



# Agency Agreement – For Monitoring Purposes

The Sovereign in Right of New Zealand acting by and through the Chief Executive  
of the Ministry of Housing and Urban Development (*HUD*)  
AND

Housing New Zealand Corporation (*HNZ*)

**Dated this**

**day of**

**2019**

**PARTIES**

**The Sovereign in Right of New Zealand** acting by and through the Chief Executive of the Ministry of Housing and Urban Development (*HUD*)

**AND**

**Housing New Zealand Corporation** (*HNZ*)

**BACKGROUND**

- A HUD undertakes the Government's housing programme of delivering 100,000 affordable quality homes in New Zealand for first time buyers to purchase (known as *KiwiBuild*).
- B *KiwiBuild* is delivered through the *KiwiBuild* business unit in HUD.
- C A *KiwiBuild* buyer is required before the settlement of the purchase of a *KiwiBuild* Property, to sign a Deed of Covenant in favour of the Crown and agrees to do certain things including:
  - (i) to reside in the *KiwiBuild* property as their principal place of residence for a minimum of three years from the date of settlement of the purchase;
  - (ii) not to transfer the title of the property to a third party during the 3-year period; and
  - (iii) may not rent part or all of the *KiwiBuild* property to a third party.
- D *HNZ* obtains information on the sale of properties for the purpose of assessing whether conditions in Welcome Home loans and the *KiwiSaver* Homestart Grant, which *HNZ* administers, are being met by the recipients of that financial assistance.
- E HUD wishes to appoint *HNZ* as its agent to obtain information on the sale of *KiwiBuild* properties, so that HUD can monitor compliance with the Deed of Covenant conditions outlined in C(i) to(iii) above.
- F HUD acknowledges and accepts that *HNZ* contract a third party, being Information Logistics Company Limited (*InfoLog*) to supply the information on the sale of the properties, and as HUD's agent, *HNZ* will bind HUD to those contractual terms to supply information on the *KiwiBuild* properties.
- G The parties now record the agreement terms.

## OPERATIVE PROVISIONS

### 1 Definitions, interpretations and standard terms

#### 1.1 Definitions

**Agent** means Housing New Zealand Corporation or HNZ and its permitted successors and permitted assigns.

**Confidential Information** means:

- (a) The contents of this Agreement;
- (b) the street address and legal description of a KiwiBuild Property;
- (c) any information which is not public information;
- (d) all reports, records and other information passed from one party to another in accordance with this Agreement.

**Dealings** means any KiwiBuild Property:

- (a) advertised for rental (whether part or all);
- (b) advertised for sale; or
- (c) has had the title of the property transferred to a third party

which has occurred within the minimum period of three years from the date of settlement of the purchase of the KiwiBuild Property.

**HNZ** means Housing New Zealand Corporation.

**HUD** means the Ministry of Housing and Urban Development.

**InfoLog** means Information Logistics Company Limited, being the third party provider which HNZ will contract to carry out certain monitoring services.

**KiwiBuild Property** means a property which has been sold to a KiwiBuild buyer and is entered in the KiwiBuild Register.

**KiwiBuild Register** means the register of KiwiBuild dwellings maintained by the KiwiBuild business unit.

**KiwiBuild unit** means the HUD business unit which delivers the KiwiBuild Programme.

**Services** means the services to be undertaken by the Agent specified in Schedule 1.

#### 1.2 Interpretations

- (a) The masculine includes the feminine and neuter, and vice versa.
- (a) The plural includes the singular, and vice versa.

- (b) All the foregoing definitions and interpretations apply throughout the term of this Agreement unless the context requires a different construction.

## **2 Exclusive agency**

- (a) HUD appoints the Agent, during the term of this Agreement, as its exclusive monitoring agent in respect of the Services.
- (b) The Agent accepts the appointment referred to in clause 2(a).

## **3 Term**

The term of this Agreement is from the date of the Agreement until either party notifies the other of the termination by 20 working days' notice in writing. After the expiry or termination of this Agreement, the Agent will no longer undertake the Services and the Agreement shall cease on the expiry date.

## **4 HUD's Obligations**

During the term of this Agreement, HUD will fortnightly provide the Agent with Confidential Information relating to the settlement and purchase of a KiwiBuild Property including the: street address, legal description, and date of settlement and transfer, for the proceeding fortnight period.

## **5 Agent's Obligations**

- (a) During the term of this Agreement the Agent must:
  - (i) honestly and diligently provide the Services to HUD;
  - (ii) perform the Services to a high standard and in accordance with best practice;
  - (iii) comply with all relevant legislation;
  - (iv) carry out and comply with all reasonable and lawful directions given by HUD with respect to the performance of the Services; and
  - (v) otherwise cooperate in a mutually beneficial manner with HUD.

## **6 Costs**

The cost of the Services shall be \$1.00 per annum, payable by HUD.

## **7 Assignment**

The Agent may not assign or delegate any of its rights or obligations under this Agreement without the prior written permission of HUD.

## **8 Relationship Between the Parties**

Nothing in this Agreement shall be construed to:

- (a) Give either party the power to direct and control the day-to-day activities of the other; or

- (b) Constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking.

## 9 Confidentiality

- (a) The Agent agrees that information provided by HUD to the Agent pursuant to this Agreement is confidential information and shall be kept strictly confidential by the Agent at all times, unless it is available in the public domain or unless stated otherwise.
- (b) The obligation of confidentiality at clause 9(a) does not apply to:
  - (i) any disclosure of Confidential Information required by law; or
  - (ii) any disclosure of Confidential Information in a manner prescribed by government rules and or guidelines; or
  - (iii) any disclosure of Confidential Information to a Party's employees and contractors on a need-to-know-basis; or
  - (iv) any disclosure of Confidential Information on a need-to-know-basis:
    - (A) a Minister; or
    - (B) any of that Party's advisors; or
    - (C) any other government agency.


provided that any person to whom confidential information is disclosed is bound in writing by obligations no less onerous than those contained in clause 9, prior to disclosure.

- (c) If one party is required to disclose the confidential information in clause 9(b), that party shall immediately give notice and inform the other party in a manner and at a time reasonably sufficient for the other party to express its view in relation to such disclosure (which view shall be taken into account by the party required to disclose such information).
- (d) Subject to any legal requirements, each Party will give notice to the other Party if it receives a request for confidential information.
- (e) The Agent will ensure that InfoLog administers any personal information which they receive in relation to this Agreement in accordance to HUD's privacy policy and otherwise in accordance with the Privacy Principles of the Privacy Act 1993.

## 10 Reporting and Key Contacts

- (a) The Agent will provide HUD with an email report fortnightly on any notifications which HNZ has received from InfoLog, which relate to the Dealings of KiwiBuild Properties.
- (b) The key contacts for each party are:
  - (i) HUD: Alexander Cholewa, mobile s 9(2)(a) and email: FinanceAndRisk@kiwibuild.govt.nz; and
  - (ii) HNZ: Martha Williams, mobile s 9(2)(a) email: martha.williams@hnzc.co.nz.

s 9(2)(a) email:  
martha.williams@hnzc.co.nz.



## **11 Dispute resolution**

If there is dispute between the parties arising out of, or in connection with, this Agreement, neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:

- (a) The party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- (b) The parties will endeavour, in good faith, to resolve the dispute referred to in the notice by using informal dispute resolution techniques.
- (c) Resolve any dispute between officials within 10 working days of first meeting.
- (d) If unable to resolve any dispute in accordance with clause 11(b), then to escalate to the General Manager of KiwiBuild Enablement.
- (e) If unable to resolve any Dispute in accordance with clause 11(d), within 10 working days then to escalate to the DCE of KiwiBuild and the CE of HNZ.

## **12 General**

### **12.1 Variation**

A variation of this Agreement must be in writing and signed by the parties.

### **12.2 Governing law**

This Agreement is governed by the laws of New Zealand.

### **12.3 Counterparts**

This Agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this Agreement, all of which together constitute one instrument which the parties may rely on. A party who has executed a counterpart of this agreement may exchange it with another party by sending it to the other party, including by email. If requested by the other party, the sending party will promptly deliver the original by hand or post (but failure to make that delivery will not affect the validity of this Agreement).



## **SCHEDULE 1**

### **Services to be carried out by the Agent**

The Agent will:

- a. On receipt of HUD's Confidential Information in clause 4, upload the Confidential Information to the InfoLog system.
- b. Arrange for InfoLog to monitor publicly available data sources, including websites and databases, for any Dealings which relate to KiwiBuild Properties within the minimum 3-year ownership period.
- c. Will provide HUD with a fortnightly report as set out in clause 10.



**Executed as an Agreement**

**Signed for and on  
behalf of HUD:**

**Signature:**



**Name of Signatory  
(print):**

MATTHEW APPLEBY

**Title:**

FINANCE AND RISK MANAGER

**Date:**

21/05/19

**Signed in the presence of:**

**Witness Signature:**



**Name of Witness  
(print):**

Alexander Cholewa

**Title of Witness:**

Analyst - Finance and Risk.

**Signed for and on  
behalf of HNZ:**

**Signature:**

Grant Campbell

**Name of Signatory  
(print):**

Grant Campbell

**Title:**

Senior Manager Financial Operations

**Date:**

24/5/19.

**Signed in the presence of:**

**Witness Signature:**

Trupti Kumar

**Name of Witness  
(print):**

Trupti Kumar

**Title of Witness:**

Team Leader-iProcurement