TEMPLATE RESOLUTIONS FOR CONVERTIBLE INSTRUMENTS – USER NOTES

Under New Zealand securities legislation, a company may not issue (or offer to issue) shares, options or other securities (including a convertible instrument) without providing detailed disclosure information to the new shareholders. A company can avoid those disclosure requirements if one of the exclusions set out in the Financial Markets Conduct Act 2013 applies. Please see our *NZ securities law – tech company capital raising* guide for an explanation of the relevant exceptions. A company must ensure that one of the exclusions described in that guide applies before it agrees to take an investment amount that is convertible to shares.

Under the Companies Act 1993, unless stated otherwise in a company's constitution, existing shareholders in the company have pre-emptive rights which means that any new shares in the company must be offered to existing shareholders before they can be issued to third parties. If existing shareholders have pre-emptive rights, these rights will need to be waived by those shareholders before any shares can be issued to the investor upon conversion of the investment amount.

Under section 117 of the Companies Act 1993, the issue of new shares upon conversion of the investment amount 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 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.

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 investment amount 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 our **template resolutions to approve a major transaction** in the resources section of our website for the relevant resolutions if necessary.

This resolution assumes that directors will sign a written resolution, rather than hold a board

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meeting. As such, it must be signed by all directors of the company.

The directors who sign this resolution will also need to sign a directors' certificate that complies with section 49 of the Companies Act 1993 (the form of that certificate follows the resolutions below).

The company must notify the Registrar of Companies of the issue of any new shares upon conversion of the investment amount 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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RESOLUTION OF THE DIRECTORS OF [*INSERT COMPANY NAME*]

(**Company**)

DATE

NOTED:

A The Company wishes to enter into a [*kiwi keep investment simple security agreement/kiwi startups agreement for future equity/convertible shareholder loan agreement*] substantially in the form circulated with this resolution (**Agreement**) under which [*insert name of investor*] (**Investor**) will provide an investment amount of $[*insert amount*] convertible to shares in the Company in accordance with the terms and conditions set out in the Agreement (**Investment Amount**).

B ***[User note: Include paragraph B 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 the Agreement has been signed. Delete paragraph B 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*] which is an Investor and potential recipient of shares in accordance with the Agreement.
[*insert name of director*]	In [*his/her*] capacity as [*an Investor and potential recipient of shares in accordance with the Agreement*.]

RESOLVED THAT:

1 In accordance with section 49 of the Companies Act 1993 (**Act**):

a the consideration for the Agreement and the rights in respect of the issue of shares in the Company on conversion of the Investment Amount (**Conversion Shares**) is the provision of $[*insert amount*] by the Investor to the Company;

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b the consideration for which the Conversion Shares will be issued is the conversion of the Investment Amount on the terms set out in the Agreement; and

c the terms of the right to subscribe for the Conversion Shares and the terms on which the Conversion Shares will be issued are as set out in the Agreement.

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

3 The Agreement is conditional on the Company being satisfied that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to the Investor's entry into the Agreement.

[*User note: Please see the "NZ securities law – tech company capital raising" guide in the "capital raising" section of the guides page of our website for an explanation of the relevant exclusions. A company must ensure that one of the exclusions described in that guide applies before it offers to issue, or issues, shares to that person.*]

4 The Company, in accordance with [*clause* **[*insert reference to clause under which the Board can issue securities*]** *of the Company's constitution and*] section 49 of the Act, enter into the Agreement and carry out all transactions contemplated by the Agreement, including any issue of the Conversion Shares to the Investor in accordance with the terms of the Agreement.

5 Any director is authorised to execute for and on behalf of the Company the Agreement and any other documents, and to take all actions as may be considered to be necessary or desirable to give effect to the entry into, and transactions contemplated by, the Agreement (except that any two directors are authorised on behalf of the Company to execute any such documents required to be executed as a deed).

SIGNED

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

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TEMPLATE DIRECTORS' CERTIFICATE IN RELATION TO CONVERTIBLE NOTES – USER NOTES

Each director who signs the resolution approving the execution of the convertible instrument must also sign a certificate in the form below, which complies with section 49 of the Companies Act 1993.

Under section 49(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 49(2) of the Companies Act 1993

DATE

NOTED:

The Company wishes to enter into a [*kiwi keep investment simple security agreement/kiwi startups agreement for future equity/convertible shareholder loan agreement*] substantially in the form circulated with this certificate (**Agreement**) under which [*insert name of investor*] (**Investor**) will provide an investment amount of $[*insert amount*] convertible to shares in the Company in accordance with the terms and conditions set out in the Agreement.

THE UNDERSIGNED DIRECTORS OF THE COMPANY CERTIFY AS FOLLOWS:

1 In accordance with section 49 of the Companies Act 1993:

a the consideration for the right to subscribe for shares in the Company on conversion of the Investment Amount (**Conversion Shares**) is the provision of $[*insert amount*] by the Investor to the Company;

b the consideration for which the Conversion Shares will be issued is the conversion of the Investment Amount on terms set out in the Agreement; and

c the terms of the right to subscribe for the Conversion Shares and the terms on which the Conversion Shares will be issued are as set out in the Agreement.

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2 After taking account of all relevant factors, in the opinion of the directors, the consideration for, and the terms of issue of, the right to subscribe for and the issue of Conversion 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 Agreement:

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

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