TEMPLATE RESOLUTIONS AUTHORISING THE GRANTING OF SHARE OPTIONS – USER NOTES

There are two ways to authorise the issue of shares:

- by a resolution (and certificate) of directors; or
- by the agreement of all entitled persons (essentially all shareholders).

If the company can easily obtain the agreement of all of its shareholders to the issue of shares, we recommend using that method. This is because:

- it avoids public disclosure of the terms of issue. Under the directors' resolution procedure each director who resolves to issue the shares must also sign a certificate describing the consideration (i.e. price per share) and terms of issue of the shares. This certificate needs to be filed at the Companies Office, and therefore becomes a public document; and
- there is no need to obtain a separate waiver from shareholders of any applicable statutory pre-emptive rights (see note below).

This resolution assumes that the share issue will be approved by the directors. If the share issue is to be approved by the shareholders, use the template **shareholders' resolution to approve share issues** in the resources section of our website.

Check whether your constitution dis-applies the pre-emptive rights set out in section 45 of the Companies Act 1993. Under the Companies Act 1993, unless stated otherwise in a company's constitution, the existing shareholders in the company have pre-emptive rights that mean any new shares in the company must be offered to those shareholders before they can be issued to third parties. If existing shareholders do have pre-emptive rights, these rights will need to be waived by those shareholders before any new shares can be issued. If the share issue is to be approved by agreement of all shareholders, the waiver is included in the template and no separate waiver of pre-emptive rights will be required.

Under section 117 of the Companies Act 1993, the issue of new shares that rank equal, or in priority, to existing shares, requires approval by a special resolution of shareholders (i.e. a 75% majority), unless the constitution of the company expressly provides otherwise. The constitution should be checked for such a provision and, if one is not provided or if the company does not have a constitution, the company must obtain the approval of shareholders holding at least 75% of the voting rights before any shares can be issued. If the company has issued more than one class of shares (e.g. ordinary and preference shares), separate special resolutions of each group of shareholders who will be affected by the share

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issue will be required. The Kindrik Partners template constitution (see the *governance* section of the templates page of our website) provides that this section 117 approval is not required.

Under New Zealand securities legislation, a company may not issue (or offer to issue) shares, options or other securities without providing detailed disclosure information to the new shareholders unless the company is satisfied that an exception to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to that offer or issue.

See our **NZ securities law – tech company capital raising guide** (in the resources section of our website) for an explanation of the relevant exclusions. A company must ensure that an exclusion applies before it offers to issue, or issues, shares.

Consider whether this transaction qualifies as a major transaction for the company for the purposes of section 129 of the Companies Act 1993. In general terms, major transactions involve assets or obligations which are greater in value than half of the company's existing assets. So, if the share issue will raise an amount that is greater than 50% of the value of the company's assets, the issue will need to be approved as a major transaction by the company's shareholders. See the template **shareholders' resolution to approve a major transaction** under the resources section of our website for the relevant resolutions if necessary.

This resolution assumes that directors will sign a written resolution, rather than approve the share issue at a board meeting. The written resolution must be signed by all directors of the company.

The directors who sign the directors' resolution will also need to sign a directors' certificate that complies with section 47 of the Companies Act 1993. The form of that certificate is set out after the template resolutions below.

The company must notify the Registrar of Companies of the share issue within 10 working days after the shares are issued. This can be done online via the Companies Office 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 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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RESOLUTIONS OF THE DIRECTORS OF [*INSERT COMPANY NAME*]

(**Company**)

in accordance with sections 42 and 47 of the Companies Act 1993

DATE

NOTED:

A [*The Company wishes to issue shares on the basis set out below to [insert name] (**Investor**)*].

[Or – delete as applicable]

[*The Company wishes to enter into a subscription agreement, substantially in the form circulated with this resolution (**Subscription Agreement**) with [insert name] (**Investor**).*]

B ***[User note: These resolutions assume that the Company has only one class of shares (i.e. for example, that there are no preference shares) and that the shares to be issued have the same rights as the other shares issued by the Company.]*** The Company will issue, and the Investor will subscribe for, an aggregate of [*insert number of shares*] shares in the Company (**Shares**), at a price per share of $[*insert price per share*] and having the same rights as the other shares in the Company.

C ***[User note: Include paragraph C if any director of the Company qualifies as being interested in the transaction under section 139 of the Companies Act 1993. The Company's register of directors' interests should be updated to record this transaction after this resolution (or the Subscription Agreement, if there is one) has been signed. Delete paragraph C if no directors are interested in the transaction.]*** [*The following directors have declared their interest in the subject matter of this resolution for the purposes of sections 140 and 141 of the Companies Act 1993:*]

DIRECTOR	NATURE OF INTEREST
[*insert name of director*]	In [*his/her*] capacity as [*a director of and/or shareholder in*] [*insert entity*], an Investor and recipient of [x] Shares.
[*insert name of director*]	In [*his/her*] capacity as [*an Investor and recipient of [x] Shares.*]

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RESOLVED THAT:

1 The issue of the Shares to the Investor on substantially the terms and conditions set out [*below*] **[*Or – delete as applicable*]** [*in the Subscription Agreement*] is approved.

2 Any director of the Company be authorised to execute any documents [*including the Subscription Agreement*], and take all such actions, as he or she may determine to be necessary or advisable to give effect to the entry into, and transactions contemplated by, [*these resolutions*] **[*Or – delete as applicable*]** [*the Subscription Agreement*] (except that any two directors are authorised to execute any documents required to be executed as a deed).

3 The terms of issue of the Shares are as set out in [*these resolutions*] **[*Or – delete as applicable*]** [*the Subscription Agreement*] [*and the constitution of the Company*].

[*User note: Delete the reference to the constitution if the Company does not have a constitution.*]

4 **[*User note: Use paragraph 4 if the Company is receiving cash in exchange for the shares. If the shares are being issued in return for non-cash consideration, use paragraphs 5 and 6 and delete paragraph 4.*]** [*The consideration for the issue of the Shares is $[insert total investment amount].*]

5 **[*User note: Use paragraphs 5 and 6 if the Company is receiving non-cash consideration in exchange for the shares. In general terms, the directors must be satisfied that the value of the non-cash consideration being provided by the Investor matches the value of the shares being issued. If the shares are being issued in return for cash, use paragraph 4 and delete paragraphs 5 and 6.*]** [*The reasonable present cash value of the consideration for the issue of the Shares is $[insert present cash value]. The basis for assessment of the reasonable present cash value is [insert].*]

6 [*The present cash value of the Shares is not less than the amount to be credited for the issue of the Shares.*]

7 After taking account of all relevant factors, in the opinion of the directors the consideration for, and the terms of issue of, the Shares are fair and reasonable to the Company and to all existing shareholders.

8 The Investor has no right to subscribe for, or be issued, any Shares unless the directors are satisfied (acting reasonably) that an exception to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to the issue of the Shares.

[*User note: Please see the "NZ securities law – tech company capital raising" guide in the resources section of our website for an explanation of the relevant exclusions. A*]

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company must ensure that an exclusion applies before it offers to issue, or issues, shares.]

9 The Company, in accordance with [*clause* [*insert reference to clause under which the Board can issue shares*] *of the Company's constitution and*] section 42 of the Act, issue the Shares to the Investor in the numbers and at the price per share set out in the table below and on the terms and conditions set out in [*these resolutions*] **[*Or – delete as applicable*]** [*in the Subscription Agreement*].

INVESTOR	**PRICE PER SHARE**	**NO. OF SHARES**	**TOTAL CONSIDERATION**
[*insert name of investor*]	$[*price per share*]	[*insert number of shares*]	[*insert the total price to be paid for the shares*]

10 The share register and Companies Office records of the Company be updated to reflect the issue of the Shares to the Investor upon completion of any issue of Shares to the Investor.

SIGNED

_____ _____

[*Insert director name*] [*Insert director name*]

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TEMPLATE DIRECTORS' CERTIFICATE IN RELATION TO THE ISSUE OF SHARES – USER NOTES

Each director who signs the resolution approving the issue of shares must also sign a certificate in the form below, which complies with section 47 of the Companies Act 1993.

This certificate is not required if the share issue is being authorised by a unanimous resolution of shareholders.

Under section 47(3) of the Companies Act 1993, the Company must upload a signed copy of this certificate to the Companies Office website within 10 working days after it is signed.

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DIRECTORS CERTIFICATE OF [*INSERT COMPANY NAME*]

(**Company**)

in accordance with section 47(2) of the Companies Act 1993

DATE

NOTED:

A The Company wishes to issue shares on the basis set out below to [*insert name*] (**Investor**).

B **[*User note: This certificate assumes that the Company has only one class of shares (i.e. for example, that there are no preference shares) and that the shares to be issued have the same rights as the other shares issued by the Company.*]** The Company will issue, and the Investor will subscribe for, an aggregate of [*insert number of shares*] shares in the Company (**Shares**), at a price per share of $[*insert price per share*] and having the same rights as the other ordinary shares in the Company.

THE UNDERSIGNED DIRECTORS OF THE COMPANY CERTIFY AS FOLLOWS:

1 The terms of issue of the Shares are as set out in this certificate [*and the constitution of the Company*].

[*User note: Delete the reference to the constitution if the Company does not have a constitution.*]

2 **[*User note: Use paragraph 2 if the Company is receiving cash in exchange for the shares. If the shares are being issued in return for non-cash consideration, use paragraphs 3 and 4 and delete paragraph 2.*]** [*The consideration for the issue of the Shares is $[insert total investment amount]*].

3 **[*User note: Use paragraphs 3 and 4 if the Company is receiving non-cash consideration in exchange for the shares. If the shares are being issued in return for cash, use paragraph 2 and delete paragraphs 3 and 4. In general terms, the directors must be satisfied that the value of the non-cash consideration being provided by the Investor matches the value of the shares being issued.*]** [*The reasonable present cash value of the consideration for the issue of the Shares is $[insert present cash value]. The basis for assessment of the reasonable present cash value is [insert].*]

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4 [*The present cash value of the Shares is not less than the amount to be credited for the issue of the Shares*.]

5 After taking account of all relevant factors, in the opinion of the directors the consideration for, and the terms of issue of, the Shares are fair and reasonable to the Company and to all existing shareholders.

Signed by all directors of the Company who voted in favour of the issue of the Shares:

[*Insert director name*]	[*Insert director name*]

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