relationship between the Parties as described in clause 3.

**Specific University representation arrangements**

5.8 The University shall be represented by at least one of its personnel (such representative(s) to be selected by the University in consultation with DHB) in the following areas:

(a) applicable DHB medical appointments committees when dealing with the appointment of senior medical and health professional personnel to the DHB who are or who will be involved in clinical education for the University;

(b) the credentialing committee of the DHB; and

(c) the monthly strategic executive management team meeting.

**Specific DHB representation arrangements**

5.9 The DHB shall be invited to participate in:

(a) education committees established by the University of any relevant clinical discipline;

(b) committees appointing senior academic and other health personnel at the University who are or will be involved in health service delivery for the DHB; and

(c) membership or attendance (at the discretion of the University) at the executive or management group of the relevant school.
5.10 Each Party shall keep the JRC informed on an on-going basis of the details of all representative appointments of the kind referred to in clauses 5.7, 5.8 and 5.9. Any issue arising in relation to any such representative appointment shall be referred to the JRC.

Conflicts of interest

5.11 The Parties recognise that their representatives under clause 5 may have a conflict of interest. Each Party shall ensure that its representatives declare the existence and nature of any conflict of interest to the relevant committee. Such individual may continue to act as a representative while taking into account the applicable conflict of interest, subject to the approval or directions of the relevant committee.

5.12 If either Party considers that a representative of the other Party has not appropriately managed a conflict of interest, it may raise the matter directly with the other Party rather than via the relevant committee, either via senior management in the first instance or via the JRC.

Structural and operational changes

5.13 The representation arrangements in this clause 5 may be varied by written agreement if either Party reasonably considers that structural or operational changes to the other Party's organisation have affected governance in a way not foreseen by this Agreement.

6. DEVELOPMENT OF SPECIFIC AGREEMENTS

Specific Agreements

6.1 The Parties shall develop and enter into agreements regarding:

(a) the matters identified in Schedule 2;
(b) any arrangements of the kind referred to in clause 8 or other arrangements, whether current at the date of this Agreement or arising after the date of this Agreement, that are not the subject of a formal agreement; and
(c) any other matters agreed on by the Parties from time to time.

each a "Specific Agreement".

Consistency

6.2 This Agreement prevails as the founding document for ensuring the Parties' mutual expectations of their working relationship are met. To that end:

(a) each Specific Agreement must be consistent with this Agreement;
(b) any provision of a Specific Agreement that is in conflict with any provision of this Agreement shall be deemed to be of no effect unless the JRC expressly agrees otherwise;
(c) accordingly, any Specific Agreement may be made subject to the approval of the JRC either generally or in relation to any identified matter or provision;
(d) the provisions of this Agreement specified in clause 6.3 shall be deemed to be incorporated into every Specific Agreement, with such variations (if any) that either:

(i) are not in conflict with those provisions of this Agreement and are agreed by the Parties at the appropriate operational level (which, in the event of doubt, is the CEO Southern DHB and the [Vice Chancellor/COO] of the University); or

(ii) are in conflict with those provisions of this Agreement and are approved by the JRC.

Provisions automatically incorporated by reference

6.3 The provisions of this Agreement that are deemed to be incorporated into every Specific Agreement in accordance with clause 6.2(d) are:

(a) clause 3.2 (principles);

(b) clause 3.3 (primary objectives);

(c) clause 3.4 (effective collaboration);

(d) clauses 5.5 and 5.6 (consultation at operational levels);

(e) clause 5.11 and 5.12 (conflicts of interest);

(f) clause 9 (legal relationship); and

(g) clause 10 (dispute resolution).

Variation of existing formal agreements

6.4 Any existing formal arrangement of the kind referred to in clause 3.5(c) shall be deemed to be varied, from the date of this Agreement, in accordance with clauses 6.2 and 6.3.

Cross-referencing

6.5 Each Specific Agreement shall record that it is entered into pursuant to this Agreement.

Other content of Specific Agreements

6.6 Subject to this clause 6, each Specific Agreement shall set out or incorporate it by reference the agreed rights, obligations and processes that are specific to the subject matter of that Specific Agreement.

7. AFFILIATION

7.1 Subject to the approval of the Council of the University, the DHB shall be entitled to be formally recognised as affiliated to the University as a proper place for the conduct of clinical education and practice in a specified discipline and for the conduct of research and training.
7.2 The parties shall work together to establish and record the legal and other requirements that apply to the DHB obtaining and retaining affiliation to the University.

7.3 The affiliation of the DHB under this clause 7 is an important feature of this Agreement. The DHB shall, once so approved, be entitled to represent itself to third parties as affiliated with the University.

7.4 In addressing the requirements of affiliation, the parties shall recognise that teaching involves clinical practice, education and assessment.

7.5 Affiliation shall terminate at the expiry or termination of this Agreement.

8. ACCESS TO FACILITIES

8.1 University personnel and students shall be afforded facilities for teaching, training and research work at the DHB in accordance with access arrangements that are in place at the date of this Agreement or such additional or replacement arrangements as may be subsequently determined in accordance with this Agreement.

8.2 Members of the DHB who are approved by the CEO or nominee of the DHB shall be offered facilities for teaching, training and research work at the University in accordance with access arrangements that are in place at the date of this Agreement or such additional or replacement arrangements as may be subsequently determined in accordance with this Agreement.

9. LEGAL RELATIONSHIP OF THE PARTIES

9.1 Neither Party shall have the authority to bind the other Party in any way and neither Party shall hold itself as representing the other Party.

9.2 This Agreement does not override any legal right or obligation that either Party may have by law to carry out its lawful powers and functions.

9.3 Nothing in this Agreement is intended to limit or affect the independence of each party or each party's ability to act to fulfil its own legal functions and obligations.

9.4 Nothing in this Agreement shall be interpreted as constituting either Party the partner, agent or trustee of the other Party or to create any trust.

10. DISPUTE RESOLUTION

*Local Dispute Notice*

10.1 Where any dispute arises concerning this Agreement or its performance (the “Dispute”), the Party initiating the Dispute shall give notice to the other Party setting out particulars of the Dispute and nominating its local representative with authority to resolve the Dispute by negotiation at a local operational level (the “Local Dispute Notice”). The other Party shall then forthwith give written notice nominating its local operational representative to resolve the Dispute by negotiation.

*Dispute Escalation*
10.2 If the local representatives of the Parties do not resolve the Dispute by negotiation within 14 days of receipt of the Local Dispute Notice, either Party may refer the Dispute to negotiation by senior management representatives of each Party. The Party wishing to take the Dispute to the senior management level shall give notice to the other Party setting out particulars of the Dispute and nominating its senior management representative with authority to resolve the Dispute by negotiation at the senior management level (the “Dispute Escalation Notice”). The other Party shall then forthwith give written notice nominating its senior management representative to resolve the Dispute by negotiation. If no other senior management representative is nominated, the senior management representatives shall be deemed to be the CEO of the DHB and the Pro-Vice Chancellor (Health Sciences) of the University.

Further Escalation to JRC

10.3 If the senior management representatives of the Parties do not resolve the Dispute by negotiation within 14 days of receipt of the Dispute Escalation Notice, either Party may refer the Dispute to the JRC for resolution.

Mediation

10.4 If after 28 days of the operation of clause 10.3 of this Agreement the Dispute is not resolved, either Party may refer the matter to mediation and the following mediation procedure apply:

(a) the mediation shall take place in Dunedin, New Zealand;

(b) if the Parties do not agree on a mediator within 14 days, the mediator shall be nominated by the President of the New Zealand Law Society (or the President’s nominee) and the Parties shall accept that nomination;

(c) if the Dispute is settled by mediation, the Parties shall sign a copy of the terms of the settlement, which shall be binding, shall override the terms of this Agreement or the relevant Specific Agreement (as the case may be) to the extent of any conflict between the two and may be tendered in evidence in any subsequent mediation or arbitration or Court proceedings;

(d) if the Dispute is not resolved within 28 Days after the mediator has been appointed, or within any extended time agreed between the Parties, the mediation shall cease;

(e) each Party shall pay an equal share of the mediator’s fee and costs;

(f) subject to applicable law, statements made and discussions held between the Parties or between the Parties and the mediator during the mediation process shall not be admissible in any arbitration or Court proceeding without both Parties’ consent; and

(g) when mediation ceases as set out above, either party may either commence Court proceedings or seek the other Party’s agreement to refer the Dispute to arbitration.

10.5 If the Parties agree to refer a Dispute to arbitration, the arbitration shall proceed in accordance with the Arbitration Act 1996 and the following provisions:
(a) the Dispute shall be determined by a sole arbitrator;

(b) the parties "otherwise agree" under the First Schedule that:

Article 3 – in addition to the stated methods of giving notice, email transmission is also permitted to an email address notified by the other party for that purpose;

Article 11(2) – in the absence of agreement, the arbitrator (who shall not be the mediator) shall be appointed by the President of the New Zealand Law Society or the President’s nominee;

Article 26 – the arbitrator may not appoint any expert to advise except with the written consent of the parties to the Dispute.

10.6 Pending resolution of any Dispute, the parties shall continue to perform their obligations under this Agreement.

10.7 Nothing in this clause shall preclude a party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

11. REVIEW

11.1 The Parties shall review this Agreement no less frequently than every 36 months from the date of signing. The OC shall review the operation of the Agreement in the first instance and report, in accordance with clause 5.4, via the senior management representatives named in that clause (who may add their comments) to the JRC.

11.2 The undertaking of a review shall not affect the on-going scope, application and effect of this Agreement during the course of the review.

11.3 After considering the report, the JRC shall be responsible for determining any amendments to this Agreement required to achieve the objectives of the Parties.

12. TERMINATION

Termination of this Agreement

12.1 Either Party may terminate this Agreement by giving 12 months’ notice in writing to the other Party. This Agreement shall terminate on expiry of the notice period unless the parties have agreed otherwise during the notice period.

Prior consultation

12.2 Termination of this Agreement is necessarily a significant decision affecting the other Party. The Parties record their mutual expectation that termination will not occur without prior consultation in accordance with this Agreement.

Consequences of termination

12.3 Termination of this Agreement shall not affect any rights, obligations or liabilities of either
Party accrued to the date of termination.

12.4 Notwithstanding termination of this Agreement, clause 10 of this Agreement shall continue to apply in relation to any unresolved dispute as at the date of termination and to any dispute arising after the date of termination relating to any accrued right, obligation or liability of either Party.

12.5 Clauses 14.2 to 14.4 shall also continue to apply after the date of termination.

Effect on Specific Agreements

12.6 Termination of this Agreement shall not have the effect of terminating any then current Specific Agreement unless the relevant Specific Agreement provides otherwise.

13. VARIATION

13.1 Except as stated in this Agreement, the terms of this Agreement may only be modified by written agreement signed by persons authorised to sign on behalf of the respective Parties.

14. GENERAL

14.1 Neither Party may assign or otherwise dispose of the benefit of any part of its interest in this Agreement.

14.2 No delay or failure to exercise a right under this Agreement prevents the exercise of that or any other right on that or any other occasion. A waiver must be express and in writing and applies only to the right and on the occasion specified in it.

14.3 If a final decision is made by a Court or arbitrator that any term of this Agreement is unlawful and unenforceable, it shall be severed from this Agreement to the extent that it is unlawful and unenforceable and the rest of this Agreement will remain in force.

14.4 Each Party shall bear its own costs incurred in connection with the negotiation, performance and enforcement of this Agreement.

14.5 Each party acknowledges that it has received independent legal advice as to the meaning and effect of this Agreement before signing it.

14.6 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

SIGNED AS AN AGREEMENT

Signed for and on behalf of the Southern District Health Board: 

Signed for and on behalf of the University of Otago:
Carol Heatly  
Chief Executive Officer

In the presence of:

Signature

Name (print): Kate Lilley  
Occupation: CEO Office Manager

Date: 9.6.2015

Professor Harlene Hayne  
Vice-Chancellor

In the presence of:

Signature

Name (print): Moree Watson  
Occupation: PA to the Vice- Chancellor

Date: 28.5.2015
Schedule 1
The Joint Relations Committee of Southern District Health Board and the University of Otago

Membership

Chair of the Board, Southern District Health Board
Chief Executive, Southern District Health Board
Executive Director Patient Services, Deputy CEO, Southern District Health Board
Chief Operations Officer, University of Otago
Vice-Chancellor, University of Otago
Pro-Vice-Chancellor, Health Sciences, University of Otago
Dean, Otago Medical School, Health Sciences, University of Otago
Dean, Dunedin School of Medicine, University of Otago
Chair of the Hospital Advisory Committee, Southern District Health Board
Co-Chairs of the Joint Operational Committee

Terms of Reference

To assist and advise the District Health Board and the University of Otago in respect of the terms, conditions, preparation and completion of such agreements, contracts and protocols as may be deemed necessary to ensure the implementation of their common objectives having particular regard to clinical education, training and research, the provision of health services, and the employment of professional staff for these purposes.

To provide a forum for the discussion of strategic issues, reports and the formulation of policy relating to matters of common interest and to make recommendations thereon where appropriate to the respective Chief Executives and/or governing bodies.

To establish such sub-committees or working parties as may be deemed necessary to assist in the implementation of the terms of reference set out above.

Meetings

The Committee will usually meet no less than 6 monthly on an agreed day and at an agreed time.

Ad hoc meetings will be called by the convenor at the request of one of the parties.

The Committee will be convened in alternate years by each of the parties, or as may be mutually agreed.

When a member of the Committee is unable to attend a scheduled meeting, a deputy or other nominated person may attend in his or her place.

Representation, from either party, can be invited to attend the JRC at the discretion of the CEO, Southern District Health Board and the Vice Chancellor, University of Otago.
Schedule 2
Matters to be Developed and Agreed Upon

In accordance with clause 6.1 the Parties undertake to develop further the details of the overall relationship between them which may include developing agreements in relation to the following matters and any other matters agreed on by the parties:

- Employment
- Infrastructure, property and facilities
- Research
- Teaching and clinical placements
- Health, Safety and Environmental matters