TEMPLATE SUBSCRIPTION AGREEMENT – USER NOTES

This agreement is for use when a company wishes to issue shares to a new investor. It sets out the mechanics for the investment and the warranties to be given by the company. This is a simple subscription agreement, intended for use when a company is raising capital from "friends and family" type investors. It provides for investment for ordinary shares in the company in one tranche, with no conditions.

There are no standard terms that apply to investment by "friends and family" investors – these types of investments can often be relatively informal and may not include the investor protection provisions required by professional investors or formal investment groups, such as angel groups. Angel groups and professional investors will have their own form of agreement. Most New Zealand angel groups use the (investor-friendly) NZVIF standard subscription and shareholders' agreement (available on NZVIF's website: http://www.nzvif.co.nz/seed-co-investment-information.html).

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. A company can avoid those disclosure requirements if it is satisfied that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to that offer or issue.

Please see our "NZ securities law – tech company capital raising" guide under the capital raising section of the guides page of our website for an explanation of the exclusions under the Financial Markets Conducts Act 2013. A company must ensure that an exclusion described in that guide applies before it offers to issue, or issues, shares.

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 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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SUBSCRIPTION AGREEMENT

DATE

PARTIES

[User note: Use the following description for each party that is a company.]

1 [***INSERT NAME OF COMPANY***] **LIMITED**, company number [*insert company number*]

[User note: Use the following description for each party that is an individual.]

2 [***INSERT***]

[User note: Use the following description for each party that is a trustee.]

3 [***INSERT***] as trustee of [*insert name of trust*]

[User note: Use the following description for the company issuing the shares.]

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

AGREEMENT

The Company agrees to issue, and the Investor agrees to subscribe for, shares in the Company on the terms contained in this Agreement.

SIGNED

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)

Signature of authorised signatory

Print full name of authorised signatory

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[User note: Use the following signature block if the Investor is a company.]

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)
)

Signature of authorised signatory

Print full name of authorised signatory

[User note: Use the following signature block if the Investor is an individual.]

SIGNED by **[*INSERT NAME OF INDIVIDUAL*]**:)
)

Signature

[User note: If the Investor is a trust, each trustee of that trust will need to sign this agreement. Use the following signature block for each party signing as trustee of a trust.]

SIGNED by **[*INSERT NAME OF TRUSTEE*]** as)
trustee of the **[*INSERT NAME OF TRUST*]**:)
)

Signature of [*Insert name of trustee*]

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TERMS OF THIS AGREEMENT

1 INTERPRETATION

1.1 **Definitions:** In this Agreement:

TERM	MEANING
Agreement	this Agreement, including the Schedules attached to it.
Business Day	Monday to Friday, other than any public holiday within the meaning of section 44 of the Holidays Act 2003 that occurs in [*insert the city where the Company is located*].
Completion	the fulfilment of the completion obligations of the parties set out in clause 5.
Completion Date	[*insert date*] or such other date as the parties agree. ***[User note: The completion date could, for example, be a specified date or a time period such as "three Business Days after the date of this Agreement". This latter option gives the Investor a chance to sort out, if necessary, any supporting evidence required by the Company to satisfy itself that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to the issue of the relevant Investor Shares (see note to clause 2) or to get its funds in place.]***
Investor	[*insert the name of the Investor*].
Investor Shares	the [*insert*] fully paid ordinary shares in the Company to be issued to the Investor, together with any additional shares to be issued to the Investor by the Company under this Agreement.
[*Shareholders' Agreement*]	[*the shareholders' agreement to be entered into between the Company and the shareholders of the Company (including the Investor) at Completion.*] ***[User note: Include this definition if the parties will enter into a new shareholders' agreement at Completion.]***
Subscription Price	$[*insert*] per Investor Share.
Tables of Shareholding	the tables set out in Schedule 1.

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1.2 **Interpretation:**

a A reference to:

i a **clause** or a **Schedule** is to a clause in or a Schedule to this Agreement;

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 **including** and similar words do not imply any limitation;

iv a **statute** includes references to that statute as amended or replaced from time to time;

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

vi **$** or **dollars** are to New Zealand currency.

b The **headings** in this Agreement are for convenience only and have no legal effect.

c The **singular** includes the plural and vice versa.

1 CONSENTS AND APPROVALS

[User note: Use the following clause 1.1if the directors will authorise the share issue in accordance with section 47 of the Companies Act. For further detail as to what is required under section 47 see "Kindrik Partners template directors' resolutions to approve share issues" under the "fund raising" section of the templates page of our website.]

1.1 **Consent to issue of Investor Shares:** The Company warrants to the Investor that, on or prior to the date of this Agreement:

a the directors of the Company have approved in accordance with sections 40 and 47 of the Companies Act 1993:

i the issue of the Investor Shares; and

ii all other issues of shares contemplated in this Agreement, and

b the shareholders of the Company have waived any rights of pre-emption relating to the issue of the Investor Shares arising under the Companies Act 1993, the constitution of the Company, any shareholders agreement relating to the Company or otherwise.

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OR

[User note: Use the following clause 1.1if the shareholders will authorise the share issue unanimously under section 107(2) of the Companies Act. For further detail as to what is required under section 107(2) see "Kindrik Partners template shareholders' resolutions to approve share issues" under the "fund raising" section of the templates page of our website.]

1.1 **Consent to issue of Investor Shares:** The Company warrants to the Investor that, on or prior to the date of this Agreement:

a all entitled persons have approved in accordance with section 107(2) of the Companies Act 1993:

i the issue of the Investor Shares; and

ii all other issues of shares contemplated in this Agreement; and

b the shareholders of the Company have waived any rights of pre-emption relating to the issue of the Investor Shares arising under the Companies Act 1993, the constitution of the Company, any shareholders agreement relating to the Company or otherwise.

2 COMPLIANCE WITH LEGISLATION

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

[User note: Please see "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.]

3 INVESTOR SHARES

3.1 **Subscription for shares:** The Company must issue, and the Investor must subscribe for the Investor Shares for the Subscription Price on the terms and conditions of this Agreement.

3.2 **Fully paid:** The Investor Shares will be fully paid up upon payment of the Subscription Price.

3.3 **Issue:** The Company must issue the Investor Shares to the Investor:

a free of all mortgages, security interests, charges, liens and other encumbrances or adverse interests; and

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b together with all rights, title and interest attaching to the shares at the time of issue.

4 COMPLETION

4.1 **Completion:** Completion of the issue of the Investor Shares must take place no later than 3 pm on the Completion Date.

4.2 **Company's obligations:** On the Completion Date, the Company must:

a issue the Investor Shares to the Investor and deliver to the Investor:

i a resolution in writing of the board of directors of the Company recording the issue of the Investor Shares and approving the entry of those shares in the Company's share register;

ii a certified copy of the Company's share register correctly updated to record the issue of the Investor Shares and reflecting the shareholdings in the Company shown in the Table of Shareholdings after the share issue has occurred;

[*User note: Include the following sub clause (iii) if it has been agreed that the Investor can appoint a director.*]

iii [*a resolution of shareholders appointing [insert] as a director of the Company;*]

[*User note: Include the following sub clause (iv) if a new shareholders' agreement is being entered into at the same time as the Investor's investment. If the constitution contains pre-emption rights on share transfers and tag-along and drag-along rights, there should be no need to have a separate shareholders' agreement for investments from friends and family investors. The "Kindrik Partners template constitution" (see the "governance" section of the templates page of our website) includes pre-emption rights and tag-along and drag-along rights.*]

iv [*the Shareholders' Agreement signed by the Company and all shareholders of the Company immediately prior to the date of this Agreement*].

4.3 **Investor's obligations:** On the Completion Date, the Investor must:

a deliver to the Company evidence sufficient to satisfy the directors of the Company that an exclusion to the information disclosure requirements of the Financial Markets Conduct Act 2013 applies in relation to the issue of the Investor Shares;

b pay the Subscription Price to the Company;

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[*User note: Insert this clause if the Investor is appointing a director.*]

c [*deliver to the Company the written consent of [insert] to act as a director of the Company*];

[*User note: Include the following if a new shareholders' agreement is being entered into at the same time as the Investor's investment.*]

d [*deliver to the Company the Shareholders' Agreement signed by the Investor*]; and

[*User note: Include the following if the Investor needs to agree to be bound by an existing shareholders' agreement.*]

e [*deliver to the Company a deed of accession to the shareholders' agreement relating to the Company signed by the Investor*].

4.4 **Interdependent obligations:** The parties' obligations at Completion are interdependent and Completion will not occur until the parties have complied with all of their obligations set out in this clause 4 and, once all such obligations have been complied with, Completion will be deemed to have occurred.

5 PAYMENTS

5.1 **Payments:** Any payment made under this Agreement is to be made:

a during normal banking hours on the due date;

b in same day cleared funds;

c without deduction, withholding or set-off (other than as provided for in this Agreement or as required by law); and

d to the bank account specified by the payee, by notice to the payer.

5.2 **Date of payment:** If the date for payment of any amount under this Agreement is not a Business Day, then the payment must be made on the next day which is a Business Day.

5.3 **Full discharge:** Payment of any amount to the account specified in clause 5.1d is a full discharge of the Investor's obligation to pay that amount.

6 WARRANTIES

6.1 **Mutual warranties:** Each party warrants to the other that the following is true as at the date of this Agreement and repeats these warranties at Completion:

a if it is a company, it is a company duly incorporated and validly existing under the laws of New Zealand;

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b it has the power, and, if it is a company, it has taken all necessary corporate action (including the passing of all resolutions), to enter into, execute and deliver, and exercise its rights and perform its obligations under, this Agreement; and

c it has validly executed and delivered this Agreement and its obligations under this Agreement are legal, valid and binding and enforceable against it in accordance with its terms.

6.2 **Company warranties:** The Company warrants to the Investor that the following is true as at the date of this Agreement and repeats these warranties at Completion:

a the capitalisation of the Company immediately following the issue of the Investor Shares will be as set out in Part A of Schedule 1, and except as set out in that schedule:

i there are no securities convertible into shares; and

ii there are no options or other entitlements to have shares, or any securities convertible into shares, issued; and

b as at the date of this Agreement, the Company has no actual or contingent liabilities greater than $[*20,000*] other than those set out in Part B of Schedule 1.

6.3 **Aggregate maximum liability:** The Company's aggregate liability to the Investor in respect of all claims under this Agreement will be limited to the total Subscription Price.

7 LOWEST PRICE

For the purposes of the financial arrangement rules in the Income Tax Act 2007, the parties agree that:

a the price payable for the Investor Shares in accordance with this Agreement is the lowest price they would have agreed for the sale and purchase of the Investor Shares on the date this Agreement was entered into, if payment would have been required in full at the time the first right in the contracted property (being the Investor Shares) was transferred;

b the price payable for the Investor Shares in accordance with this Agreement is the value of the Investor Shares; and

c they will compute their taxable income for the relevant period on the basis that the price payable for the Investor Shares includes no capitalised interest and will file their tax returns accordingly.

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8 INDEPENDENT TRUSTEES

The liability of any independent trustee under this Agreement is not an unlimited or personal liability and instead is limited to the funds from time to time belonging to the trust on behalf of which he has entered into this Agreement, in the proper course of the administration of that trust. In this clause, an **independent trustee** is any party who has signed this agreement in his capacity as the trustee of a trust and who is not a beneficiary of the trust nor has any right to, or interest in, any of the assets of the trust except in his capacity as trustee of that trust.

9 GENERAL

9.1 **Confidentiality:** Each party must keep this Agreement and information it receives about the Company and its business in connection with this Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other party 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 necessary in connection with any proposed:

i financing of that party;

ii sale of that party's interest in the Company; or

iii sale of all or part of the business of, or the shares in, that party,

and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause.

9.2 **Notices:** All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in Schedule 2 (or at such other address as notified from time to time by the party changing its address).

9.3 **Time of service:** Any notice given under this Agreement 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.

9.4 **Entire agreement:** This Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in this Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of this Agreement. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the date of this Agreement.

9.5 **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 Agreement.

9.6 **Amendment:** This Agreement may only be amended by agreement of the parties in writing.

9.7 **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.

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

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

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

9.11 **No merger:** The obligations, warranties and representations of the parties under this Agreement, to the extent not already performed at Completion, will not merge on Completion, or on the execution or delivery of any document in connection with this Agreement, but will remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.

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

9.13 **Governing law and jurisdiction:** This Agreement will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

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SCHEDULE 1

TABLES OF SHAREHOLDING, TABLE OF LIABILITIES

[User note: Insert here a capitalisation table of the Company showing the capitalisation of the Company (i.e. the shareholders and the number and percentage of shares held by each shareholder) immediately after the Investor's investment, or fill out the tables below.]

A Tables of Shareholding immediately after the issue of the Investor Shares

SHAREHOLDER NAME	NUMBER OF SHARES ON A FULLY DILUTED BASIS*	PERCENTAGE SHAREHOLDING

* Include details of all options over shares in the Company, convertible loans and any other obligations to issue shares in the Company.

B Table of Liabilities

DEBTOR	AMOUNT

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SCHEDULE 2

DETAILS FOR NOTICES

COMPANY	
Contact Name	
Company	
Address (Physical Address & PO Box)	
Email address	

INVESTOR	
Contact Name	
Company	
Address (Physical Address & PO Box)	
Email address	

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