



Template share option deed

User notes

This is a deed for use when a company wishes to issue options to purchase shares in the company to an employee. This is a simple template - there are no *good leaver/bad leaver* provisions, nor does it provide for options to vest as KPIs are achieved.

This share option deed is for use when the company wishes to issue options to an employee in reliance on the exclusion for employee share purchase schemes under the Financial Markets Conduct Act 2013 (FMCA). Please do not use this deed if your offer is not covered by the share purchase scheme exclusion under the FMCA.

Briefly, 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.

Please see our template letter (see the share options section of the templates page on our website), which is intended to cover that limited disclosure package, and should be provided to the employee before the employee accepts the offer.

The company needs to take tax and accounting advice in respect of options before adopting any form of share option scheme. Share option schemes are simple to set up but are not necessarily the most effective share scheme from a tax perspective because, generally speaking, the employee will be taxed on the difference between the exercise price and the market value of the share on the date the option is exercised.

This share option deed must be used in conjunction with a constitution that adequately deals with small minority shareholdings, including tag, drag and pre-emption rights. The template Simmonds Stewart constitution deals with these matters - see the *governance* section on the templates page of our website.

using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of 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 ensure that all square brackets have been deleted.

If you delete any clauses or schedules, remember to cross reference check the document.

SHARE OPTION DEED

DATE

PARTIES

- 1 **[INSERT] LIMITED**, company number *[insert]* (**Company**)
- 2 **[INSERT FULL LEGAL NAME]** (**Employee**)

BACKGROUND

The Company has agreed to grant to the Employee options to purchase shares in the Company on and subject to the terms of this Deed.

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

Director

Director

Print Full Name

Print Full Name

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

Signature of Witness

[Insert name of Employee]

Occupation of Witness

Address of Witness

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TERMS OF THIS DEED

1 INTERPRETATION1.1 **Definitions:** In this Deed:

Definition	Meaning
Act	the Companies Act 1993.
Board	the board of directors of the Company from time to time.
Business Day	Monday to Friday, other than any public holiday within the meaning of section 44 of the Holidays Act 2003 that occurs in <i>[insert the city where the Company is located]</i> .
Deed	this Deed, including any Schedules attached to it.
Exercise Price	<p>\$<i>[insert]</i> per share (adjusted for any of the matters referred to in clause 4).</p> <p><i>[User note: The Exercise Price is the price per share that the employee will pay when the options are exercised. This should be the market price of the share at the date of grant of the option (i.e. the date of this deed). As noted above, the employee will be liable for tax when he/she exercises or sells the option on the difference between the Exercise Price and the market price of the shares at the time the option is exercised.]</i></p>
Expiry Date	<p><i>[the [fifth] anniversary of the date of this Deed].</i></p> <p><i>[User note: This is the final date on which an employee can exercise his/her options. Consider what is appropriate for your company – consider the likely time frame for a liquidity event v/s the period during which you are comfortable having options outstanding.]</i></p>
Issue Date	the date of this Deed.
Options	the <i>[Insert]</i> options granted to the Employee in accordance with this Deed (adjusted for any of the matters referred to in clause 4), each being a right to subscribe for one ordinary Share at the Exercise Price.
Parties	the Company and the Employee.

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Definition	Meaning
Share	a share in the Company.
Vest	the right to exercise an Option which arises on the vesting date of that Option as set out in the Vesting Schedule and Vested has a corresponding meaning.
Vesting Schedule	the Schedule attached as Schedule 1.

1.2 Interpretation:

- a A reference to:
 - i a **clause** or a **schedule** is to a clause in or a schedule to this Deed;
 - ii a **person** includes bodies corporate, unincorporated associations or partnerships;
 - 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; and
 - v **\$** or **dollars** is to New Zealand currency.
- b The headings in this Deed are for convenience only and have no legal effect.
- c The singular includes the plural and vice versa.
- d If there is any conflict of meaning between the main body of this Deed and a Schedule, the main body of this Deed prevails, unless expressly stated otherwise in the Schedule.

2 ISSUE OF OPTIONS

The Company will issue the Options on the Issue Date and the Employee will accept the Options on the terms and conditions set out in this Deed.

3 VESTING AND EXERCISE OF THE OPTIONS

- 3.1 **Vesting of Options:** The Options will Vest progressively in accordance with the Vesting Schedule. Subject to clause 6, the Employee may exercise an Option that has Vested at any time during the period commencing on the date on which the Option Vested and ending on the Expiry Date.

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- 3.2 **Expiry:** Any Option that is not exercised on or prior to the Expiry Date lapses on the Expiry Date.
- 3.3 **Exercise by written notice:** An Option that has Vested may be exercised by the Employee:
- a providing at least 10 Business Days' written notice to the Board in the form set out in Schedule 2; and
 - b paying to the Company the Exercise Price in respect of each of the Options being exercised on or before the date set out in the notice provided to the Company in accordance with clause 3.3a, in cleared funds and into the nominated bank account of the Company.
- 3.4 **Failure to pay:** If the Employee fails to pay the Exercise Price in accordance with clause 3.3b, unless otherwise determined by the Board, the Employee's entitlement to those Options lapses, even though the Expiry Date of those Options may not have passed.
- 3.5 **The Employee's indemnity:** The Employee indemnifies the Company against any taxes, levies or penalties which the Company may be liable to deduct, withhold or pay by reason of the Employee being issued Shares upon the exercise of the Options.
- 3.6 **No distribution:** By holding Options, the Employee is not, except as provided in clauses 4 and 5, entitled to participate in any distribution nor any issue of Shares or other securities in or in respect of the Company other than the ordinary Shares to be issued upon the exercise of the Options under this Deed.
- 3.7 **No transfer:** The Options are personal to the Employee and are not transferable without the approval of the Board, which approval may be withheld in the Board's absolute discretion.

4 **ADJUSTMENTS**

- 4.1 **Bonus issue, consolidation or subdivision:** If there is any bonus issue, consolidation or subdivision of any Shares or any reduction or cancellation of share capital (or any similar reorganisation of the capital of the Company), the number of Options, the Exercise Price, or both will be adjusted by the Company to ensure that the economic effect of the Options remains the same.
- 4.2 **Restructure:** If there is a restructure of the Company, its share structure or its business (including the establishment of a new holding company in New Zealand or overseas for the purpose of procuring investment), the Board may cancel the Options and procure the issue of new options in the Company, a new holding company or any

other entity, if the Board acting in good faith considers that the economic effect of those new options remains substantially similar to the Options.

5 TERMS OF ISSUE OF SHARES

An ordinary Share issued as a consequence of the exercise of an Option will rank for dividends from the date it is issued and will otherwise rank equally in all respects with the other ordinary Shares of the Company then on issue. It is acknowledged that the Company may have issued or may in the future issue any other class of Shares ranking in any or all respects in priority to the ordinary Shares.

6 CANCELLATION OF OPTIONS

If the Employee ceases to be employed by the Company for any reason:

- a all Options that have not Vested as at the date that the Employee's employment ceases (**Leaving Date**) will be cancelled without compensation on that date; and
- b all Options that have Vested as at the Leaving Date must be exercised on or prior to the Expiry Date, and any Options not exercised within that period will lapse.

7 EARLY EXERCISE OF OPTIONS

7.1 Options Vest on a Liquidity Event: If:

- a the Company enters into a listing agreement with the New Zealand Stock Exchange, or other national stock exchange of similar or better standing;
- b a shareholder (or shareholders) of the Company enters into a binding agreement with a third party (or a group of associated third parties) on arms length terms under which the third party is to acquire 50% or more of the voting Shares of the Company, and that agreement becomes unconditional;
- c the Company enters into a binding agreement to dispose of assets comprising more than half the value of the Company's assets, the shareholders of the Company approve the disposition of those assets, and that agreement becomes unconditional; or
- d the Company resolves to amalgamate with any other company (whether or not it is the continuing company), in a transaction that is in substance the same as those in b and c above,

(Liquidity Event) all Options:

- e immediately Vest to the extent that they have not done so at the date of the Liquidity Event; and
- f may be exercised in the period from the date on which the Liquidity Event occurs to the date that the relevant transaction referred to in clause 7.1a to d above is completed, and any Options not exercised by that date automatically lapse.

7.2 **Options may be cash settled:** If there is a Liquidity Event, the Company may cash settle some or all of the Options by paying an Option Holder the difference between the value of an Ordinary Share as determined by the Liquidity Event and the Exercise Price for each Option being cash settled. If an Option is cash settled, the Option automatically lapses.

8 GENERAL

8.1 **Confidentiality:** Each party must keep this Deed, its terms and 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 other parties except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain; or
- c it is reasonably required 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.

8.2 **Notices:** All notices and communications given under this Deed 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 3 (or at such other address as notified from time to time by the party changing its address). 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 mail 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,

provided that any notice received after 5pm 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.

- 8.3 **Entire agreement:** This Deed contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in this Deed and supersedes and cancels all prior discussions and agreements covering the subject matter of this Deed. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Deed that is not expressly set out in this Deed, and no such representation, warranty or agreement has any effect from the date of this Deed.
- 8.4 **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.
- 8.5 **Amendments:** This Deed may only be amended by agreement of the parties in writing.
- 8.6 **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.
- 8.7 **No assignment:** No party may assign any of its rights or obligations under this Deed without the prior written consent of the other parties.
- 8.8 **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.
- 8.9 **Partial invalidity:** If any provision of this Deed becomes invalid or unenforceable to any extent, the remainder of this Deed and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 8.10 **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 each other party.
- 8.11 **Governing law and jurisdiction:** This Deed will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

SCHEDULE 1**Vesting Schedule**

Issue Date	Number of Options	Vesting Date	Expiry Date
The Issue Date	[•] of the Options issued to the Employee in accordance with clause 2 of this Deed.	<i>[The [first anniversary] of the date of this Deed]</i>	The Expiry Date.
The Issue Date	[•] of the Options issued to the Employee in accordance with clause 2 of this Deed.	<i>[The [second anniversary] of the date of this Deed]</i>	The Expiry Date.
The Issue Date	[•] of the Options issued to the Employee in accordance with clause 2 of this Deed.	<i>[The [third anniversary] of the date of this Deed]</i>	The Expiry Date.

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SCHEDULE 2

Exercise Notice

[Insert date]

The Board of Directors

[Insert name of Company]

[Insert address of Company]

Dear Board

Exercise of Options

I refer to the options granted to me by [insert name of Company] (**Company**) under the deed between the Company and me dated [insert date] (**Options**).

I give notice that I am exercising [insert number] Options on [insert date] at the exercise price of \$[to insert] per share. On or before [insert date] I will deposit \$[insert] in cleared funds into the nominated bank account of the Company, being the total exercise price for the shares.

I agree to accept the shares subject to the constitution and the current shareholders' agreement (if any) of the Company.

Yours sincerely

[Insert name of Employee]

Address:

Date:

SCHEDULE 3**Details for Notices**

Company	
Contact name	
Company	
Address (physical address & PO Box)	
Email address	

Employee	
Contact name	
Address (physical address & PO Box)	
Email address	

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