**KiwiBuild Terms**

1. Defined terms, references and interpretation
   1. Defined terms

In this Schedule:

**Anticipated Marketing Date** means [*date*].

1. **Approved Pre-sale Agreement** means the form of agreement for the sale of KiwiBuild Homes approved by Kāinga Ora under clause 3.
2. **Brand Identity Guidelines** means the guidelines prepared by Kāinga Ora and provided to the Developer relating to the use of the ‘KiwiBuild’ name and Trade Marks as updated from time to time.
3. **Cancelled Sale Agreement** means an agreement entered into by the Developer to sell a KiwiBuild Home to an Eligible Purchaser or, where clause 2.4 applies, a Secondary Purchaser or Open Market Purchaser, that has been cancelled by the Developer because of purchaser default.
4. **CHP** means a community housing provider as defined in the *Public and Community Housing Management Act 1992* and registered under that Act.
5. **Development Agreement** means the Agreement for Sale and Development between Kāinga Ora (or its subsidiary) and the Developer of which this Schedule forms part.

**Eligible Purchaser** means a person who meets the KiwiBuild eligibility criteria published by Kāinga Ora as at the date of the Development Agreement, or any amended or replacement criteria published from time to time by Kāinga Ora, and includes any such person proposing to buy a KiwiBuild Home together with Kāinga Ora or a PHO Provider under a shared ownership arrangement.

**GST** means goods and services tax under the GST Act.

**Intellectual Property** means all intellectual property rights and interests (including the goodwill and any other common law rights and interests) owned, licensed or held by a party or used by it, including without limiting the Trade Marks, domain names, patents, designs, copyrights, know how, trade names, symbols, logos and licenses or similar use rights in respect of such rights and interests and any other intellectual property rights enforceable in New Zealand and elsewhere.

**Kāinga Ora** means Kāinga Ora – Homes and Communities established under *section 8* of the *Kāinga Ora – Homes and Communities Act 2019* and includes its wholly-owned subsidiary companies (including Housing New Zealand Build Limited where that subsidiary is a party to the Development Agreement).

**KiwiBuild Home** means a home that:

* + 1. is priced at or below the relevant Price Cap;
    2. is offered for sale in the first instance to Eligible Purchasers; and
    3. has been approved by Kāinga Ora for entry in the Register.

**KiwiBuild Programme** means the programme to identify and leverage opportunities to procure KiwiBuild Homes, being affordable quality homes for first home buyers, by acquiring vacant and underutilised land or purchasing private land and contracting with developers to deliver KiwiBuild Homes, and generally known as ‘KiwiBuild’.

1. **Licensed IP** means the ‘KiwiBuild’ name and brand and the Trade Marks.
2. **Open Market Purchaser** means any person who wishes to purchase a KiwiBuild Home on the open market, which (for the avoidance of doubt) may include an Eligible or Secondary Purchaser.
3. **Pre-sale Agreement** means a written agreement between the Developer as vendor and an Eligible Purchaser (or, where clause 2.4 applies, an Open Market Purchaser) as purchaser in respect of a KiwiBuild Home in the form of the Approved Pre-sale Agreement.
4. **PHO Provider** means either:
   * 1. a not-for-profit organisation that provides or will provide progressive home ownership products to households who would meet the definition of an eligible household under the Government Progressive Home Ownership Fund; or
     2. an organisation participating in the Government Progressive Home Ownership Fund.
5. **Price Cap** means the price caps for the purchase of a KiwiBuild Home set out in Appendix 1, or otherwise as determined from time to time by Kāinga Ora:
6. **Records** means all information held by the Developer in connection with the KiwiBuild Homes and the Developer’s performance of its obligations under this Schedule irrespective of the form of that information, including (for the avoidance of doubt) all agreements entered into by the Developer for the sale of KiwiBuild Homes.
7. **Register** means the register of KiwiBuild homes maintained by Kāinga Ora and which contains the information shown in Appendix 2 and any other related information reasonably required by Kāinga Ora.
8. **Secondary Purchaser** means any of Kāinga Ora, a CHP, a PHO Provider or a Māori entity (being a registered business with a minimum of 50% Māori ownership or a Māori Authority (as classified by the Inland Revenue Department)).
9. **Secondary Purchaser Date** means the date on which the Developer applies to the relevant building consent authority for a code compliance certificate for the relevant KiwiBuild Home (as those terms are defined in the *Building Act 2004*).
10. **Successful Applicant** means an Eligible Purchaser that Kāinga Ora nominates as being the potential purchaser of a specified KiwiBuild Home, having been drawn from a ballot for that KiwiBuild Home administered by Kāinga Ora under clause 2.3(b)(i).
11. **Trade Marks** means KiwiBuild together with any intellectual property rights that may subsist in those trademarks.
12. **Unsold Home** means a KiwiBuild Home that is not the subject of a Pre-sale Agreement.
    1. References

A reference in this Schedule to:

* + 1. **$** means the lawful currency of New Zealand;
    2. an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
    3. **at any time** includes from time to time;
    4. **including** and similar expressions do not limit what else may be included;
    5. **law** includes any common law, equity and any statute; and
    6. a **person** includes:
       1. an individual, body corporate, association of persons (whether corporate or not), trust, state, agency of state and any other entity (in each case, whether or not having separate legal personality; and
       2. that person’s successors, permitted assigns, executors and administrators (as applicable).
  1. Interpretation

In this Schedule:

* + 1. definitions used in the Development Agreement apply to this Schedule;
    2. headings are for reference only and do not affect interpretation;
    3. reference to a document or agreement includes that document or agreement as extended, novated, altered, amended, supplemented or replaced from time to time;
    4. reference to any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
    5. reference to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
    6. the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
    7. unless stated otherwise, anything required to be done on or by a day which is not a Working Day, will be done on or by the next Working Day;
    8. reference to time is to New Zealand time unless stated otherwise;
    9. no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
    10. a KiwiBuild Home is not the subject of a Pre-sale Agreement if the relevant Pre-sale Agreement has become a Cancelled Sale Agreement.

1. Marketing and sale of KiwiBuild Homes
   1. Sale to Eligible Purchasers

The Developer:

* + 1. acknowledges and agrees that Kāinga Ora requires the KiwiBuild Homes to be initially marketed and, where possible, sold to Eligible Purchasers;
    2. will use reasonable endeavours to sell the KiwiBuild Homes to Eligible Purchasers (including Successful Applicants where clause 2.3(b)(i) applies); and
    3. will not sell or agree to sell any KiwiBuild Home to any person other than an Eligible Purchaser or Successful Applicant (as applicable) except where clause 2.4 applies.
  1. Marketing requirements and Brand Identity Guidelines
     1. The parties agree that:
        1. the date on which any KiwiBuild Home is to be launched to market will be mutually agreed between Kāinga Ora and the Developer (both acting reasonably), with the expected date being the Anticipated Marketing Date;
        2. the following matters will be mutually agreed between Kāinga Ora and the Developer (both acting reasonably) before the date on which that KiwiBuild Home is launched to market:
           1. the sales strategy and the marketing and communications plan for the sale of any KiwiBuild Home;
           2. all sales, marketing and communications collateral for the sale of any KiwiBuild Home; and
           3. the appointment of the real estate agency or sales team for the sale of any KiwiBuild Home; and
        3. subject to clause 2.6, the Developer’s marketing obligations for any KiwiBuild Home will cease on the date on which the Developer enters into an unconditional Pre-sale Agreement for that KiwiBuild Home.
     2. The Developer agrees that:
        1. the KiwiBuild Homes will be marketed in accordance with standard marketing practices engaged for developments of a similar size to the number of KiwiBuild Homes and homes of a similar typology and price point to the KiwiBuild Homes;
        2. the Developer will ensure that:
           1. any agent or salesperson engaged by the Developer for the sale of any KiwiBuild Home under an agency agreement is licensed under the Real Estate Agents Act 2008 and will comply with their duties under that Act; and
           2. any person involved in the sale of any KiwiBuild Home who is employed by or contracted directly to the Developer rather than through an agency agreement will comply with the duties of a licensed salesperson under that Act even if they are not licensed under that Act; and
        3. Kāinga Ora requires the KiwiBuild Homes to be marketed in accordance with the Brand Identity Guidelines.
     3. If Kāinga Ora considers (at its discretion) the Developer’s marketing of any KiwiBuild Home to be inconsistent with any of the Developer’s obligations under clauses 2.2(a) and (b), Kāinga Ora may require the Developer to change or cease its marketing of that KiwiBuild Home until Kāinga Ora is satisfied that the Developer’s marketing of that KiwiBuild Home is consistent with those obligations.
  2. Method of sale
     1. Notwithstanding that Kāinga Ora may determine which of the methods of sale described in clause 2.3(b) will apply to any given KiwiBuild Home, Kāinga Ora will liaise with the Developer before making its determination.
     2. Kāinga Ora may determine whether the KiwiBuild Homes will be sold to an Eligible Purchaser by way of:
        1. a ballot to select a Successful Applicant for each KiwiBuild Home;
        2. the Developer selling each KiwiBuild Home directly to an Eligible Purchaser with no ballot taking place, subject to the Developer verifying with Kāinga Ora (before entering into a Pre-sale Agreement) that the Eligible Purchaser has been pre-qualified by Kāinga Ora and continues to be an Eligible Purchaser; and/or
        3. a combination of the methods described in paragraphs (i) and (ii) above for any given KiwiBuild Homes.
     3. Where Kāinga Ora determines that the method of sale described in clause 2.3(b)(i) applies to any given KiwiBuild Home:
        1. the Developer will use reasonable endeavours to sell the KiwiBuild Home to the Successful Applicant; and
        2. if the Developer becomes aware that, notwithstanding the Developer’s compliance with clause 2.3(c)(i), the Developer will not be able to conclude a Pre-sale Agreement for any KiwiBuild Home with the Successful Applicant:
           1. the Developer will request details of a new Successful Applicant for that KiwiBuild Home from Kāinga Ora; and
           2. Kāinga Ora may elect to provide details of a new Successful Applicant for that KiwiBuild Home or allow the Developer to sell that KiwiBuild Home using the method of sale described in clause 2.3(b)(ii).
  3. Sale of Unsold Homes

If the Developer has complied with its obligations under clause 2.1(b), then:

* + 1. from and including the relevant Secondary Purchaser Date the Developer may sell any Unsold Homes to a Secondary Purchaser; and
    2. subject to clause 2.5, no earlier than the date that is one (1) month after the issue of a code compliance certificate for the relevant KiwiBuild Home, the Developer may sell any Unsold Homes to an Open Market Purchaser.
  1. Restrictions on sales to Open Market Purchasers

Despite clause 2.4(b), the Developer will not in any circumstances sell more than 15% of all KiwiBuild Homes to Open Market Purchasers without first obtaining written consent of Kāinga Ora (at the discretion of Kāinga Ora). If the Developer requests Kāinga Ora to consent to sell more than 15% of all KiwiBuild Homes to Open Market Purchasers, the Developer will provide Kāinga Ora with all information reasonably required by Kāinga Ora in order to make its decision.

* 1. Cancelled Sale Agreement

If an agreement for the sale of a KiwiBuild Home becomes a Cancelled Sale Agreement, then the Developer will continue to market the KiwiBuild Homes to Eligible Purchasers and the balance of this clause 2 will apply.

1. Approved Pre-sale Agreement
   1. Preparation and approval of Approved Pre-sale Agreement

Before entering into any Pre-sale Agreement, the Developer will:

* + 1. prepare a form of pre-sale agreement to be used for selling KiwiBuild Homes to Eligible Purchasers and (where clause 2.4 applies) a Secondary Purchaser or Open Market Purchaser; and
    2. obtain prior written approval from Kāinga Ora of that form of pre-sale agreement.

Kāinga Ora will give its approval within 10 Working Days of receiving the form of pre-sale agreement from the Developer where Kāinga Ora is satisfied (acting reasonably) that the form of pre-sale agreement is consistent with and properly reflects the Developer’s obligations under this Schedule and the objectives of the KiwiBuild Programme.

* 1. Reporting to purchasers

The Developer will include in each Pre-sale Agreement an obligation on the Developer (as vendor) to report to the relevant purchaser on a regular basis (being not less than monthly) on the progress of the KiwiBuild Homes, including the then current status of resource and building consents for the KiwiBuild Homes, the subdivision of the Land into the Lots, any proposed variations to the plans and specifications for the KiwiBuild Homes and the Developer’s best estimate of when settlement is likely to occur.  For the avoidance of doubt, the Developer’s report to purchasers may comprise a generic report relating to all KiwiBuild Homes under development rather than individual reports for each KiwiBuild Home.

* 1. Variations to Approved Pre-sale Agreement

The Developer warrants that, except for the insertion of any standard purchaser conditions (including due diligence, finance, LIM report and the like), the Developer will not vary or agree to vary the Approved Pre-sale Agreement when entering into a Pre-sale Agreement without obtaining the prior written approval of Kāinga Ora to that variation (not to be unreasonably withheld).

* 1. Developer co-operation

The Developer acknowledges that Kāinga Ora may (at its discretion) enter into a deed of covenant with any Eligible Purchaser who purchases a KiwiBuild Home under a Pre-sale Agreement regarding the Eligible Purchaser’s future use of the KiwiBuild Home. The Developer will:

* + 1. procure each Eligible Purchaser who enters into a Pre-sale Agreement to enter into the deed of covenant at the same time provided that Kāinga Ora has first provided the Developer with the then current form of the deed of covenant;
    2. provide each signed deed of covenant to Kāinga Ora promptly following signing by the relevant Eligible Purchaser; and
    3. co-operate with Kāinga Ora and do all things reasonably necessary to allow Kāinga Ora to register an instrument relating to the deed of covenant in the e-dealing workspace for the transfer of the relevant KiwiBuild Home from the Developer to the relevant Eligible Purchaser.

1. Reporting
   1. Reporting by Developer

The Developer will provide the following reports to Kāinga Ora (**Reports**):

* + 1. a marketing activity report (the **Marketing Report**), to be submitted weekly on Tuesdays to the online reporting portal of Kāinga Ora with a first Marketing Report being due no later than one week after the date on which the KiwiBuild Homes are launched to the KiwiBuild database, setting out details of:
       1. the marketing programme for the KiwiBuild Homes, the market response to that marketing programme and any changes to that marketing programme; and
       2. any other matter relating to the marketing of the KiwiBuild Homes reasonably requested by Kāinga Ora;
    2. a sales status report (the **Sales Report**), to be submitted weekly on Tuesdays to the online reporting portal of Kāinga Ora with a first Sales Report being due no later than one week after the date on which the KiwiBuild Homes are launched to the KiwiBuild database, setting out details of:
       1. the progress and status of sales of the KiwiBuild Homes, including details of any Pre-sale Agreement that fails to go unconditional or settle in accordance with its terms;
       2. the settlement of any KiwiBuild Home completed in the preceding week and the purchase price for each such KiwiBuild Home, together with copies of all sale notices received for any KiwiBuild Home in the preceding week;
       3. any settlement of a KiwiBuild Home expected to complete in the coming month and the sale price for each KiwiBuild Home;
       4. the percentage of KiwiBuild Homes in all Stages that are Unsold Homes; and
       5. any other matter relating to the sale of the KiwiBuild Homes reasonably requested by Kāinga Ora; and
  1. Updating the Register

The Developer will provide Kāinga Ora with all information necessary for it to update the Register and in a format reasonably required by Kāinga Ora.

1. Intellectual property
   * 1. Kāinga Ora grants to the Developer, and the Developer accepts a royalty-free non-exclusive, non-transferable and revocable licence to use the Licensed IP solely in connection with the promotion and marketing of the KiwiBuild Homes, on the terms specified by Kāinga Ora in the Brand Identity Guidelines, as updated by Kāinga Ora from time to time and in accordance with this clause 5.
     2. Unless otherwise agreed, each party’s Intellectual Property is and remains the property of that party.
     3. For the avoidance of doubt no party assigns any Intellectual Property rights to any other party under this Schedule.
     4. The Developer will:
        1. not use the Licensed IP in respect of any other development or sublicence any Licenced IP to any third party, without the prior written approval of Kāinga Ora (such approval to be at the discretion of Kāinga Ora);
        2. only use the Licensed IP as expressly provided in this Schedule;
        3. not use or permit the use of the Licensed IP in any manner which could be detrimental to the reputation of Kāinga Ora;
        4. not use or permit the use of the Licensed IP in any manner that could adversely affect the goodwill in the KiwiBuild Programme;
        5. not knowingly use the Licensed IP in a manner which could jeopardise its validity or enforceability;
        6. not make any representation nor do any act which may be taken to indicate that it has any right, title or interest in or to the Licensed IP other than as granted to it under the terms of this Schedule;
        7. not apply for registration as a trade mark in any territory of words, phrases, combinations of words and/or logos containing the Trade Marks or which are similar to or capable of being confused with the Trade Marks;
        8. not apply for registration of a company name, or use as a trading name, any words, phrases or combinations of words containing the KiwiBuild name or which are similar to or capable of being confused with the KiwiBuild name;
        9. except to the extent permitted by this Schedule, not use any other trade mark, logo or domain name which is similar to or substantially similar to or so nearly resembles the Trade Marks as to be likely to cause confusion or deception; and
        10. notwithstanding clauses 5(d)(vi) and (vii), not seek to register, or induce or entice any third party to register, any Intellectual Property rights the same as or similar to the Licensed IP, or use any such Intellectual Property rights, except to the extent as permitted by this Schedule.
     5. The Developer agrees to indemnify Kāinga Ora in respect of any liability, claims, demands, proceedings, damages, loss or costs arising out of or on in connection with any breach of the licence from Kāinga Ora of the Licenced IP by the Developer, and the negligence or wilful act or omission or any misleading or deceptive conduct by or on behalf of the Developer.
     6. The Developer will promptly notify Kāinga Ora of any actual or potential infringements of the Licensed IP which it becomes aware of and, at the request and cost of Kāinga Ora, will assist Kāinga Ora in any legal action it may take in respect of such infringements. Kāinga Ora will, in its absolute discretion, determine what action, if any, should be taken regarding such matter. Each party will promptly give notice in writing to the other if any claims are made or threatened against that party that the use of the Licensed IP infringes the rights of a third party. Kāinga Ora will in its absolute discretion determine what steps will be taken to defend or settle such claims and, if it so determines, will have sole control over and conduct any such defence or settlement of such claims at its own cost. The parties will fully co-operate with each other in any action, claim or proceedings brought or threatened in respect of the Licensed IP or any other proceedings referred to in this clause 5(f).

Appendix 1 – Price Caps

|  |  |  |  |
| --- | --- | --- | --- |
| **Region** | **Price cap including GST (if any)** | | |
| **One bed / studio** | **Two bed** | **Three bed** |
| Auckland Region | $550,000 | $760,000 | $860,000 |
| Hamilton Urban Area | $550,000 | $640,000 | $720,000 |
| Tauranga Urban Area | $550,000 | $740,000 | $780,000 |
| Wellington Urban Area | $580,000 | $760,000 | $850,000 |
| Christchurch Urban Area | $550,000 | $640,000 | $720,000 |
| Queenstown-Lakes District | $550,000 | $760,000 | $860,000 |
| Rest of New Zealand | $550,000 | $640,000 | $720,000 |

For the purposes of the above table:

1. **Auckland Region** means any area under the authority of Auckland Council.
2. **Hamilton Urban Area** means any area under the authority of Hamilton City Council, Waipā District Council and Waikato District Council.
3. **Tauranga Urban Area** means any area under the authority of Tauranga City Council and Western Bay of Plenty District Council.
4. **Wellington Urban Area** means any area under the authority of Wellington City Council, Hutt City Council, Upper Hutt City Council, Porirua City Council and Kāpiti Coast District Council.
5. **Christchurch Urban Area** means any area under the authority of Christchurch City Council, Selwyn District Council and Waimakariri District Council.
6. **Queenstown-Lakes District** means any area under the authority of Queenstown Lakes District Council.
7. **Rest of New Zealand** means any area in New Zealand not located in one of the above areas.

Appendix 2 – Register

* Developer name
* Development name
* Development stage
* Property name / address
* City / District
* Property type (stand-alone house, duplex, terraced house, apartment)
* Number of bedrooms
* Number of bathrooms
* Car park (none, added extra, carport, off-street, garage)
* Floor area
* Land area
* Balcony area
* Other attributes
* Market value
* Price marketed to KiwiBuild purchasers
* Target start date
* Target completion date