

JONAH LOMU LEGACY TRUST

PARTIES

NEW ZEALAND RUGBY PLAYERS ASSOCIATION INC.

(the Settlor)

AND

**DAVID OLIVER JONES, DOUGLAS MATHEW WILSON,
JOHN GORDON PHIPPS AND MICHAEL NIKO JONES**

(the Trustees)

**Jones Young
Lawyers Corporate advisers Strategists
Auckland**

JONAH LOMU LEGACY TRUST

DEED dated the _____ day of _____ 2015

PARTIES

- 1 **NEW ZEALAND RUGBY PLAYERS ASSOCIATION INC. (“Settlor”)**

- 2 **DAVID OLIVER JONES of Auckland, Solicitor, DOUGLAS MATHEW WILSON of Hamilton, Chartered Accountant, JOHN GORDON PHIPPS of Auckland, Funds Manager AND MICHAEL NIKO JONES of Auckland, Businessman (“Trustees”)**

BACKGROUND

- A The Settlor wishes to make provision for the benefit of certain beneficiaries by creating the trusts provided for in this Deed.

- B The Settlor has accordingly paid or caused to be paid into the joint names of the Trustees the sum of \$10.00 (receipt of which is acknowledged by the Trustees) **TO BE HELD** by the Trustees together with any further sums or other assets acquired by or vested in the Trustees for the benefit of the beneficiaries referred to in this Deed.

- C The Trustees have consented to become the Trustees of the Trust Fund upon the trusts and with and subject to the powers and discretions set out or implied in this Deed.

COVENANTS

1 INTERPRETATION

- 1.1 **Definitions:** In this Deed the following terms have the following meanings except to the extent that they may be inconsistent with the context:

“**Appointors**” means the person or persons having the power of appointment of Trustees pursuant to clause 9.1;

“**child**”, “**children**” and “**remoter issue**” includes those who are adopted or conceived by artificial means as well as those who are natural born;

“**Date of Final Distribution**” means:

- (a) the date which is one day less than 80 years after the date of this Deed and the perpetuity period applicable to this Deed for the purposes of the Perpetuities Act 1964 is specified accordingly; or

- (b) such earlier date as the Trustees may in their absolute and uncontrolled discretion by deed appoint;

“Discretionary Beneficiaries” means:

- (a) the Final Beneficiaries;
- (b) any child or remoter issue of any Final Beneficiaries;
- (c) any other person (including a company or trust) nominated as a Discretionary Beneficiary by the Trustees by deed revocable or irrevocable.

“Final Beneficiaries” means **DHYREILLE KIOLE LOMU** and **BRAYLEY SIONA LOMU**, the children of Jonah Tali Lomu and Nadine Atele Amiria Lomu;

“Financial Year” means any year (or in the first year, such shorter period) as ends either on the 31st day of March next following or such other date in each year acceptable to the Inland Revenue Department as the Trustees may elect;

“Trust” means the trust constituted by this Deed;

“Trustees” means the trustees for the time being of the Trust whether original, additional or substituted;

“Trust Fund” means:

- (a) the sum of \$10.00 and any other property transferred by the Settlor to the Trustees and directed to be held on the trusts contained in this Deed and the property and investments from time to time representing the same; and
- (b) any further property, whether real or personal, acquired by the Trustees for the purposes of the Trust from any source and in any manner, including the moneys and investments from time to time representing such property and the income from such property;

“Trust Period” means the period from the date of this Deed until the Date of Final Distribution.

1.2 General construction: In interpreting this Deed the following rules must be applied unless the context otherwise requires:

- (a) Headings to clauses are for reference only and are not an aid in interpretation;
- (b) References to statutory provisions will be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time;

- (c) References to clauses are to clauses of this Deed;
- (d) References to currency are to New Zealand currency;
- (e) Reference to a party are to a party to this Deed and include that Party's personal representatives, successors in title and permitted assigns;
- (f) All periods of time include the day on which the period commences and also the day on which the period ends;
- (g) Words importing the plural include the singular and vice versa and words importing gender import all genders;
- (h) Any obligation not to do something will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- (i) All warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one person will be deemed to have been given or entered into jointly and severally.

2 **DECLARATION OF TRUST**

- 2.1 The Settlor **DIRECTS AND DECLARES** and the Trustees **ACKNOWLEDGE AND DECLARE** that the Trustees shall stand possessed of the Trust Fund upon the trusts and with the powers and discretions set out or implied in this Deed.

3 **NAME OF TRUST**

- 3.1 The Trust established will be known and referred to as the ***JONAH LOMU LEGACY TRUST*** or such other name as the Trustees determine from time to time.

4 **DISTRIBUTIONS OF CAPITAL AND INCOME DURING THE TRUST PERIOD**

- 4.1 **Distributions:** The Trustees may at any time during the Trust Period:
 - (a) pay or apply all or any part of the capital and/or income of the Trust Fund to or for such one or more of the Discretionary Beneficiaries who are then living or in existence; and
 - (b) appropriate all or any part of the capital and/or income of the Trust Fund to or for such one or more of the Discretionary Beneficiaries who are then living or in existence contingently upon the reaching of a specified age, or on the happening of a specified event.

4.2 **General Provisions for Distributions:** The following general provisions apply to any and all payments, applications and appropriations of capital and/or income made by the Trustees pursuant to clause 4.1 (“Distributions”):

- (a) **Reason for Distributions:** All Distributions to a Discretionary Beneficiary must be, in the opinion of the Trustees, for the personal support, maintenance, comfort, well being, education, advancement in life or otherwise for the benefit of that Discretionary Beneficiary. The Trustees are not bound by the limitations contained in section 41 of the Trustee Act 1956;
- (b) **Trustees’ Discretion:** All Distributions are at the absolute discretion of the Trustees and no Discretionary Beneficiary has any right to or interest in all or any part of the Trust Fund otherwise than pursuant to the exercise of such discretion. Any Distribution made by the Trustees may be made:
 - (i) to or for such one or more of the Discretionary Beneficiaries as are then living or in existence to the exclusion of the other or others of them and, if to or for more than one, in equal or unequal shares; and
 - (ii) on such terms and conditions as the Trustees may decide;
- (c) **Contingency Failure:** If any income or capital of the Trust Fund is appropriated by the Trustees for a Discretionary Beneficiary upon a contingency, and the contingency is not fulfilled or becomes incapable of fulfilment, all income or capital so appropriated shall be added to and form part of the capital of the Trust Fund;
- (d) **Trusts Continue after Appropriation:** When any part of the Trust Fund has been appropriated to any particular Discretionary Beneficiary, it will continue to remain subject to the powers conferred upon the Trustees by this Deed (so far as the nature and circumstances will permit) as if no such appropriation had taken place until the same has been absolutely transferred to or by the direction of such Discretionary Beneficiary;
- (e) **Date of Final Distribution:** All property comprised in any appropriation made by the Trustees must vest absolutely before the Date of Final Distribution;
- (f) **Income Not Received:** The Trustees may at any time appropriate to one or more of the Discretionary Beneficiaries all or any part of the income derived or to be derived from the Trust Fund during any Financial Year whether or not such income has been received by the Trustees as at the date of such appropriation.

5 CAPITALISATION OF INCOME

5.1 Any income of the Trust Fund in any Financial Year not distributed pursuant to clause 4 during that Financial Year, or within 6 months of the end of that Financial Year, will be accumulated and any income so accumulated will be added to and form

part of the capital of the Trust Fund, and will then become subject to the powers and discretions set out in this Deed in respect of the capital of the Trust Fund.

6 DISTRIBUTIONS ON DATE OF FINAL DISTRIBUTION

6.1 **Accounting on Date of Final Distribution:** The Trustees may upon any Distribution pursuant to clause 4 to or for any Discretionary Beneficiary who is also a Final Beneficiary, direct in writing that the value (as determined by the Trustees) of all or any part of the property being so dealt with is to be taken in to account in ascertaining the share of that Discretionary Beneficiary on the Date of Final Distribution. Following such direction, any such Discretionary Beneficiary shall not share in the Trust Fund upon the Date of Final Distribution without that value being brought into account.

6.2 Distributions:

- (a) Subject to any direction given by the Trustees pursuant to clause 6.1, the Trustees shall hold such of the capital and income of the Trust Fund as may remain on the Date of Final Distribution upon trust for such of the Final Beneficiaries as are then living and, if more than one, as tenants in common in equal shares.
- (b) Should any Final Beneficiary die prior to the Date of Final Distribution leaving a child, children or remoter issue who are living on the Date of Final Distribution then such child, children or remoter issue shall take as tenants in common in equal shares the share that their parent would have taken in the Trust Fund pursuant to clause 6.2(a) had that parent been living on the Date of Final Distribution.
- (c) If there are no beneficiaries alive to take a vested interest in the Trust Fund on the Date of Final Distribution pursuant to the preceding provisions of this clause 6.2, then the Trustees shall hold such of the capital and income of the Trust Fund as may then remain to pay the same to such charitable organisation or organisations as the Trustees shall select.

6.3 Alienation of Expectancy: If the Trustees know that any Final Beneficiary:

- (a) is an undischarged bankrupt immediately before the Date of Final Distribution; or
- (b) without the Trustees' consent has entered into (and immediately before the Date of Final Distribution is still subject to) or is attempting to enter into:
 - (i) any proposal to creditors or any arrangement or composition with creditors; or
 - (ii) any assignment or charge of that person's expectant interests,

that Final Beneficiary shall be deemed to have died before the Date of Final Distribution for the purposes of clause 6.2.

7 PAYMENTS TO PARENT OR GUARDIAN

7.1 The Trustees may pay all or any part of the Trust Fund to the parent, guardian or any other person having the care of or responsibility for any Discretionary Beneficiary who is a minor without being bound to see to the application of such payments.

8 NUMBER OF TRUSTEES

8.1 **Number:** Except as provided in clause 8.3, the number of Trustees will be at least 3.

8.2 **No sole Trustee:** Notwithstanding anything contained or implied in this Deed, if at any time there is only one Trustee (other than a sole corporate trustee), no power or discretion conferred on the Trustees by law or by this Deed, other than that of appointing a new Trustee, will be exercised by the sole Trustee until such time as an additional Trustee has been appointed.

8.3 **Corporate Trustee:** If an incorporated company is appointed a trustee, that company may be the sole trustee.

9 APPOINTMENT, REMOVAL & RETIREMENT OF TRUSTEES

9.1 **Appointors:** The statutory power of appointment of new trustees will be vested in the trustees.

9.2 **Appointors' Powers:** The Appointors shall have power:

(a) acting unanimously:

(i) to appoint at any time or times an additional trustee or trustees of all or any of the trusts in this Deed;

(ii) to appoint any retiring or retired Trustee or any other person at any time or times as advisory trustee;

(iii) to appoint a new trustee or trustees outside the jurisdiction of the New Zealand courts;

(iv) to appoint themselves or any of themselves to be a trustee of all or any of the trusts in this Deed; and

(b) acting by majority, to remove any trustee. If the removal of a trustee or trustees will result in the number of continuing trustees being reduced below 3, this power of removal shall be exercisable if followed by the appointment of

a new trustee or new trustees so that there will be at least three trustees of the Trust (except as provided in clause 8.3).

9.3 **Transfer of Trust Assets:** To facilitate the appointment, removal and retirement of Trustees, each Trustee irrevocably appoints the Appointors (excluding an Appointor referred to in clause 9.7) to be their attorney in their name to do all such acts and sign all documents necessary to vest, transfer and assign all assets, investments or funds for the time being constituting the Trust Fund.

9.4 **Exercise of Powers:** Exercise of the Appointors' powers shall always be by deed (revocable or irrevocable).

9.5 **Terms of Appointment:** Each appointment of a new Trustee:

- (a) shall take effect as provided in the instrument of appointment; and
- (b) may be conditional to take effect on a future date or upon the occurrence of a future event.

9.6 **Retirement:** Any Trustee is entitled to retire by notice in writing delivered to the Appointors. The retiring Trustee shall cease to hold office from the date of delivery of such notice.

9.7 **Vacation of Office:** the office of a trustee is vacated if the person holding that office:

- (a) becomes mentally incapable in terms of the Protection of Personal and Property Rights Act 1988;
- (b) is an undischarged bankrupt; or
- (c) is convicted of a criminal offence punishable by imprisonment of one year or more.

10 TRUSTEES' MEETINGS

10.1 **Meetings of Trustees:** The Trustees may meet together for the dispatch of business, adjourn or otherwise regulate their meetings as they think fit. A quorum for meetings shall be a majority of the Trustees. Meetings may be held in person, or by electronic communication (for example, video conference, teleconference, skype or similar in which every participant can be heard) or a combination of both.

10.2 **Majority Decision of the Trustees:** Decisions of the Trustees as to the exercise of any of their powers, authorities or discretions shall be by majority.

10.3 **Resolution in Writing:** A resolution in writing signed by all the Trustees for the purpose of becoming an entry in the minute book will be as valid and effectual as if it had been passed at a meeting of the Trustees and for that purpose that resolution

may be contained in one document or in several documents in like form each signed by one or more Trustees.

10.4 Records and Accounts: The Trustees shall:

- (a) do or procure to be done, all things required of them in order to deal with receipts and payments including but not by way of limitation, the opening and operating of bank accounts, authorisation of persons to draw and endorse cheques, instructions regarding the custody, disposal, discharge, sale or purchase of instruments, securities and property in connection with the Trust, including the variations and revocation of any such instructions;
- (b) cause proper minutes of all resolutions and proceedings of all meetings to be kept and entered into a book provided for that purpose; and
- (c) cause to be kept a complete record of all other matters, information or data necessary or expedient for the proper and efficient working of the Trust.

11 TRUSTEES' POWERS

11.1 General: To achieve the objects of the Trust the Trustees shall have in the administration, management and investment of the Trust Fund all the rights, powers and privileges of a natural person. Subject always to the trusts imposed by this Deed, the Trustees may deal with the Trust Fund as if the Trustees were the absolute owners of and beneficially entitled to the Trust Fund. Accordingly, in addition to any specific powers vested in the Trustees by law, in dealing with the Trust Fund or acting as Trustees of the Trust, the Trustees may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever including, without limitation, exercising unrestricted powers to borrow and raise money, giving securities and guarantees, including guarantees for the benefit of any of the beneficiaries, and appointing an attorney or attorneys.

11.2 Investment Discretion: In the exercise of the powers and discretions vested in the Trustees by law or by this Deed, the Trustees may acquire any property or retain or deal with any property which from time to time comprises the whole or part of the Trust Fund notwithstanding that any act or omission by the Trustees in the exercise of those powers and discretions would be or could be contrary to the principles governing the investment of trust funds set out in the Trustee Amendment Act 1988, this clause being a "contrary intention" as that phrase is defined by Section 13D of that Act.

11.3 Trustee Investment Committee:

- (a) The Trustees shall appoint a Trustee Investment Committee which will comprise that number of members (each a Member) determined by the Trustees from time to time. Each Member must be a Trustee of the Trust. The initial Members shall be David Oliver Jones, John Gordon Phipps and Michael Niko Jones.

- (b) The business of the Trustee Investment Committee is to review, discuss and make recommendations to the Trustees that relate to the investment of the Trust Fund in accordance with the Investment Policy adopted by the Trustees.
- (c) The Trustees must not make any investment of the Trust Fund, realise any investment of the Trust Fund or make any material decisions relating to any investment of the Trust Fund other than in accordance with the recommendation of the Trustee Investment Committee in accordance with this clause.
- (d) The Trustee Investment Committee is required to provide reasons for any investment recommendations which they make and may take into account or omit to take into account such matters as they in their absolute discretion think appropriate when making investment recommendation.
- (e) Meetings of the Trustee Investment Committee may be convened as frequently as the Members may determine. Meetings may be by telephone, audio, audio and visual means or any other reasonable means.
- (f) A quorum for any meeting of the Trustee Investment Committee will be all of the Members.
- (g) Recommendations of the Trustee Investment Committee shall be made by unanimous agreement of the Members.
- (h) The Trustee Investment Committee shall keep minutes of each Trustee Investment Committee meeting.
- (i) In the absence of a meeting of the Trustee Investment Committee, a recommendation in writing signed by all Members (in counterparts), will be as valid and effectual as if it had been made at a duly convened meeting of the Trustee Investment Committee.
- (j) The Trustees may from time to time appoint the Trustee Investment Committee as the attorney of the Trustees to implement an investment recommendation or recommendations of the Trustee Investment Committee approved by the Trustees.

11.3 **Amendment of this Deed:** The Trustees may alter or add to the terms of this Deed provided that no such alteration or addition shall be valid if it is in any material way contrary to the intent of the Settlor expressed or implied herein.

12 TRUSTEES DEALING WITH OR FOR THE BENEFIT OF BENEFICIARIES

12.1 Without in any way limiting any of the powers and discretions vested in the Trustees by law or by this Deed, the Trustees may:

- (a) sell, lend or lease any property of the Trust Fund on any terms to any Discretionary Beneficiary;

- (b) for the benefit of any Discretionary Beneficiary, give any guarantee (of a value not greater than 10% of the net realizable assets of the Trust without the prior unanimous approval of the Trustees), either alone or jointly with any other person, and give security in support of, or in place of, any such guarantee over any of the property of the Trust Fund; and
- (c) sell, lend or lease any property of the Trust Fund to or enter into any dealing or financial arrangement on any terms whatever with the trustees of any trust or estate of which any Discretionary Beneficiary for the time being is a beneficiary (contingent or otherwise).

13 EXCLUSION OF BENEFICIARY

- 13.1 Any person who is a Discretionary Beneficiary may by deed signed by himself, herself or itself and delivered to the Trustees declare himself, herself or itself to be excluded from the class of Discretionary Beneficiaries forever or for a stated period, but without prejudice to the accrued beneficial entitlement (if any) of that person as at the date of such declaration. As from the date of such declaration the rights of that person shall be modified accordingly.

14 RESOLUTION OF DISPUTES AND UNCERTAINTIES

- 14.1 **Disputes between Beneficiaries:** The Trustees may determine all questions arising with reference to this Deed, the Trust Fund and the administration of the Trust Fund in the case of any dispute or difference between the persons beneficially interested.
- 14.2 **Settlement of Accounts:** The Trustees may agree and settle accounts with all persons, firms or companies liable to account to the Trustees and to compromise all questions relating to the Trust Fund and to grant effectual receipts, discharges and releases.
- 14.3 **Advice of Counsel:** The Trustees may take and act on the opinion of any barrister or solicitor practising in New Zealand, whether in relation to the interpretation of this Deed or any other document or any statute or as to the administration of the trusts of this Deed without being liable for any act done by them in accordance with such opinion.

15 CONFLICT OF INTERESTS

- 15.1 **Trustees entitled to act notwithstanding conflicts:** Any Trustee shall be entitled to act as such and to exercise all of that Trustee's powers and discretions notwithstanding that:
 - (a) such Trustee is associated as a director, or otherwise in a private capacity, or as trustee of any other trust, with any company or other person to which the

Trustees sell or lease any property forming part of the Trust Fund, or in which the Trustees hold or wish to acquire shares, securities or other rights as part of the Trust Fund, or with which the Trustees otherwise deal as trustees of the Trust;

- (b) any Trustee may be a trustee of any other trust to or from which the Trustees propose to sell or purchase shares, securities or other rights or property or with which the Trustees otherwise deal as trustees of the Trust;
- (c) the interest or duty of such Trustee in any particular matter may conflict with his or her duty to the Trust Fund to or any Discretionary Beneficiary; or
- (d) such Trustee is personally purchasing or taking on lease any property forming part of the Trust Fund, or personally selling any property to become part of the Trust Fund, or is otherwise dealing with the Trust Fund in a personal capacity as well as that of a trustee.

15.2 Trustees may act in other capacities: Any Trustee may:

- (a) act as a director, officer or employee of, or consultant to, any company the shares, securities or other rights of which comprise part of the Trust Fund or as a director, officer or employee of, or consultant to, any subsidiary or associated company of any such company; and
- (b) retain any remuneration which the Trustee may receive as such director, officer, employee or consultant, notwithstanding any rule of law or equity to the contrary, or that the votes or other rights attached to any such shares, securities or other rights were or may have been instrumental, either alone or in conjunction with other votes or rights in securing such appointment as director, officer, employee or consultant.

15.3 Conduct of Business in which a Trustee has an interest: Each Trustee must enter in the Interests Register maintained by the Trust any interest which he or she may have in relation to the business of the Trust from time to time. A Trustee interested in an item of business of the meeting of the Trust must absent himself or herself from the meeting during the conduct of that business, and may not vote on the matter.

16 LIMITATION OF TRUSTEES' LIABILITY

16.1 No Trustee being an individual will be liable for any loss suffered to the Trust Fund or by any Discretionary Beneficiary arising from any act or omission of the Trustees or any of the Trustees if that act or omission is not attributable to the Trustees' or any Trustee's own dishonesty or to the wilful commission or omission by them or any of them of an act when that commission or omission is known by the Trustees or the relevant Trustee to be a breach of trust. No Trustee shall be bound to take any proceedings against a co-trustee for any breach or alleged breach of trust committed by such co-trustee.

17 TRUSTEES' INDEMNITY

- 17.1 Subject to clause 16, the Trustees shall be completely indemnified out of the Trust Fund for any liability they may incur arising in any way out of or in connection with acting or purporting to act as Trustees.

18 PROFESSIONAL TRUSTEES

- 18.1 Any Trustee or advisory trustee of the Trust being engaged in any profession, business or trade, may act in that capacity in connection with the affairs of the Trust, and will be entitled to charge and be paid all reasonable and proper charges for all services rendered, business transacted, responsibility involved, 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, including acts which a Trustee, not being in that particular profession, business or trade, could have done personally. The Trustees may not engage a Trustee to act in relation to the business of the Trust in the absence of an estimate of the likely costs to be incurred in carrying out the engagement having been first approved by the Trustees.

19 PAYMENT OF TRUST EXPENSES

- 19.1 All expenses of administering the Trust and the Trust Fund may be paid out of either the capital or income of the Trust Fund as the Trustees in their absolute discretion decide.

20 RESETTLEMENT

- 20.1 **Power to Resettle:** The Trustees may at any time during the Trust Period resettle by deed all or any part of the Trust Fund upon trust in any manner which in the opinion of the Trustees is for the benefit of any Discretionary Beneficiary, including resettlement upon any trust of which such Discretionary Beneficiary is a beneficiary provided that such resettlement does not transgress the rule against perpetuities.

21 ADMINISTRATION

- 21.1 **Governing Law:** This Trust will be governed by and construed in accordance with the laws of New Zealand.
- 21.2 **Change of Governing Law:** The Trustees are empowered to change the governing law at any time by resolution in writing to that effect. The Trustees may transfer to any new Trustee or Trustees of all or any of the trusts in this Deed appointed outside the jurisdiction of the New Zealand Courts all or any of the property subject to such trusts.

- 21.3 **Receipts:** In respect of any payment made to any corporation, charitable, educational or benevolent body or institution, the receipt of the secretary, treasurer or proper officer of that corporation, body or institution is a full discharge to the Trustees for that payment and the Trustees are not bound to see to the application of the payment.
- 21.4 **Counterpart execution:** this Deed may be executed and exchanged in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is to be deemed to be an original, but all of which together are to constitute a binding and enforceable Deed.