



Template letter to employees offering share options

User notes

This letter is intended for use with our template share option deed (see the share options section of the templates page on our website) and it is to be sent to employees who are to be offered share options.

This letter only applies to an offer to employees under the exclusion for employee share purchase schemes set out in the Financial Markets Conduct Act 2013 (FMCA).

Please do not use this letter, or our template share option deed, if your offer is not covered by the share purchase scheme exclusion under the FMCA.

To qualify for the employee share purchase scheme exclusion under the FMCA, the company must meet the following requirements:

- ▲ the offer must be made as part of the employee's remuneration, or in connection with their employment or engagement
- ▲ raising funds must not be the primary purpose of the offer
- ▲ the company must limit the number of shares and/or options issued under the scheme in any 12 month period to 10% of the total number of shares on issue.

The company must also provide limited disclosure documents to each employee containing:

- ▲ a description of the scheme and its terms and conditions
- ▲ the company's latest annual financial statements and latest annual report, with a statement that (if applicable) the financial

statements are not audited. Alternatively, the company may state that the employee has a right to receive those documents free of charge from the company

- ▲ a warning statement in the form prescribed under the FMCA.

This letter includes the disclosures listed above, and must be provided to the employee before the employee accepts the offer.

Employees need to be aware of the tax consequences of exercising share options and should take independent advice before accepting options.

using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted.

If you delete any clauses or schedules, remember to cross reference check the document.

[To be printed on the letterhead of the Company]

[Insert employee's name]

[Insert employee's address]

Date

Dear [employee]

Offer of employee share options and limited disclosure documents

We value your ongoing contribution as an employee of [insert name of Company] (**Company**) and in connection with that role the Company wishes to grant to you options to purchase shares in the Company (**Options**).

Number of Options

The Company offers you, on the terms set out in this letter and the share option deed attached to this letter (**Deed**), the following Options:

Number of Options	Exercise price per share
[Number of Options]*	[\$[Exercise price]**

*This will equate to approximately [Insert]% of the shares in the Company as at the date of this letter.

**As may be adjusted by the terms of the Deed.

Description of the employee share purchase scheme

The terms of the issue of the Options are set out in the Deed, but in broad terms:

- ▲ the Options will vest over time in accordance with the vesting schedule attached to the Deed;
- ▲ subject to the terms of the Deed, the Options will be exercisable between the date an Option vests and [insert expiry date]; and
- ▲ if you cease to be employed by the Company, any Options that have not vested at the date you cease to be employed will be cancelled immediately.

The shares issued following the exercise of the Options will be ordinary shares of the Company and will be subject to the provisions of [the shareholders' agreement relating to the Company and] the Company's constitution, a copy of which may be downloaded from the company's office website <http://www.business.govt.nz/companies/>. The key rights and limitations attaching to the shares are:

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[User note: The key terms described below are based on the key rights and limitations attaching to shares as set out in the Kindrik Partners standard constitution. If you have a different constitution, review that constitution and insert applicable terms attaching to the shares here.]

- ▲ the right to:
 - vote at meetings of the Company
 - share equally in dividends on a per share basis
 - share equally in the distribution of the surplus assets of the Company on a per share basis
 - receive notice of and attend meetings of shareholders
- ▲ the shares will be subject to drag-along rights, which means if the number of shareholders specified in the Company’s constitution wish to sell their shares in the Company, you will also be required to sell your shares;
- ▲ the shares will have tag-along rights, which means that if the number of shareholders specified in the Company’s constitution wish to sell their shares in the Company, you may also choose to sell your shares at the same time; and
- ▲ the shares will be subject to pre-emption rights, which means that before you can sell them to any person, they will need to be offered to the other shareholders of the Company.

If when you exercise the Options the Company has a shareholders’ agreement which all shareholders are party to, you will be required to execute a deed of accession to that shareholders’ agreement before your shares will be issued.

We suggest that you obtain independent legal and financial advice to ensure that you understand the implications of the Options and their potential effect on you, including the financial and taxation implications of the Options. In particular:

- ▲ the Options do not give you the rights attaching to shares in the Company (these are available to shareholders only, i.e. you will only have these rights if the Options are exercised and shares are issued to you); and
- ▲ any benefits you get under the Options may be subject to tax, for which you will be liable.

Annual report and financial statements

[User note: The regulations under the FMCA require the company to provide the employee with a copy of the company’s latest annual report prepared under the Companies Act (or any other enactment) or overseas law (if any), and financial statements with a statement that (if

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applicable) the financial statements are not audited. Alternatively, the company may state that the employee has a right to receive those documents free of charge from the company. To comply with these regulations, please use one of the following options:]

[Option 1: If the annual report and financial statements will be provided to the employee with this letter] [Please find enclosed with this letter a copy of the Company's latest annual report, and a copy of the relevant financial statements of the Company. [Please note that these statements have not been audited or reviewed by an auditor.]]

[Option 2: If the employee will be given the right to receive the annual report and financial statements separately] [You have the right to receive from the Company at your request, free of charge, a copy of the Company's latest annual report, and a copy of the relevant financial statements of the Company. [These financial statements have not been audited or reviewed by an auditor]. You can obtain a copy of these documents by electronic means [by emailing [insert email address] to request that a copy be emailed to you].]

What you will need to do

Please contact [insert] if you wish to discuss any aspect of this letter or the Deed.

If you agree to the Company granting you the Options on the terms set out in this letter (including the warning set out on the following page) and the Deed, please countersign the **attached** copy of this letter, and the Deed, and return them to me before [insert date].

Yours sincerely

[Insert name]

[Insert title]

[User note: Under the FMCA regulations, the company must provide the employee with the warning statement below – please do not remove this warning statement]

Warning

This is an offer of options to purchase ordinary shares in [*insert name of Company*] (**Company**). If you purchase ordinary shares by exercising these options, those shares give you a stake in the ownership of the Company. You may receive a return if dividends are paid.

If the Company runs into financial difficulties and is wound up, you will be paid only after all creditors [*and all holders of preference shares*] have been paid. You may lose some or all of your investment.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors to make an informed decision.

The usual rules do not apply to this offer because it is made under an employee share purchase scheme. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.

Please be aware that:

- ▲ the shares in the Company are not listed;
- ▲ the trading market for the investment is likely to be limited and you may not be able to sell it; and
- ▲ the arrangements under which you may redeem or sell your investment, and the restrictions on your ability to do so, are contained in the constitution of the Company [*and the current shareholders' agreement relating to the Company*].

Acceptance

Having read this letter (including the above warning) and the Deed I accept the grant of the Options on the terms set out in this letter and the Deed and I agree to be bound by this letter and that Deed.

[*Insert name of employee*]

Date: