TEMPLATE SHARE OPTION PLAN LETTER ACCOMPANYING SHARE OPTION PLAN TERMS – USER NOTES

This letter is intended for use with our template share option plan terms (see the resources section of 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**).

Do not use this letter, or our share option plan terms, if your offer is not covered by the employee 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
- the primary purpose of the offer must not be to raise funds for the company
- 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 otherwise gaining any benefit from being granted options, and should take independent advice before accepting options.

The Companies Act 1993 requires the board of the company to resolve, and certify, certain mandatory statements before options are granted. Our template ESOP resolutions include these mandatory statements – see the *ESOP* section of the templates page of our website.

USING THIS TEMPLATE

The ***User Notes*** and the statements in the footer (all marked in red) are included to assist you to prepare this document. They are for reference only. You should delete all user notes and the

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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 deleted the brackets.

If you delete any clause or schedule, remember to cross reference check the document.

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[*to be printed on Company letterhead and marked "confidential"*]

[*insert recipient's name*]
[*insert recipient's address*]

Date

Dear [*recipient*]

OFFER OF SHARE OPTIONS AND LIMITED DISCLOSURE DOCUMENTS

We value your ongoing contributions as an [*employee/director/consultant*] of [*insert*] Limited (**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 and exercise price

The number of Options offered to you and the exercise price of those Options are set out in Part A of Schedule 1 to this letter. The terms and conditions of the Options are set out in this letter and the document titled *Share Option Plan Terms* attached as Schedule 2 to this letter (**Terms**).

Description of the share purchase scheme

[User note: The description below should be updated to match the Share Option Plan Terms.]

The terms and conditions of the Options are set out in more detail in the Terms, but broadly:

- the Options will vest over time in accordance with the vesting schedule attached as Part B of Schedule 1 of this letter;
- subject to the terms of this letter and the Terms, the Options will be exercisable between the date an Option vests and the [*seventh*] anniversary of the date the Options are granted to you; and
- if you cease to be employed by or provide services to the Company, any Options that have not vested at the date you cease to be employed or provide services will be cancelled immediately, and you will have [*3 months*] after your leaving date to exercise any vested Options (otherwise they will lapse). ***[User note: Delete the following sentence if this principle was not included in the Share Option Plan Terms.]*** [*The Company also has the option of repurchasing all vested Options and any shares issued to you on exercise of any Options, at fair market value*].

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 entered into by all of the shareholders of the Company (**Shareholders' Agreement**) and*] the Company's constitution

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(**Constitution**), a copy of which may be downloaded from the Companies Office website http://www.business.govt.nz/companies/. The key rights and limitations attaching to the ordinary shares, as at the date of this letter, are:

- 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 may be subject to drag-along rights, which means if the number of shareholders specified in the [*Shareholders' Agreement or*] Constitution wish to sell their shares in the Company, you will also be required to sell your shares;
- the shares may be subject to tag-along rights, which means that if the number of shareholders specified in the [*Shareholders' Agreement or*] Constitution wish to sell their shares in the Company, you may also choose to sell your shares at the same time; and
- the shares may 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.

[*When you exercise the Options you will be required to execute a deed of accession to the Shareholders' Agreement before your ordinary shares will be issued.*]

Seek independent advice

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 in connection with 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 recipient with a copy of the company's latest annual report prepared under the Companies Act 1993 (or any other enactment) or overseas law (if any), and financial statements, together with a statement that (if applicable) the financial statements are not audited. Alternatively, the company may state that the recipient 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:***]

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

[***Option 2: If the recipient 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 financial statements of the Company for the most recently completed accounting period. [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 me if you wish to discuss any aspect of this letter or the Terms.

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 Terms, please countersign the **attached** copy of this letter, have your signature witnessed, and return it to me before [*insert date*].

Yours sincerely

[*insert name*]
[*insert title*]

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Acceptance

WARNING

This is an offer of options to purchase ordinary shares in [*insert*] Limited (**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*].

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

[*Subject to, and with effect on the date any shares are issued to me following exercise of any Options, I agree as an entitled person for the purposes of section 107(1)(c) of the Companies Act 1993 to any share purchase made by the Company under the Terms.*] [***User note: Delete this paragraph if clauses 6.2 to 6.7 of the template share option plan terms are not included in that document.***]

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SIGNED by **[*INSERT NAME OF RECIPIENT*]**)
in the presence of:)

Signature of Witness

[*Insert name of recipient*]

Name of Witness

Occupation of Witness

Address of Witness

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SCHEDULE 1

Part A: Recipient and Option Details

NAME	[*insert recipient name*]
ADDRESS	[*insert address*]
EMAIL ADDRESS	[*insert email address*]
NUMBER OF OPTIONS (AS MAY BE ADJUSTED BY THE TERMS)	[*insert*]
EXERCISE PRICE	$[*insert*] per share
COMPANY CONTACT	[*insert address*]
COMPANY ADDRESS	[*insert address*]
COMPANY EMAIL ADDRESS	[*insert email address*]
ISSUE DATE	[*insert date*]
EXPIRY DATE	The [*seventh*] anniversary of the Issue Date.

Part B: Vesting Schedule

NUMBER OF OPTIONS	**VESTING DATES**
[*insert*]% of the Options	[*The [first anniversary] of the Issue Date] (**Initial Vesting Period**).*]
[*insert*]% of the Options	[*At the end of each [insert] month period following the end of the Initial Vesting Period.*]

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SCHEDULE 2

OPTION TERMS

[Attached]

[User note: This letter is intended for use with our template share option plan terms (see the ESOP section of the templates page on our website). Attach the final form of your share option terms here as Schedule 2.]

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