

Memorandum of Understanding as to the New Zealand Real Estate Trust Service

Real Estate Agents Authority

SafeKiwi (New Zealand) Limited

Parties

Real Estate Agents Authority, a Crown Entity established under the Real Estate Agents Act 2008 (REAA)

SafeKiwi (New Zealand) Limited, a company incorporated in New Zealand with company number 2194044 and having its registered office at CFO Services Limited, Unit 3, 75 Peterborough Street, Christchurch Central, Christchurch 8013, New Zealand (**SafeKiwi**)

Introduction

- A REAA is responsible for administering the licensing regime for those who undertake real estate agency work, unless they are exempt under the Act or by regulation under section 156(1) of the Act.
- B SafeKiwi provides the NZRET Service to consumers.
- C As the real estate sector regulator, REAA wishes to ensure that the NZRET Service is carried out in accordance with its regulatory expectations to ensure the protection of consumers.
- D SafeKiwi wishes to provide assurance to REAA that it is providing the NZRET Service in a manner that is consistent with the consumer protection purpose of the Act.
- E This Memorandum records the expectations and conditions that SafeKiwi agrees to meet when providing the NZRET Service.

Agreements

1 Interpretation

- 1.1 In this Memorandum, the following definitions apply:

Act means the Real Estate Agents Act 2008;

[REDACTED]

Control, in relation to SafeKiwi and the NZRET Service, means the possession of the power to direct, or cause the direction of the management and policies of SafeKiwi and/or the NZRET Service, whether through holding a majority of the voting rights at meetings of the board of SafeKiwi or voting shares in SafeKiwi, by contract, by law or otherwise;

[REDACTED]

[REDACTED]

External Auditor means an auditor licensed under the Auditor Regulation Act 2011;

Financial Service Provider has the meaning given to that term by the Financial Service (Registration and Dispute Resolution) Act 2008;

Funds means monies paid into the Trust Account by purchasers using the NZRET Service;

Memorandum means this Memorandum of Understanding as to the New Zealand Real Estate Trust Service;

NZRET Service means the real estate transaction services provided by SafeKiwi under the trading name "New Zealand Real Estate Trust", including the provision of third party trust account services through Public Trust, a web-based registry for Real Estate Agents to monitor and authorise the release of any Funds, and all associated services;

Public Trust means Public Trust, a Crown Entity established under the Public Trust Act 2001 and licensed under the Financial Markets Supervisors Act 2011;

Real Estate Agent means a real estate agent as defined in the Act, including a real estate agency, that uses the NZRET Service;

Regulations means regulations made under the Act;

Terms of Use means the New Zealand Real Estate Trust Terms of Use, last updated on 22 July 2014 and accessed at <https://www.realestatetrust.co.nz/termsfuse> as amended or replaced from time to time (in accordance with the provisions of this Memorandum); and

Trust Account means the bank account in the name of Public Trust, as administered by Public Trust for the purpose of holding and releasing Funds.

- 1.2 Unless the context requires otherwise, a reference in this Memorandum to a "lawyer" includes a conveyancing practitioner.

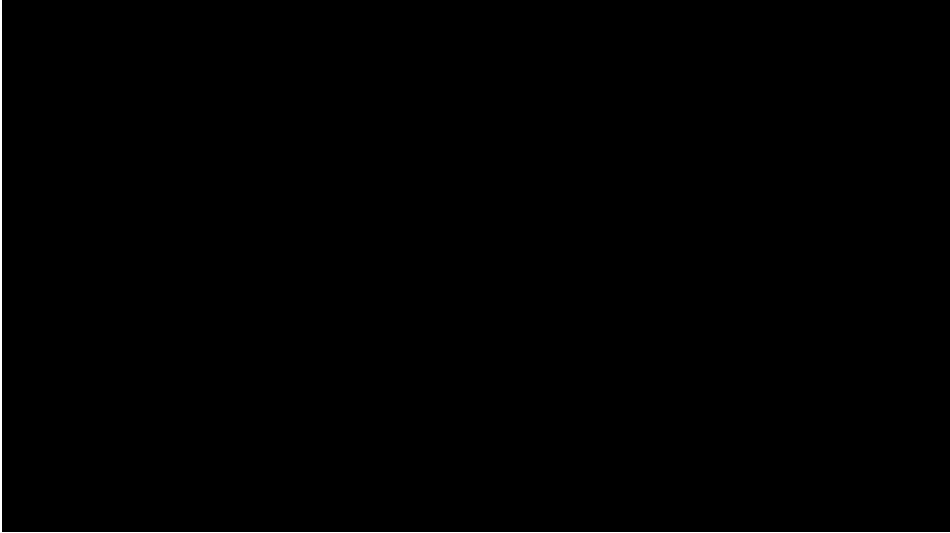
2 Nature of relationship between the parties

- 2.1 The parties agree to maintain and continue to develop a relationship that emphasises openness, co-operation and protection of the interests of consumers in real estate transactions.

3 Holding and ownership of Funds

- 3.1 SafeKiwi agrees to ensure that, at all times:

- (a) Public Trust holds the Funds on trust as stakeholder for purchasers and vendors using the NZRET Service (and not for SafeKiwi), [REDACTED]
[REDACTED]

- (b) Public Trust clearly identifies the Funds as being held for purchasers and vendors using the NZRET Service and segregates the Funds from other property of Public Trust;
- (c) 
- (d) any monies paid through the NZRET Service are paid directly into the Trust Account and disbursed directly from the Trust Account;
- (e) SafeKiwi does not handle any Funds; and
- (f) Public Trust is instructed to release Funds only in accordance with the Terms of Use.

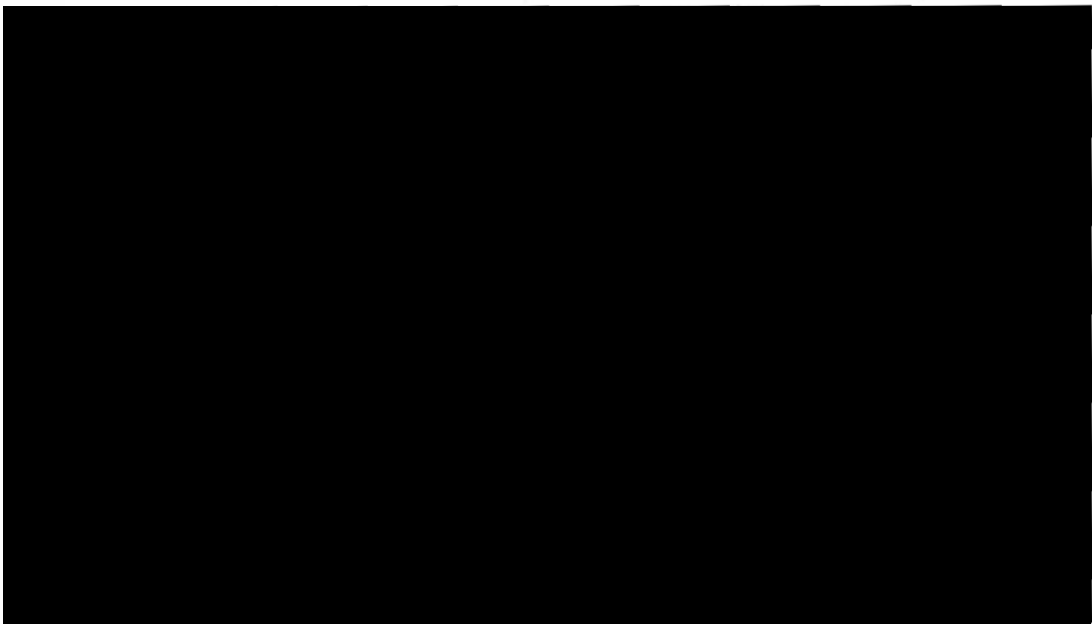
4 Terms of Use

- 4.1 SafeKiwi agrees that its agreements with Real Estate Agents regarding the use of the NZRET Service will contain provisions that require the participating Real Estate Agents to:
- (a) include, in each agreement for sale and purchase, a clause or clauses:
 - (i) stating that the Funds will be held by Public Trust on trust as stakeholder for purchasers and vendors using the NZRET Service;
 - (ii) referring purchasers and vendors using the NZRET Service to the Terms of Use; and
 - (iii) explaining how any interest earned on the Funds will be distributed.
 - (b) authorise the release of any Funds only to the person lawfully entitled to those Funds;
 - (c) where there is doubt as to who is lawfully entitled to any Funds:
 - (i) take all reasonable steps to ascertain as soon as practicable the identity of that person; and
 - (ii) delay authorising the release of any Funds until the identity of that person is ascertained;

- (d) in respect of any Funds that have been held for more than 10 working days, (and subject to clause 4.1(g)), authorise the release of those Funds only upon appropriate confirmation that the underlying sale and purchase agreement is unconditional;
- (e) in respect of any Funds that have been held for less than 10 working days, only authorise the release of those Funds in accordance with:
 - (i) an authority signed by all parties to the relevant transaction; or
 - (ii) a court order;
- (f) upon receipt of written notice of requisitions or objections in respect of the title of any land affected by the relevant transaction, not authorise the release of the relevant Funds, except in accordance with:
 - (i) an authority signed by all parties to the relevant transaction, or
 - (ii) a court order; and
- (g) ensure that, except as otherwise agreed between the parties to the relevant transactions or as ordered by a court or adjudicator of competent jurisdiction, funds are released to the following parties (subject at all times to clause 4.1(c)):
 - (i) in the case of agreements for sale and purchase that come to an end due to non-fulfilment of any condition, and/or otherwise fail to become unconditional, to the original bank account that paid the funds into the Trust Account or the purchaser's lawyer; and
 - (ii) in the case of agreements for sale and purchase that become unconditional, by payment of any agreed commission to the Real Estate Agent and any balance to the vendor's lawyer or as otherwise directed by the vendor's lawyer.

5 SafeKiwi's obligations

5.1



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5.2 SafeKiwi will not amend or replace the Terms of Use without the approval of Public Trust and REAA (REAA's approval not to be unreasonably withheld).

5.3 [Redacted]

5.4 [Redacted]

5.5 [Redacted]

6 Auditing

6.1 SafeKiwi will arrange periodic [Redacted] external compliance reviews by an External Auditor, and will report review results to REAA as soon as is reasonably practicable following the completion of a review.

6.2 [Redacted]

6.3 [Redacted]

6.4 [Redacted]

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- [REDACTED]
- 6.5 Upon reasonable request by REAA, SafeKiwi will carry out an audit of all release authorisations by a Real Estate Agent.

7 Assignment

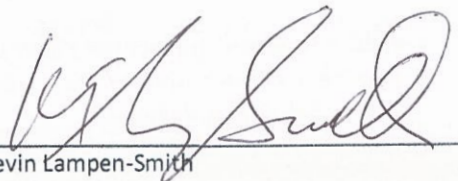
- 7.1 SafeKiwi may not assign any of its rights or interests under this Memorandum without the prior written consent of REAA.
- 7.2 A change in Control of either SafeKiwi or the NZRET Service will be deemed to be an assignment for the purposes of clause 7.1.
- 7.3 A condition of REAA granting its consent under clause 7.1 will be that the entity assuming Control of either SafeKiwi or the NZRET Service enters into a new Memorandum of Understanding with REAA on the same or similar terms to those set out in this Memorandum.
- 7.4 If SafeKiwi wishes to replace Public Trust [REDACTED] [REDACTED], any substitute custodian of the Funds must:
- (a) be licensed under the Financial Markets Supervisors Act 2011; and
 - (b) meet any other capability, expertise, experience and/or regulatory requirements that REAA deems applicable.

8 General

- 8.1 Nothing in this Memorandum operates to limit, restrict or remove REAA's functions, powers and obligations under the Act or any other law. REAA agrees that it will not take enforcement action against SafeKiwi in relation to matters which are the subject of this Memorandum without first discussing those matters in good faith with SafeKiwi.
- 8.2 This Memorandum does not create any relationship of partnership or agency between the parties. Each party agrees that it does not have any right or power to bind or act on behalf of the other party without that party's prior written consent.
- 8.3 Except as otherwise expressly provided in this Memorandum, no amendment to this Memorandum will be effective unless it is in writing and signed by both parties.
- 8.4 This Memorandum shall be governed by the laws of New Zealand
- 8.5 This Memorandum will be deemed signed by a party if a party has executed and delivered to the other party a counterpart of this Memorandum, which may be a facsimile or pdf copy.

Execution


Signed by and on behalf of **Real Estate Agents Authority**



Kevin Lampen-Smith
Chief Executive and Registrar

Real Estate Agents Authority

Signed by and on behalf of **SafeKiwi (New Zealand) Limited**



Tracey Kellett
Director

SafeKiwi (New Zealand) Limited

