TEMPLATE DEED OF INDEMNITY – USER NOTES

This deed of indemnity is intended for use when a company wishes to indemnify a director for:

- liability arising from their acts or omissions as a director of the company
- costs incurred in defending or settling claims brought against them in their capacity as a director of the company.

The indemnities provide protection to the maximum extent allowed under the Companies Act 1993.

The company may only provide the indemnity contemplated by this deed if it is expressly authorised by its constitution to do so. The Kindrik Partners template constitution (see the governance section of the templates page of our website) includes the required authorisation.

If the company is indemnifying more than one director, the company should enter into a separate deed of indemnity in respect of each director.

The company must update its interests register to record any indemnity given to any director of the company.

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 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
- the whole clause is optional and you need to consider whether to include it, based on your 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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DEED OF INDEMNITY

DATE

PARTIES

1 [***INSERT FULL NAME OF COMPANY***] **LIMITED**, company number [*insert company number*] (**Company**)

2 [***INSERT FULL NAME***] (**Director**)

BACKGROUND

The Company has agreed to indemnify the Director from the liabilities and costs set out in this deed, subject to the terms of this deed.

SIGNED AND DELIVERED

SIGNED AND DELIVERED as a DEED for)
[*INSERT NAME OF COMPANY*] LIMITED by:)

Director	Director
Print full name	Print full name

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SIGNED AND DELIVERED as a DEED by)
[***INSERT NAME OF DIRECTOR***] in the)
presence of:)

Name of witness	[*Insert name of Director*]
Signature of witness	
Occupation of witness	
Address of witness	

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TERMS OF THIS DEED

1 INTERPRETATION

1.1 In this deed:

a a reference to:

i a **clause** is to a clause in this deed;

ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;

iii a **statute** includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;

iv a **party** is a reference to a party to this deed, and includes that party's permitted assigns; and

v **$** or **dollars** is to New Zealand currency;

b **including** and similar words do not imply any limit;

c the **headings** in this Deed are for convenience only and have no legal effect;

d the **singular** includes the plural and vice versa; and

e terms and expressions that are defined in the Companies Act 1993 (**Act**) have the same meaning in this deed as in the Act.

2 INDEMNITY

2.1 **Indemnity:** The Company indemnifies the Director for any costs incurred by the Director in any proceeding:

a that relates to liability for any act or omission in the Director's capacity as a director of the Company or of a Related Company; and

b in which judgment is given in the Director's favour, or in which the Director is acquitted, or which is discontinued.

2.2 **Further indemnity:** The Company further indemnifies the Director in respect of:

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a liability to any person other than the Company or of a Related Company for any act or omission in the Director's capacity as a director of the Company or of a Related Company; and

b costs incurred by the Director in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability, or liability in respect of a breach of the duty specified in section 131 of the Act owed to the Company or to a Related Company.

2.3 **Limitation:** The indemnities in clauses 2.1 and 2.2 do not apply to the extent that any such costs or liabilities are recovered by the Director under any insurance policy.

1 CLAIMS

1.1 **Handling of Claims:** If any claim is made or any proceedings are brought or threatened to be brought against the Director (**Claim**), as a result of which the Director may seek to have recourse to any indemnity provided to the Director by the Company under this deed, the Director must notify the Company in writing of the existence of the Claim as soon as practicable and must:

a make available to the Company and its advisors all such information, books and records; and

b co-operate with the Company in respect of that Claim,

as the Company or its advisors may require.

1.2 **Settlement of Claims:** The Director must not settle or compromise any Claim for which the Director may be entitled to be indemnified under this deed unless the Company has given its prior written consent to the proposed settlement or compromise.

2 ACCESS TO INFORMATION

2.1 **Access to Information:** If any Claim is made against the Director in respect of which any indemnity provided to the Director by the Company under this deed applies, the Company must make available to the Director and the Director's advisors all such information, books and records of the Company relating to the subject matter of the Claim as are reasonably necessary to enable the Director to defend that Claim (**Information**).

2.2 **Limitation:** The Company is not obliged to provide Information to the Director under clause 2.1 if the Director is in breach of the Director's obligations under clause 1 of this deed.

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3 PAYMENT ON DEMAND

The Company must pay to the Director on demand, all monies which may be claimed or demanded by the Director under the indemnities contained in this deed, provided that the Director first provides the Company with evidence to the reasonable satisfaction of the Company that the Company is required to pay the sums demanded.

4 CONTINUING INDEMNITY

The indemnities given under this deed are irrevocable without the consent of the Director and continue in effect if the Director has resigned, retired or been otherwise removed as a director of the Company or of a Related Company.

5 GENERAL

5.1 **Confidentiality:** The Director must keep this deed, its terms, the Information and any other information it receives about the Company and its business in connection with this deed (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the Company except to the extent that:

a disclosure is required by law;

b the relevant information is already in the public domain;

c it is reasonably required to obtain professional advice; or

d it is reasonably required for the purpose of defending a Claim.

5.2 **Notices:** All notices and communications given under this deed must be in writing and must be delivered personally, sent by post or sent by email to the address or email address notified from time to time by the parties. Any notice given under this deed will be deemed to be validly given:

a in the case of delivery, when received;

b in the case of posting, on the second day following the date of posting; or

c if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered,

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provided that any notice received after 5 pm on a business day or on any day that is not a business day will be deemed to have been received on the next business day.

5.3 **Entire agreement:** This deed contains all of the terms agreed between the parties relating to the matters dealt with in this deed and supersedes all prior discussions and agreements covering the subject matter of this deed.

5.4 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to this deed.

5.5 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.

5.6 **No assignment:** No party may assign any of its rights or obligations under this deed without the prior written consent of the other party.

5.7 **Costs:** Except as otherwise provided in this deed, the parties will meet their own costs relating to the negotiation, preparation and implementation of this deed.

5.8 **Partial invalidity:** If any provision of this deed becomes invalid or unenforceable to any extent, the remainder of this deed and its application shall not be affected and shall remain enforceable to the greatest extent permitted by law.

5.9 **Signature:** This deed may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same deed. A party may enter into this deed by signing and sending (including by email) a counterpart copy to the other party.

5.10 **Governing law and jurisdiction:** This deed is governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

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