

Dated

21 October 2021

**AMENDED AND RESTATED AGREEMENT RELATING TO
MANAGEMENT OF OUTSTANDING CANTERBURY
EARTHQUAKE CLAIMS**

EARTHQUAKE COMMISSION

**SOUTHERN RESPONSE EARTHQUAKE
SERVICES LIMITED**

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**AMENDED AND RESTATED AGREEMENT RELATING TO MANAGEMENT OF OUTSTANDING
CANTERBURY EARTHQUAKE CLAIMS**

DATED

2021

PARTIES

- (1) **EARTHQUAKE COMMISSION (EQC)**
- (2) **SOUTHERN RESPONSE EARTHQUAKE SERVICES LIMITED (Southern Response)**

BACKGROUND

- A. Southern Response has approximately 200 open insurance claims in respect of damage arising out of the Canterbury Earthquake Sequence which exceed, or may exceed, the Cap (as more fully defined in clause 1.1(y), **SR Claims**). The parties wish to facilitate the prompt resolution of these SR Claims.
- B. Under the agreement relating to management of outstanding Canterbury earthquake claims dated 21 October 2019 (**Original Claims Management Agreement**) the parties agreed that EQC was to be appointed as an agent of Southern Response for the purposes of managing, assessing and determining certain SR Claims and to provide certain other functions on behalf of Southern Response on the terms and conditions set out in this agreement.
- C. This agreement restates and replaces the Original Claims Management Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this agreement unless the context indicates otherwise:

- (a) **Apportionment** means the process that is applied to calculate the amount of insured damage caused by each natural disaster event where insured property is damaged by more than one natural disaster event before the insurance settlement is determined;
- (b) **Cap** means the statutory amount set out in section 18 of the EQC Act;
- (c) **Canterbury Earthquake Sequence** means earthquakes centred in Canterbury from and including 4 September 2010 through to and including 5 April 2012;
- (d) **CHRP** means the Canterbury Home Repair Programme, being the managed repair programme implemented by The Fletcher Construction Company Limited as EQC's agent to settle certain EQC Claims arising from the Canterbury Earthquake Sequence;
- (e) **Claims Management Function** has the meaning given to it in clause 2.1;
- (f) **Confidential Information** means any of the following (whenever it was obtained):

- (i) information in relation to a party's (or a Related Person of a party's) business, operations or strategies;
- (ii) information designated as confidential by a party or that would appear to a reasonable person to be confidential; and
- (iii) information relating to actual or prospective customers, clients or competitors of a party or a related entity of a party (including personal information and information relating to Vulnerable Persons),

but does not include information that:

- (iv) is in the public domain, unless it came into the public domain by a breach of confidentiality;
 - (v) is already known by the other person at the time this agreement is entered into and is not otherwise subject to an obligation of confidentiality; or
 - (vi) is obtained lawfully from a third party without any breach of confidentiality;
- (g) **Customer** means a Southern Response policyholder who held a contract of insurance insuring a residential building at the time of each earthquake that caused loss and/or damage to their property during the Canterbury Earthquake Sequence, and includes any other person with an insurable interest in the property concerned;
- (h) **Customer's Insurance Policy** means a Customer's contract of insurance insuring a residential building under which a SR Claim is made;
- (i) **Defective Work** means work which does not achieve settlement of part or all of the EQC Claim that it was intended to settle because:
- (i) in the case of a Customer managed repair or CHRP repair, EQC's repair strategy did not achieve the repair standard in paragraph 9 of Schedule 3 of the EQC Act; or
 - (ii) in the case of a CHRP repair, the remedial work did not meet the repair standard in paragraph 9 of Schedule 3 of the EQC Act;
- (j) **Defective Work Claim** means:
- (i) a claim by a Customer of Defective Work; or
 - (ii) Defective Work identified by EQC (including as part of the CEDAR audit or any other quality assurance programme by or on behalf of EQC);
- (k) **Disregarded Work Sum** means, in relation to any Defective Work and/or Omitted Work, the amount (if any) required so that the Customer or Southern Response (as applicable) should not have to pay more to remediate that Defective Work and/or complete the Omitted Work than would have been required at that time if the EQC Claim had been settled in accordance with the EQC Act at the first settlement attempt;
- (l) **EQC Act** means the Earthquake Commission Act 1993 and any regulations or other subordinate legislation or instrument made under that Act;

- (m) **EQC Claim** means a residential building claim under section 18 of the EQC Act that is in respect of the Canterbury Earthquake Sequence;
- (n) **GST Act** means the Goods and Services Tax Act 1985;
- (o) **GST Invoice** means a tax invoice complying with the requirements of section 24 of the GST Act;
- (p) **in accordance with the Customer's Insurance Policy** and similar references mean in accordance with the Customer's Insurance Policy:
 - (i) as interpreted by Southern Response, provided that Southern Response's interpretation has been notified to EQC in writing;
 - (ii) as directed by Southern Response in accordance with clause 7.2; or
 - (iii) in the absence of a written notification or direction from Southern Response in accordance with paragraphs 1.1(p)(i) or 1.1(p)(ii) above, as interpreted by EQC acting reasonably.
- (q) **Intellectual Property** means all and any patents, patent applications, trademarks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, data, reports and all and any other intellectual property, whether registered or unregistered, and including all applications and rights to apply for any of the same;
- (r) **Omitted Work** means work that was excluded from the scope of work carried out by or on behalf of EQC in response to an EQC Claim but that should reasonably have been carried out to reinstate the property in accordance with EQC's obligations under the EQC Act;
- (s) **Omitted Work Claim** means:
 - (i) a claim by a Customer in respect of Omitted Work; and/or
 - (ii) Omitted Work identified by EQC (including as part of the CEDAR audit or any other quality assurance programme by or on behalf of EQC);
- (t) **Original Claims Management Agreement** has the meaning given in recital C;
- (u) **Purpose** means for the purpose of EQC carrying out the Claims Management Function following a SR Claim being allocated to EQC under clause 4.1;
- (v) **Repair or Rebuild Sum** means the sum (net of any Disregarded Work Sum and applicable excess) required to complete a repair or rebuild to settle a SR Claim;
- (w) **Settlement Sum** means the sum (net of any Disregarded Work Sum and applicable excess) required to cash settle a SR Claim;
- (x) **Southern Response's Share of Expenses** means the share of Expenses to be borne by Southern Response in relation to a SR Claim managed under this agreement calculated in accordance with the formula set out in Schedule 1;

- (y) **SR Claim** has the meaning given in recital A and includes any claim in respect of any defective or incomplete repair work carried out by or on behalf of Southern Response;
- (z) **Third Party Payment Cap Amount** means for the purposes of clause 5.6(b) the third party payment cap amount agreed from time to time between the Chief Executives of Southern Response and EQC; and
- (aa) **Vulnerable Person** means a vulnerable person within the Human Rights Commission's Vulnerability Guidelines
(https://www.hrc.co.nz/files/5114/7426/1153/HRC_Vulnerability_Guidelines.pdf).

1.2 **Interpretation:** In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this agreement;
- (b) a reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington or Christchurch, New Zealand;
- (c) if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day;
- (d) a reference in this agreement to 'dollars' or '\$' means New Zealand dollars and all amounts payable under this agreement are payable in New Zealand dollars;
- (e) a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (f) a reference in this agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this agreement;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders;
- (k) a reference to the word 'include' or 'including' is to be interpreted without limitation; and
- (l) any schedules and attachments form part of this agreement.

2. AGENCY

2.1 **EQC appointed as Southern Response's agent:** Southern Response appoints EQC as Southern Response's agent to:

- (a) assess and manage;
- (b) estimate Repair or Rebuild Sums and Settlement Sums;
- (c) subject to the level of delegated authority set out at clause 5.6 make payment of Settlement Sums to the relevant Customer;
- (d) manage repairs and rebuilds (including the application of any Repair or Rebuild Sums to the relevant repair or rebuild);
- (e) where EQC considers necessary procure appropriate third party advisers to assist with the functions in paragraphs 2.1(a), 2.1(b) and 2.1(d);
- (f) carry out ancillary activities (including, but not limited to, responding to enquiries under the Official Information Act 1982 and Privacy Act 2020),

in respect of all SR Claims allocated to EQC in accordance with the terms of this agreement (the **Claims Management Function**).

2.2 **Agency mandate:** When acting as Southern Response's agent under this agreement, EQC will act:

- (a) with the degree of skill, care and diligence reasonably expected of a professional insurance claims manager provider providing insurance claims management services of the type contemplated by this agreement; and
- (b) in accordance with:
 - (i) the Customer's Insurance Policy for the applicable SR Claim;
 - (ii) the process for management and determination of SR Claims as set out in clause 5;
 - (iii) the Crown Entities Act 2004, including managing Southern Response's claims portfolio in a financially responsible manner; and
 - (iv) Southern Response's Letter of Expectations to:
 - (1) achieve the timely resolution of all remaining valid customer claims;
 - (2) settle customers' claims fairly and consistently in accordance with insurance policy obligations while communicating openly and effectively with customers;
 - (3) use efficient and cost-effective processes to manage those claims; and
 - (4) continue to look for flexible solutions and work proactively to reduce disputes with customers to deliver outcomes consistent with its obligations; and
 - (v) all other applicable laws.

3. TERM

- 3.1 **Term:** This agreement is effective from 21 October 2019 and remains in force for a period of 4 years thereafter with the final expiry date being 20 October 2023 (unless otherwise agreed in writing by EQC and Southern Response).

4. GENERAL PRINCIPLES RELATING TO CLAIMS UNDER THIS MOU

- 4.1 **Allocation of SR Claims to EQC:** All SR Claims received by either party shall be allocated to EQC. EQC shall allocate the SR Claim to a member of the EQC staff to assess and handle the SR Claim in accordance with the provisions of this agreement.

- 4.2 **Information systems:** Following a claim being allocated to EQC under clause 4.1 and subject always to clause 17 and the parties' respective obligations under the Privacy Act 2020, EQC and Southern Response will continue to share data, including historic settlement information, by granting each other operational access to their respective information systems provided always that:

- (a) in carrying out the Claims Management Function, EQC will, where practicable, rely on engineering or other technical reports previously procured by, or on behalf of, either party to reduce the need for such work to be repeated;
- (b) for the avoidance of doubt, operational access to information systems in accordance with this clause is by way of licence only and such licence may be terminated immediately on notice by the owner of the relevant information system; and
- (c) a party accessing any information under this clause 4.2 shall only access, view and rely on such information to the extent it relates to the Purpose, and no other purpose whatsoever.

- 4.3 **Information and research:** Where Southern Response has research and/or other technical expertise that EQC is not able to access through the systems referred to at clause 4.2 above and which Southern Response considers relates to the Purpose and may assist in the settlement of any SR Claims under this agreement, Southern Response will make that information and research available to EQC to assist in the settlement of those SR Claims. EQC shall only be entitled to access, view and rely on the information provided under this clause 4.3 to the extent it relates to the Purpose, and no other purpose whatsoever.

- 4.4 **Re-allocation of SR Claims to Southern Response:** Notwithstanding any other provision of this agreement but without prejudice to any Southern Response obligation to pay any accrued amounts to EQC in accordance with clause 6, Southern Response may, at any time, on not less than 5 Business Days' written notice to EQC, require any SR Claim that has been allocated to EQC under this agreement to be re-allocated back to Southern Response.

5. CLAIMS MANAGEMENT FUNCTION

- 5.1 **Assess:** In respect of each SR Claim allocated to EQC under this agreement, EQC will, or where EQC considers necessary will procure appropriate third party advisers to:

- (a) assess, and prepare a description of:

- (i) the natural disaster event damage;
 - (ii) any proposed repair or rebuild methodology for that damage; and
 - (iii) the cost calculation for that repair or rebuild;
- (b) where there is a Defective Work Claim, assess the extent of the Defective Work (if any) and determine any Disregarded Work Sum in relation to that Defective Work;
- (c) where there is an Omitted Work Claim, consider the extent of the Omitted Work (if any) and determine any Disregarded Work Sum in relation to that Omitted Work;
- (d) provide a description of any Defective Work and/or Omitted Work and calculate the applicable Disregarded Work Sum (and provide details of how that sum was calculated);
- (e) assess the SR Claim in accordance with:
- (i) the Customer's Insurance Policy; and
 - (ii) Southern Response policies notified to EQC under clause 7.1; and
- (f) assess, record and compile any other information held by EQC and which Southern Response or EQC considers may be relevant to the assessment and Apportionment of the SR Claim.

5.2 **Provision of information:** EQC will provide Southern Response on request with details and supporting materials in relation to all of the matters set out in clauses 5.1(a) to 5.1(f).

5.3 **Estimation of Settlement Sum or Repair or Rebuild Sum:** EQC will, with the assistance of third party advisers where EQC considers necessary, estimate:

- (a) the Settlement Sum; or
- (b) the Repair or Rebuild Sum,

in respect of each SR Claim in accordance with the EQC Act and, to the extent relevant to the portion of a Settlement Sum or Repair or Rebuild Sum that is in excess of the Cap, in accordance with the Customer's Insurance Policy.

5.4 **Payment of Settlement Sum or Repair or Rebuild Sum:** Subject to clauses 5.5 and 5.6, EQC shall:

- (a) if the Settlement Sum or Repair or Rebuild Sum does not exceed the Cap, make payment of the Settlement Sum to the relevant Customer or communicate to the Customer that a repair or rebuild will be provided, as applicable; and
- (b) if the Settlement Sum or Repair or Rebuild Sum exceeds the Cap:
 - (i) advise Southern Response of the amount by which the Settlement Sum or Repair or Rebuild Sum (as applicable) exceeds the Cap, so Southern Response can pay the Customer the over Cap amount; and
 - (ii) (ii) if applicable, communicate to the Customer if a repair or rebuild will be provided; and pay that part of the Settlement Sum or Repair or Rebuild Sum (as applicable) which does not exceed the Cap to the Customer.

- 5.5 **Settlement Agreements:** EQC may negotiate and instruct the preparation of settlement agreements for Southern Response's approval and, if approved, execution.
- 5.6 **Delegated authority:** EQC must obtain Southern Response's written agreement, prior to:
- (a) proceeding under clauses 5.4(b) or 5.5, where the Settlement Sum or Repair or Rebuild Sum estimated in accordance with clause 5.3 exceeds the Cap by more than \$50,000; or
 - (b) approving any payments to third parties which relates to a SR Claim and exceeds the Third Party Payment Cap Amount.
- 5.7 **Vulnerable Persons and Prioritisation:** In relation to each SR Claim within the scope of this agreement, each party will:
- (a) notify the other party as soon as practicable after it becomes aware that a Customer is a Vulnerable Person and
 - (b) prioritise SR Claims for Vulnerable Persons notified in accordance with this clause 5.7.
- 5.8 **Over Cap amounts:** To the extent that a Settlement Sum or Repair or Rebuild Sum exceeds the Cap, the parties shall use all reasonable endeavours to ensure that the Customer receives the under Cap and over Cap sums payable by EQC and Southern Response at the same time.

6. REIMBURSEMENT AND PAYMENT

- 6.1 **Reimbursement:** Southern Response will reimburse EQC:
- (a) Southern Response's Share of Expenses to the extent these have not already been paid; and
 - (b) without limiting paragraph 6.1(a) above, all amounts incurred by EQC arising out of or in connection with EQC's compliance with a direction by Southern Response pursuant to clause 7.2.
- 6.2 **Reimbursement Statement:** At the end of each quarter during the term of this Agreement, EQC shall use its reasonable endeavours to provide Southern Response with a statement showing the amounts to be reimbursed to EQC in accordance with clause 6.1 (**Reimbursement Statement**).
- 6.3 **Payment of amount in Reimbursement Statement:** Subject to clause 6.4, Southern Response shall, within 10 business days of Southern Response's receipt of a Reimbursement Statement, make payment of the amount specified in the Reimbursement Statement to EQC's nominated account.
- 6.4 **Disputed Reimbursement Statement:** If Southern Response (acting reasonably) disputes any Reimbursement Statement, it shall immediately notify EQC in writing of the dispute. Southern Response must pay the undisputed portion of the Reimbursement Statement and the disputed amount will be resolved by the parties in accordance with clause 19. Unless a dispute is raised by Southern Response within 10 business days of Southern Response's receipt of the Reimbursement Statement (time being of the essence), Southern Response will be deemed to have accepted such Reimbursement Statement as valid and will make payment in accordance with clause 6.3.

7. POLICIES

- 7.1 **Southern Response policies:** EQC will adhere to, and is entitled to rely on the correctness, accuracy and completeness of, any policies provided to EQC by Southern Response (as updated and notified to EQC in writing from time to time) for the purpose of acting in accordance with Customer's Insurance Policies as required by clause 5.1(e) including, without limitation, any policy notified by Southern Response regarding who should be paid when there is more than one person with an insurable interest in the relevant property.
- 7.2 **Direction:** EQC will seek direction from Southern Response whenever it considers or is aware that a Customer's Insurance Policy is capable of, or has been applied using, more than one interpretation. Southern Response will provide that direction, in the appropriate form, as soon as reasonably practicable.
- 7.3 **Southern Response point of contact and assistance:** Southern Response will make available to EQC, at Southern Response's cost, subject matter experts who will be EQC's primary point of contact in relation to Customer's Insurance Policies and other Southern Response policies.

8. TRAINING

- 8.1 **Training:** EQC shall:
- (a) ensure that all EQC personnel (including any contractors, sub-contractors and consultants) involved in the Claims Management Function have completed training as reasonably directed by Southern Response from time to time; and
 - (b) maintain full, complete, accurate and up to date records of all EQC personnel involved in providing Southern Response with the services described in this agreement, including:
 - (i) the date they commenced and finished providing services under this agreement;
 - (ii) the nature of the services provided by that person; and
 - (iii) the training they have received, the date on which that training was received and the results of any test in respect of that training.

9. RECORD KEEPING AND THE PUBLIC RECORDS ACT 2005

- 9.1 **Record keeping:** Without limiting EQC's obligations under the Public Records Act 2005, EQC must maintain full complete and accurate records:
- (a) relating to all SR Claims assessment and settlement decisions; and
 - (b) of all other matters relating to this agreement.

10. CUSTOMER SATISFACTION AND PROCESS EFFICIENCY

- 10.1 Subject to the provisions of this agreement including under clause 12 the parties may work together to put in place procedures to measure and monitor Customer satisfaction in relation to SR Claims and the parties' responsibilities under this agreement.

10.2 Southern Response will from time to time assess Customer satisfaction under this agreement and will report to EQC.

11. GOODS AND SERVICES TAX

11.1 **GST payable by Recipient:** Unless otherwise stated, all amounts and values referred to in this agreement are exclusive of GST. To the extent that any supply from one party (**Supplier**) to another party (**Recipient**) under this agreement constitutes a taxable supply for GST purposes (**Taxable Supply**), an amount equal to the GST chargeable on that Taxable Supply, as between the Supplier and the Recipient, will be payable by the Recipient to the Supplier in addition to the amount payable for the Taxable Supply. The Recipient will pay the GST amount at the same time and in the same manner as payment for the Taxable Supply is required, provided that on or before that time the Supplier has issued to the Recipient a GST Invoice.

11.2 **GST treatment of supplies as agent (section 60(2B) of the GST Act):** EQC and Southern Response agree for the purposes of section 60(2B) of the GST Act that each payment made by either of them as agent for the other will be treated for the purposes of the GST Act as two separate supplies, being:

- (a) a supply of goods and services from the customer to the agent (as if the agent was the principal for the purpose of supply); and
- (b) a supply of those goods and services from the agent to the principal.

12. AUDIT AND ASSURANCE

12.1 **Audit Right:** Subject to clause 12.5, upon Southern Response giving no less than 5 business days' prior written notice to EQC, EQC shall permit any Crown agency or regulator, Southern Response, any reinsurer of Southern Response or any duly qualified auditor (in each case, the **Auditor**) to have access to EQC's premises and any EQC personnel to:

- (a) examine records, documents, processes or other relevant information directly relating to this agreement; and
- (b) ask for adequate explanations from EQC which EQC shall provide, to the extent necessary for the Auditor to satisfy itself:
- (c) of the correctness of any:
 - (i) Settlement Sum;
 - (ii) Southern Response's Share of Expenses invoiced to Southern Response; or
 - (iii) any actions carried out by EQC under delegated authority as permitted under clause 5.6; and/or
- (d) that each party is performing its obligations under this agreement in accordance with this agreement.

12.2 **Findings of audit:** If an Auditor determines a discrepancy or error in the calculation of Southern Response's Share of Expenses then, subject to EQC's right to dispute that determination in

accordance with clause 19, EQC shall be required to, as soon as reasonably practicable, refund Southern Response any overpayment.

- 12.3 **Costs of audit:** Each party will bear its own costs in relation to any such access, inspection, copying, observation, interviewing, testing or audit unless any significant breach of this agreement by EQC is revealed in which case EQC will meet the reasonable costs of Southern Response and its reinsurers in relation to any such access, inspection, copying, observation, interviewing, testing and audit.
- 12.4 **Replacing auditor:** EQC may request replacement of the Auditor, and Southern Response shall comply with such request at its cost, if EQC reasonably considers the Auditor is unsuitable due to competitive conflict or not complying with clause 12.5.
- 12.5 **Access conditions:** EQC shall grant the Auditor access to the extent required in clause 12.1, provided that:
- (a) any Auditor has first produced to EQC any necessary authorisation from Southern Response;
 - (b) the Auditor agrees to comply with all reasonable requirements of EQC stipulated for the purpose of protecting the confidentiality and security of information, personnel and premises;
 - (c) Southern Response shall not be entitled to have access to any of EQC's accounts or financial records and information that relate to a service provided on a fixed price basis; and
 - (d) the Auditor causes as little disruption to EQC and its personnel as is reasonably practicable.
- 12.6 **Further steps:** If at any time (including following an audit) Southern Response is concerned that EQC is failing to comply with:
- (a) this agreement, or
 - (b) the requirements of a Customer's Insurance Policy (as applicable),

in any systemic or material way, Southern Response may give notice to EQC requiring EQC to provide a remedial plan showing, to Southern Response's reasonable satisfaction, the steps to be taken by EQC to remedy the failure. If, after a further 20 business days of such notice, Southern Response is not satisfied with the implementation of EQC's remedial plan or otherwise considers that the failure has not been remedied, Southern Response may on written notice to EQC immediately cease settlement of any SR Claims or any particular category of SR Claims or SR Claims relating to particular type of property pending further review and Southern Response satisfying itself that EQC's claims settlement practices are appropriate or that EQC has otherwise addressed Southern Response's concerns.

13. ADMINISTRATION

- 13.1 **Health and Safety:** Each party is responsible for all aspects of health and safety for its personnel (including its employees, contractors and subcontractors, agents, external consultants and co-opted or seconded employees). EQC and Southern Response acknowledge their collective goal of "zero harm" in the provision of services under this agreement and other people lawfully at their respective workplaces. For these purposes:

- (a) where any activity involves both parties, the parties will consult, co-operate and co-ordinate their activities to ensure all health and safety duties in relation to that activity are appropriately, resourced, allocated and fulfilled;
- (b) each party:
 - (i) must have in place, and comply with, health and safety policies, processes and procedures that are appropriate for the services provided under this agreement (health and safety systems) and meet their respective obligations under the Health and Safety at Work Act 2015 and associated regulations;
 - (ii) will:
 - (1) provide reasonable details of its health and safety systems to the other party, and if requested, will allow the other party to audit those systems from time to time;
 - (2) will report regularly to the other party on health and safety matters as reasonably required by that other party;
 - (3) notify the other party of any identified risks or hazards;
 - (4) consult with the other party in relation to management of risks and hazards, and any changes to its health and safety policies and procedures; and
 - (5) comply with any reasonable expectations communicated by the other party in relation to its health and safety systems;
- (c) a party may suspend the other party's services (or any part thereof) with immediate effect by giving Notice to that other party if it is not satisfied with any aspect of that other party's health and safety systems or conduct;
- (d) In the event of any near miss incident or accident, the party responsible for the activity where the accident or incident occurred will:
 - (i) immediately advise the other party of that near miss incident or accident relating to the services under this agreement; and
 - (ii) if requested by the other party:
 - (1) undertake its own investigation into that near miss incident or accident and provide the other party with a copy of all investigation reports in a timely manner;
 - (2) comply with its obligations under the Health and Safety at Work Act 2015 to notify WorkSafe, prevent further harm, and preserve the incident site (if required); and
 - (3) assist in or carry out any reasonable subsequent investigation relating to that incident or accident, as and when reasonably required by the other party.

13.2 Fraud notification: A party will notify the other party promptly on becoming aware of any fraudulent conduct or suspected or alleged fraudulent conduct, whether in relation to a Customer, contractor, staff or any other person whatsoever. The parties will work together in good faith on a case by case basis to resolve such matters relating to the fraud or suspected or alleged fraud.

13.3 **Personnel:** EQC must ensure that all of its personnel, agents and third party advisors engaged in the performance of EQC's obligations under this agreement:

- (a) are sufficiently experienced, qualified and skilled for those purposes; and
- (b) conduct themselves in a professional manner and in a manner consistent with the Crown's expectations to pursue fair, timely and enduring settlements at all times.

If Southern Response is at any time dissatisfied on reasonable grounds with the performance of a particular person engaged in the performance of EQC's obligations under this agreement, Southern Response may (after consulting with EQC in good faith) notify EQC that the particular person must immediately cease involvement with the performance of EQC's obligations under this agreement. In such a case EQC must immediately remove that person from any involvement and replace that person as quickly as practicable with a suitably qualified and experienced person.

14. INTELLECTUAL PROPERTY

14.1 **Existing Intellectual Property:** The parties agree that all Intellectual Property owned by a party and existing prior to the commencement of this agreement will remain the exclusive property of that party during the term of this agreement and afterwards, provided always that each party (**first party**) shall allow the other party (**other party**) to use the first party's Intellectual Property for the term of this agreement for the purposes of complying with the other party's obligations under this agreement.

14.2 **New Intellectual Property:** Each party agrees that:

- (a) all Intellectual Property that is created jointly by the parties or any of their employees, agents, officers or subcontractors during the term of this agreement, as a result of, for the purposes of, or in connection with, this agreement will be jointly owned by the parties and each party will have a perpetual, royalty free, non-exclusive licence (subject to clause 17, the Privacy Act 2020 and all other applicable laws) to use such jointly owned Intellectual Property; and
- (b) all new Intellectual Property that is created by a party (Party A) or any of its employees, agents, officers or subcontractors during the term of this agreement, as a result of, for the purposes of, or in connection with, this agreement will vest in Party A on creation and Party A may, but need not, licence the other party to use such new Intellectual Property on such terms and conditions as Party A sees fit.

15. TERMINATION

15.1 **Termination on notice:** In addition to any other rights, powers or remedies a party may have under this agreement or at law, a party may terminate this agreement at any time by giving 120 business days' notice to the other party.

15.2 **Effect of termination:** In addition to any other rights, powers or remedies a party may have under this agreement or at law, if this agreement ends or is terminated, the following will apply:

- (a) each party is released from its obligations under this agreement (except those relating to confidentiality, disengagement, audit and assurance, reporting, assistance with customer complaints, final apportionment and any other clauses expressly stated or which would reasonably be expected to survive the termination of this agreement);
- (b) each party retains the rights it has accrued under this agreement including any right to be reimbursed under clause 6;
- (c) each party must return any Confidential Information in its possession to the relevant party or, if requested by the relevant party, destroy the Confidential Information; and
- (d) EQC will assist Southern Response with a smooth transition of its SR Claims management process to Southern Response or an alternative provider as requested by Southern Response, including by, to the extent permitted by law, transferring to Southern Response or at Southern Response's direction, all information held by EQC relating to the SR Claims being managed by EQC on Southern Response's behalf under this agreement.

16. LIABILITY

16.1 Mutual indemnities: Subject to clauses 16.2 and 16.3:

- (a) EQC shall be liable to Southern Response for, and indemnifies Southern Response in respect of, all costs and expenses suffered by Southern Response as a result of a wilful and material breach of EQC's obligations under this agreement; and
- (b) Southern Response shall be liable to EQC for, and indemnifies EQC in respect of:
 - (i) all costs and expenses suffered by EQC as a result of a wilful and material breach of Southern Response's obligations under this agreement;
 - (ii) any loss suffered by EQC as a result of following Southern Response's directions in accordance with clause 7.2;
 - (iii) any failure by Southern Response to reimburse amounts due to EQC in accordance with clause 6; and
 - (iv) all amounts incurred by EQC in respect of any third party claim (including by a Customer) against EQC arising out of or in connection with EQC's performance of the Claims Management Function or otherwise under, and in accordance with, this Agreement.

16.2 Cap: Notwithstanding any other provision in this agreement and except to the extent:

- (a) not permissible by law; or
- (b) payable under clauses 6 or 16.1(b),

the maximum amount for which either party may be liable to the other (in contract, tort or otherwise, including negligence) in the aggregate for all actions, claims, demands, rights or set-offs for anything arising directly or indirectly out of this agreement is limited to \$1,000,000.

16.3 No indirect or consequential loss: No party shall be liable to the other party for any indirect, consequential or special loss, or loss of profit, in relation to this agreement however arising, whether in contract, tort or otherwise.

17. CONFIDENTIAL INFORMATION

17.1 **Confidentiality obligations:** Where the one party (**Recipient**) receives, or has received, whether before or after the date of this agreement, Confidential Information from the other party (**Provider**), the Recipient must, subject to the terms of this agreement:

- (a) keep the Confidential Information secret and preserve its confidential nature;
- (b) not use, disclose or reproduce the Confidential Information for any purpose other than the Purpose or another purpose permitted by this agreement;
- (c) not, without the Provider's consent, disclose or permit the disclosure of the Confidential Information to any person except as permitted under clauses 17.2 and 17.3;
- (d) only copy or reproduce Confidential Information for the purposes of this agreement or with the consent of the Provider;
- (e) establish and maintain appropriate security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure;
- (f) immediately notify the Provider of any unauthorised access to, use or disclosure of the Confidential Information; and
- (g) comply with any direction from the Provider in relation to the protection of the Confidential Information.

17.2 **Further permitted use and disclosure of Confidential Information:** This agreement does not prohibit the disclosure of Confidential Information by the Recipient in the following circumstances:

- (a) the Provider has consented to the disclosure, which consent may be subject to the condition that the person to whom the disclosure is to be made enters into a separate confidentiality agreement with the Provider.
- (b) the disclosure is to a director, officer, employee, agent, contractor, financier or professional adviser of the Recipient to the extent disclosure to that person is necessary in order to perform a function in connection with this agreement;
- (c) the disclosure is required by a court, or to comply with any law, binding directive of a governmental or administrative authority;
- (d) the disclosure is required to comply with the listing rules of any stock exchange on which the Recipient's securities are listed; or
- (e) the disclosure is to EQC's responsible Minister or in connection with any Parliamentary convention.

17.3 **Official Information:** The parties acknowledge that they are each subject to the Official Information Act 1982 (**OIA**) and that they may be obliged to disclose Confidential Information under the OIA if so requested and there is no good reason under the terms of the OIA to withhold that information. Each party acknowledges the importance of the other party's commercially sensitive Confidential Information and will:

- (a) promptly notify the other party of any request received by it under the OIA that relates to Confidential Information of that other party; and

- (b) consult with the other party in relation to the Confidential Information that it is required to disclose under the OIA to comply with that request.

18. NOTICES

18.1 **Giving notices:** Any notice, consent, approval or other communication (each a Notice) given to a party under this agreement is only given if it is in writing and sent in one of the following ways:

- (a) delivered to that party at its physical address and marked for the attention of the relevant department or officer (if any) set out below;
- (b) posted to that party at its postal address and marked for the attention of the relevant department or officer (if any) set out below; or
- (c) emailed to that party at its email address and marked for the attention of the relevant department or officer (if any) set out below.

EQC

Name: Earthquake Commission
Physical Address: Level 11, Majestic Centre, 100 Willis Street, Wellington
Postal Address: PO Box 311, Wellington 6140
Email: sidmiller@eqc.govt.nz
Copy to:
Attention: Sid Miller

Southern Response

Name: Southern Response Earthquake Services Limited
Physical Address: Level 3, 7 Winston Avenue, Papanui, Christchurch
Postal Address: PO Box 9052, Tower Junction, Christchurch 8149
Email: casey.hurren@southernresponse.co.nz
Copy to:
Attention: Casey Hurren

18.2 **Change of address:** If a party gives the other party three business days' notice of a change of its physical, postal or email address, any Notice is only given by that other party if it is delivered, posted or emailed to the new physical, postal or email address or provided that any change of physical or postal address will only be effective if the new address is in New Zealand.

18.3 **Time notice is given:** Any Notice is to be treated as given at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, three (or, in the case of a Notice posted to another country, nine) business days after it is posted; or
- (c) if it is sent by email, on the date and time the email is sent (as shown in a confirmation of the email generated by the sender's computer system which indicates that the email was sent to the email address of the recipient notified for the purpose of this clause and provided that the sender's computer system has not generated a record that the email has not been received).

However, if any Notice is given on a day that is not a business day, or after 5.00pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

19. DISPUTES

- 19.1 **No proceedings:** If a dispute arises under this agreement, no party may commence any court or arbitral proceedings relating to the dispute unless it has first complied with clauses 19.2 and 19.3. However, nothing in this clause restricts or limits the right of a party to obtain urgent injunctive relief or to terminate this agreement.
- 19.2 **Dispute Notice:** If a dispute arises under this agreement, a party may, at any time, give a notice (**Dispute Notice**) to the other party:
- (a) specifying the nature of the dispute and the position that the party giving the notice believes to be correct; and
 - (b) requesting that a meeting take place to attempt to resolve the dispute.
- 19.3 **Meeting:** The senior representatives of each party must meet within five business days of the date of the Dispute Notice and endeavour to resolve the dispute in good faith.
- 19.4 **Mediation:** If the dispute is not resolved within ten business days of a party's receipt of a Dispute Notice, the dispute may, at the option of any party involved in the dispute, be submitted for mediation by a mediator agreed by the parties or, if no agreement can be reached within two business days, a mediator nominated by the President of the New Zealand Law Society. The mediator will determine the procedure and timetable for the mediation, which is to be held as soon as reasonably practicable. The costs of the mediation will be shared equally by the parties involved in the mediation.
- 19.5 **Arbitration:** If any party does not wish to use, or continue to use, mediation, or mediation does not resolve the dispute within 15 business days from the date of the submission to mediation, the dispute will be referred to and finally resolved by arbitration in accordance with the provisions of the Arbitration Act 1996 as follows:
- (a) there will be a single arbitrator, to be agreed by the parties or failing agreement within 5 business days of referral to arbitration, the arbitrator shall be selected by the President of the New Zealand Law Society;
 - (b) the seat or place of arbitration will be in Christchurch; and
 - (c) the parties agree:
 - (i) clauses 2, 4, 5 and 6(1) and (2) of the Second Schedule to the Arbitration Act 1996, referring to the determination of preliminary points of law, appeals on questions of law and costs and expenses of an arbitration, will apply to any arbitration under this agreement;
 - (ii) no other provisions of the Second Schedule to the Arbitration Act 1996 apply to any such arbitration;
 - (iii) any appeal contemplated by clause 5 of the Second Schedule may be taken without any need for leave from the High Court of New Zealand; and
 - (iv) the award of any arbitral tribunal constituted under this agreement shall be in writing and will be binding on the parties, who each covenant to carry out that award.

20. MISCELLANEOUS

- 20.1 **Approvals and consents:** Unless this agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 20.2 **Assignments and transfers:** Neither party may assign any of its rights under this agreement without the prior written consent of the other party.
- 20.3 **Contract and Commercial Law Act 2017:** Unless this agreement expressly provides otherwise, this agreement is not intended to, and does not, confer a benefit on any person or class of persons who is not a party to it. Without limiting the generality of the foregoing, nothing in this agreement limits any discretion of a party or binds a party in any way in respect of any SR Claim that has not been allocated to EQC pursuant to clause 4.1.
- 20.4 **No set off:** A party is not entitled to raise a set-off or counterclaim in respect of any amount it owes another party and all amounts to be paid by a party under this agreement will be paid in full without deduction or withholding. An amount owed includes any amount owed, whether actually, contingently or prospectively.
- 20.5 **Costs:** Except as otherwise set out in this agreement, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 20.6 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this agreement was executed.
- 20.7 **Execution of separate documents:** This agreement is properly executed if each party executes either this document or an identical document. In the latter case, this agreement takes effect when the separately executed documents are exchanged between the parties.
- 20.8 **Further acts:** Each party must at its own expense promptly execute all documents, do all things and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this agreement and all transactions incidental to it.
- 20.9 **Governing law and jurisdiction:** This agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.
- 20.10 **Severability:** Each provision of this agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this agreement in the relevant jurisdiction, but the rest of this agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.
- 20.11 **Variation:** No variation of this agreement will be of any force or effect unless it is in writing and signed by each party to this agreement.

20.12 **Waivers:** A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.

EXECUTION AND DATE

Executed as an agreement.

Date: 21 October 2021

Earthquake Commission by:



.....
Signature of authorised person

Mary Jane Daly
.....
Name of authorised person (print)

Board Chair
.....
Office held

Southern Response Earthquake Services Limited by:



.....
Signature of authorised person

Anne Urlwin
.....
Name of authorised person (print)

7 Winston Avenue, Papanui, Christchurch 8053
.....
Office held