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**MEMORANDUM OF UNDERSTANDING RELATING TO
MANAGEMENT OF OUTSTANDING CANTERBURY
EARTHQUAKE CLAIMS**

**EARTHQUAKE COMMISSION
SOUTHERN RESPONSE EARTHQUAKE SERVICES LIMITED**

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PARTIES

Earthquake Commission (EQC)

Southern Response Earthquake Services Limited (Southern Response)

BACKGROUND

- A EQC's Canterbury Finalisation Programme (**CFP**) seeks to resolve approximately 11,500 open claims relating to building issues arising out of the Canterbury earthquake sequence. Of these open claims, approximately 2,500 relate to properties insured with Southern Response.
- B The parties wish to facilitate the prompt resolution of open claims relating to properties insured with Southern Response.
- C The parties have agreed that:
- (a) Southern Response will be appointed as an agent of EQC and will be responsible, on EQC's behalf, for assessing and Cash Settling certain Claims arising out of the Canterbury earthquake sequence; and
 - (b) EQC will provide Southern Response with additional assessment, costing and other data obtained by EQC in assessing EQC claims so as to assist Southern Response Cash Settle certain SR Claims,

on the terms and conditions set out in this Memorandum of Understanding (**MoU**) which are legally binding on the parties.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this MoU the following definitions apply:

Apportionment means the process that is applied to calculate the amount of insured damage caused by each natural disaster where insured property is damaged by more than one natural disaster before the insurance settlement is determined, and includes:

- (a) an initial Apportionment as contemplated in clause 6.6.1 and clause 7.3.1; and
- (b) a final Apportionment as contemplated in clause 6.6.2 and clause 7.3.2;

Canterbury Earthquake Sequence means earthquakes centred in Canterbury from and including 4 September 2010 through to and including 5 April 2012;

Cap means, in the case of an EQC Claim, the statutory amount set out in s18 of the EQC Act;

Cash Settle means a cash settlement of an EQC Claim and/or SR Claim and **Cash Settlement** and **Cash Settling** have the corresponding meaning;

CHRP means the Canterbury Home Repair Programme, being the managed repair programme managed by The Fletcher Construction Company Limited as EQC's agent to settle certain EQC Claims arising from the Canterbury Earthquake Sequence;

Claim means, as applicable, an EQC Claim and/or an SR Claim;

Confidential Information means any of the following (whenever it was obtained):

- (a) Information in relation to a party's (or a Related Person of a party's) business, operations or strategies;
- (b) Information designated as confidential by a party or that would appear to a reasonable person to be confidential;
- (c) 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);

Information is not confidential in any of the following circumstances:

- (a) It is in the public domain, unless it came into the public domain by a breach of confidentiality;
- (b) It is already known by the other person at the time this MoU is entered into and is not otherwise subject to an obligation of confidentiality;
- (c) It is obtained lawfully from a third party without any breach of confidentiality;

Contents Claim means a personal property claim under s20 of the EQC Act related to the Canterbury Earthquake Sequence;

Customer means a Southern Response policyholder who held a contract of fire insurance insuring personal property and/or a residential building (each as defined under the EQC Act) 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;

Customer's Insurance Policy means a Customer's contract of fire insurance insuring a Residential Building under which an SR Claim is made;

Defective Work means work on a Customer's Residential Building which does not achieve settlement of part or all of the EQC Claim that it was intended to settle because:

- (a) 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
- (b) 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;

Defective Work Claim means:

- (a) a claim by a Customer of Defective Work; or
- (b) Defective Work identified by EQC (including as part of the CEDAR audit or any other quality assurance programme by or on behalf of EQC);

Disregarded Work Sum means, in relation to any Defective Work and/or Omitted Work, the amount (if any) required so that the Customer or private insurer (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;

EQC Act means the Earthquake Commission Act 1993 and any regulations or other subordinate legislation or instrument made under that Act;

EQC Claim means a Residential Building Claim received by EQC in relation to the Canterbury Earthquake Sequence and for which Southern Response is the relevant private insurer;

EQC's Share of External Assessment Expenses means the share of External Assessment Expenses to be borne by EQC in relation to a Claim managed under this MoU, determined in accordance with Schedule 1;

Excess means, in the case of an EQC Claim, the applicable excess payable in respect of that EQC Claim as determined by EQC.

External Assessment Expenses means external assessment expenses for Claims, determined in accordance with Schedule 1.

GST Act means the Goods and Services Tax Act 1985.

GST Invoice means a tax invoice complying with the requirements of section 24 of the GST Act.

In-Scope means an EQC Claim relating to the Canterbury Earthquake Sequence:

- (a) for which Southern Response is the relevant private insurer;

- (b) that is open or which has been settled but the customer has disputed the settlement; and
- (c) that is not out of scope in accordance with clause 5.5.

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, rights in confidential information, 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.

Land Claim means a claim under s19 of the EQC Act arising from land damage that is related to the Canterbury Earthquake Sequence;

MoU Wash-up means a wash-up contemplated by clause 8;

Omitted Work means work that was excluded from the scope of work:

- (a) carried out at a Customer's Residential Building 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; or
- (b) on which a Customer was Cash Settled by EQC and which should have been considered in settling the EQC Claim in accordance with the EQC Act.

Omitted Work Claim means:

- (a) a claim by a Customer in respect of Omitted Work; and/or
- (b) Omitted Work identified by EQC (including as part of the CEDAR audit or any other quality assurance programme by or on behalf of EQC);

Over-Cap Claim means an EQC Claim in excess of the Cap;

Representative means, in relation to each party:

- (a) the initial representatives named in clause 13.19; and
- (b) any replacement person appointed by a party as its authorised representative for the purposes of this MoU and notified to the other party from time to time;

Residential Building has the statutory meaning defined in s2 of the EQC Act;

Residential Building Claim means a residential building claim under s18 of the EQC Act that is related to the Canterbury Earthquake Sequence;

Settlement Sum means:

- (a) in the case of an EQC Claim, the sum (after having regard to any Disregarded Work Sum and the applicable Excess) required to Cash Settle that EQC Claim in accordance with the EQC Act as advised by EQC under clause 6.8.5; and
- (b) in the case of an SR Claim, the sum required to Cash Settle that SR Claim in accordance with the Customer's Insurance Policy;

Specialist Assessment Services means the following types of services:

- (a) geotechnical, structural or other professional engineering advice;
- (b) specialist reports (for example, roof reports, floor level reports and structural x-rays); and
- (c) loss adjusting, quantity surveying and estimator services.

SR Claim means, in relation to a Residential Building, a claim under a Customer's Insurance Policy for damage to that Residential Building;

Under-Cap Claim means an EQC Claim confirmed as being below the Cap; and

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)

Interpretation

1.2 In the interpretation of this MoU, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this MoU.
- 1.2.2 A reference in this MoU 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.
- 1.2.3 If the day on which any act, matter or thing is to be done under this MoU is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this MoU to 'dollars' or '\$' means New Zealand dollars and all amounts payable under this MoU are payable in New Zealand dollars.
- 1.2.5 A reference in this MoU 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.

- 1.2.6 A reference in this MoU to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this MoU.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 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.
- 1.2.10 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.
- 1.2.11 A reference to the word 'include' or 'including' is to be interpreted without limitation.
- 1.2.12 Any schedules and attachments form part of this MoU.

2 AGENCY

Southern Response appointed as EQC's agent

- 2.1 EQC appoints Southern Response as agent of EQC for the purpose of assessing and Cash Settling any In-Scope Claims within the terms of this MoU.
- 2.2 The agency appointments in clause 2.1 are made pursuant to (as applicable):
 - 2.2.1 paragraph 7(5) of Schedule 3 of the EQC Act; and
 - 2.2.2 section 73(1)(d) of the Crown Entities Act 2004.
- 2.3 Southern Response will at all times act:
 - 2.3.1 with the degree of skill, care and diligence reasonably expected of a professional insurance claims manager provider providing insurance claims management services similar to the claims management services provided under this MoU; and
 - 2.3.2 in accordance with:
 - (a) the EQC Act;
 - (b) all other applicable laws; and
 - (c) EQC's instructions in relation to the application of the EQC Act.

3 ACTING IN ACCORDANCE WITH THE EQC ACT

3.1 In this MoU the phrase "in accordance with the EQC Act" and similar references means in accordance with the EQC Act as interpreted by EQC and notified to Southern Response.

4 TERM

4.1 This MoU commences on the date it is signed and remains in force until 31 December 2017 (unless otherwise agreed in writing by EQC and Southern Response).

5 GENERAL PRINCIPLES RELATING TO CLAIMS UNDER THIS MOU

Allocation of claims to Southern Response or EQC

- 5.1 The parties will work together to allocate open In-Scope EQC Claims for resolution by either EQC or Southern Response by applying agreed processes intended to assess which party is best placed to manage resolution of the particular Claim.
- 5.2 To assist Southern Response in determining which In-Scope EQC Claims to manage, EQC may notify Southern Response of In-Scope Claims that it considers are clearly Under-Cap having regard to the spend to date and any issues raised by the Customer and/or any EQC audit process.
- 5.3 Claims allocated to Southern Response pursuant to clause 5.1, may not be returned to EQC unless:
- 5.3.1 EQC has agreed to settle the Claim by managed repair;
 - 5.3.2 proceedings are filed in relation to the Claim; or
 - 5.3.3 EQC has otherwise agreed to the return of the Claim.
- 5.4 The parties acknowledge that they may not, individually or collectively, be able to manage all In-Scope Claims during the term of this MoU.

Out of Scope Claims

- 5.5 The following EQC Claims are out of the scope of this MoU:
- 5.5.1 all Land Claims;
 - 5.5.2 all Contents Claims;
 - 5.5.3 all EQC Claims relating to properties that have unresolved (including claims settled but disputed) Claims:
 - (a) that do not relate to the Canterbury Earthquake Sequence; or

- (b) for which the relevant private insurer is not Southern Response;
 - 5.5.4 all EQC Claims relating to any Residential Buildings that have been Settled or confirmed as having an Over-Cap Claim by Southern Response or EQC;
 - 5.5.5 all EQC Claims in respect of which proceedings have been issued; and
 - 5.5.6 part or all of any other EQC Claim or category of EQC Claim notified by EQC to Southern Response.
- 5.6 The parties acknowledge that this MoU does not specifically contemplate all situations that might arise in relation to an EQC Claim managed by Southern Response under this MoU. The parties agree that they will discuss on a case by case basis how to manage any Southern Response managed EQC Claims in respect of which issues come to light which reasonably require reconsideration of the EQC Claim's allocation or management, including where (by way of example only):
- 5.6.1 EQC or Southern Response considers it may be appropriate to settle a Claim by managed repair rather than Cash Settlement; and
 - 5.6.2 issues are identified that raise questions as to whether an EQC Claim, or aspects of an EQC Claim, should be In-Scope or Out-of-Scope including due to events that are not part of the Canterbury Earthquake Sequence.

Inclusion of repair costs in Cap

- 5.7 EQC and Southern Response agree that, subject to clause 5.8, the following sums are included in the Cap:
- 5.7.1 contractor and associated costs in repairing a Residential **Building**; and
 - 5.7.2 any Cash Settlement of an EQC Claim to the extent that the Customer has not reinstated the earthquake damage the settlement related to.

Exclusion of Disregarded Work Sum from Cap

- 5.8 EQC and Southern Response agree that:
- 5.8.1 any Disregarded Work Sum is excluded from the calculation of the Cap; and
 - 5.8.2 an excess is not deducted from the Disregarded Work Sum.

Settlement payment process

- 5.9 The parties will work together to develop and agree as soon as reasonably practicable after the date of this MoU a payment process to facilitate smooth handling of settlement payments pursuant to clauses 6.13 that is consistent with EQC's internal requirements and which ensures that Southern Response's balance sheet liabilities do not include EQC settlement payments.

Data sharing

- 5.10 EQC and Southern Response will continue to share data, including historic settlement information where EQC (acting reasonably) considers that appropriate.

Engineering and technical reports

- 5.11 In assessing Claims under this MoU, each party will where practicable, rely on engineering or other technical reports previously procured by or on behalf of EQC to reduce the need for such work to be repeated.

6 MANAGEMENT OF EQC CLAIMS ALLOCATED TO SOUTHERN RESPONSE UNDER THIS MOU

- 6.1 Southern Response will manage EQC Claims it is allocated under this MoU as set out in this clause 6.

Assess

- 6.2 Southern Response will assess each EQC Claim in accordance with the EQC Act and the EQC policies notified in accordance with clause 10.1, including:
- 6.2.1 where there is a Defective Work Claim, considering the extent of the Defective Work (if any) and determining any Disregarded Work Sum in relation to that Defective Work; and
 - 6.2.2 where there is an Omitted Work Claim, the extent of the Omitted Work (if any) and determining any Disregarded Work Sum in relation to that Omitted Work.

Apportionment

- 6.3 Southern Response will refer each Claim to EQC for Apportionment.
- 6.4 To assist EQC in determining Apportionment, Southern Response will provide EQC with:
- 6.4.1 Southern Response's assessment of the aggregate Settlement Sum for all Claims for the Residential Building assessed by Southern Response;
 - 6.4.2 description of the natural disaster damage, the proposed repair methodology for that damage and Southern Response's cost calculation for that repair;
 - 6.4.3 if Southern Response has identified any Defective Work and/or Omitted Work, a description of that Defective Work and/or Omitted Work and the applicable Disregarded Work Sum (including how that sum was calculated); and
 - 6.4.4 any other information held by Southern Response and which Southern Response or EQC considers may be relevant to that Apportionment.
- 6.5 EQC will utilise a fast track apportionment process to promptly Apportion each Claim assessed by Southern Response to enable settlement to occur as soon as possible.

- 6.6 Each Claim assessed by Southern Response will be Apportioned as follows:
- 6.6.1 **Initial Apportionment:** EQC will carry out a fast track apportionment process to determine an initial Apportionment to enable settlement to occur as soon as possible; and
 - 6.6.2 **Final Apportionment:** Where either party considers it appropriate, EQC will determine a final Apportionment. To facilitate Southern Response's review of an initial Apportionment, EQC will provide Southern Response on request with any material information used by EQC in the initial Apportionment and which was not provided to EQC by Southern Response.

6.7 Southern Response will accept any initial Apportionment by EQC. Nothing in this MoU prevents Southern Response disputing any final Apportionment determined by EQC. Apportionment will include, where applicable, apportionment of any Disregarded Work Sum.

Determination if Under-Cap Claim or Over-Cap Claim

- 6.8 Taking into account:
- 6.8.1 Southern Response's assessment of:
 - (a) the cost of settling all Claims relating to a Residential Building; and
 - (b) any aggregated Disregarded Work Sums for those Claims; and
 - 6.8.2 the matters described in clause 5.8; and
 - 6.8.3 EQC's initial Apportionment or, if there is no initial Apportionment, EQC's final Apportionment,

EQC will:

- 6.8.4 determine if each Claim is an Under-Cap Claim or Over-Cap Claim in accordance with the EQC Act; and
- 6.8.5 advise Southern Response of the amount of the Settlement Sum (which will recognise any Disregarded Work Sum in accordance with clause 5.8 and any applicable Excess) for each EQC Claim.

Cash Settlement of EQC Claims

- 6.9 Unless EQC has notified Southern Response that it will settle an EQC Claim by managed repair, Southern Response will Cash Settle each EQC Claim by paying the amount of the Settlement Sum notified by EQC under clause 6.8.5.
- 6.10 Southern Response will pay the aggregate Settlement Sum:
- 6.10.1 to the Customer directly; or

6.10.2 at Southern Response's election and with EQC's consent, hold the Settlement Sum. EQC shall grant its consent if it is satisfied that the necessary documentation has been provided to allow for Southern Response to receive the Settlement Sum, including where necessary a deed of assignment or other direction from the Customer,

and EQC will reimburse Southern Response:

6.10.3 for that EQC Claim Settlement Sum; and

6.10.4 EQC's Share of External Assessment Expenses.

6.11 Southern Response will comply with any policy notified by EQC relating to section 29(4) of the EQC Act and who should be paid when there is more than one person with an insurable interest in any property;

Treatment of settlements paid by Southern Response

6.12 All settlements paid by Southern Response to a Customer (or held by Southern Response pursuant to clause 6.10.2) within the terms of this MoU, shall be binding on EQC provided that:

6.12.1 such settlements are subject to any final Apportionment and/or MoU Wash-up; and

6.12.2 EQC may dispute any Disregarded Work Sum calculated by Southern Response.

Payment and confirmation by bordereau statement

6.13 Upon receipt of an invoice from Southern Response the:

6.13.1 amount of each EQC Claim Settlement Sum; and

6.13.2 EQC's Share of External Assessment Expenses,

will become a debt due by EQC to Southern Response and EQC will reimburse Southern Response within 10 business days of Southern Response making payment and confirming that fact to EQC by way of a bordereau statement (provided weekly or at such other frequency at Southern Response's option) with accompanying GST Invoice. EQC is not required to pay Southern Response any Settlement Sum or part of a Settlement Sum that Southern Response has not paid to the Customer (except where payment is made to Southern Response as contemplated in clause 6.10.2) or expended on External Assessment Expenses.

7 MANAGEMENT OF CLAIMS ALLOCATED TO EQC UNDER THIS MOU

7.1 EQC Claims not allocated to Southern Response under this MoU will be managed by EQC as set out in this clause 7.

Assess

- 7.2 EQC will assess each EQC Claim in accordance with the EQC Act and EQC policies, and, where an EQC Claim appears to be Over-Cap, EQC will (unless otherwise agreed with Southern Response):
- 7.2.1 where there is a Defective Work Claim, consider the extent of the Defective Work (if any) and determine any Disregarded Work Sum in relation to that Defective Work; and
 - 7.2.2 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.

Apportionment

- 7.3 Each EQC Claim assessed by EQC will be Apportioned as follows:
- 7.3.1 **Initial Apportionment:** EQC will carry out a fast track apportionment process to determine an initial Apportionment to enable settlement to occur as soon as possible, provided that EQC may proceed straight to a final apportionment process where EQC considers that is appropriate. The fast track apportionment process will take into account:
 - (a) EQC's assessment of the aggregate Settlement Sum for all Claims for the Residential Building;
 - (b) description of the natural disaster damage, the proposed repair methodology for that damage and EQC's cost calculation for that repair;
 - (c) if EQC has identified any Defective Work and/or Omitted Work, a description of that Defective Work and/or Omitted Work and the applicable Disregarded Work Sum (including how that sum was calculated); and
 - (d) any other information held by EQC and which Southern Response or EQC considers may be relevant to that initial Apportionment; and
 - 7.3.2 **Final Apportionment:** Where either party considers it appropriate, EQC will determine a final Apportionment. To facilitate Southern Response's review of an initial Apportionment, EQC will provide Southern Response on request with:
 - (a) its assessment of the aggregate Settlement Sum for all Claims for the Residential Building assessed by EQC;
 - (b) description of the natural disaster damage, the proposed repair methodology for that damage and its's cost calculation for that repair;

- (c) if it has identified any Defective Work and/or Omitted Work, a description of that Defective Work and/or Omitted Work and the applicable Disregarded Work Sum (including how that sum was calculated); and
- (d) any other information held by a party and which Southern Response or EQC considers may be relevant to the review of that initial Apportionment.

7.4 Southern Response will accept any initial Apportionment by EQC. Nothing in this MoU prevents Southern Response disputing any final Apportionment determined by EQC. Apportionment will include, where applicable, apportionment of any Disregarded Work Sum.

Determination if Under-Cap Claim or Over-Cap Claim

7.5 Taking into account:

7.5.1 EQC's assessment of:

- (a) the cost of settling all Claims; and
- (b) any applicable Disregarded Work Sum; and

7.5.2 the matters described in clause 5.8; and

7.5.3 EQC's initial Apportionment,

EQC will:

7.5.4 determine if each EQC Claim is an Under-Cap Claim or Over-Cap Claim in accordance with the EQC Act; and

7.5.5 determine the amount of the Settlement Sum (which will recognise any Disregarded Work Sum in accordance with clause 5.8 and any applicable Excess), for each EQC Claim.

EQC provision of information relating to Over-Cap Claims

7.6 If EQC assesses any EQC Claim as Over-Cap, EQC will:

7.6.1 assess all natural disaster damage to the relevant Residential Building (rather than limiting its assessment to the extent necessary to determine that a particular EQC Claim is Over-Cap) insured under the EQC Act;

7.6.2 scope and price the repair of that natural disaster damage in accordance with the EQC Act; and

7.6.3 provide Southern Response with:

- (a) full details of its assessment of damage, proposed repair strategy and the cost to repair in accordance with the EQC Act;
- (b) any engineering or specialist reports EQC has obtained in relation to that Residential Building and the relevant EQC Claims; and
- (c) any other information in EQC's possession or control reasonably requested by Southern Response in relation to that Claim.

in each case for the purposes of assisting Southern Response determine the Customer's entitlement under any SR Claim for that Residential Building.

8 MOU WASH-UP

- 8.1 The parties agree to conduct a wash-up between themselves at regular intervals of any payment due from one to the other under this MoU as a result of:
 - 8.1.1 any change between an initial Apportionment and a final Apportionment determined by EQC; and
 - 8.1.2 if Southern Response has disputed a final Apportionment, any subsequent change EQC agrees with Southern Response (including in each case any reallocation of liability as, Over-Cap, Under-Cap or a Disregarded Work Sum).

9 CONFLICT ACKNOWLEDGEMENT

- 9.1 EQC acknowledges and accepts that Southern Response has an interest in ensuring that its Customers are satisfied with Southern Response's service and that Southern Response's commercial approach might differ from EQC's approach under the EQC Act.
- 9.2 Southern Response will at all times when it is acting as EQC's agent under this MoU act in good faith, considering EQC's interests which, for the purposes of this clause mean having EQC Claims Settled in accordance with the EQC Act.
- 9.3 Nothing in clause 9.1 allows Southern Response to do anything in breach of the EQC Act.
- 9.4 Southern Response may not make an ex gratia payment on EQC's behalf without EQC's prior written approval on each occasion. For clarity, the parties acknowledge that this clause does not apply to the determination and payment of any Disregarded Work Sum.

10 POLICIES, TRAINING, RECORD KEEPING AND REPORTING

EQC policies

- 10.1 Southern Response will adhere to, and is entitled to rely on, any policies provided by EQC (as updated and notified to Southern Response in writing from time to time) for the purpose of acting in accordance with the EQC Act.

- 10.2 Southern Response will seek direction from EQC whenever it considers or is aware that the EQC Act is capable of, or has been applied using, more than one interpretation. EQC will provide that direction as soon as reasonably practicable.

EQC point of contact and assistance

- 10.3 EQC will make available to Southern Response, at no cost, a subject matter expert who will be Southern Response's primary point of contact in relation to the EQC Act and EQC policies.

- 10.4 Where EQC has research and/or other technical expertise that is unavailable to Southern Response and which may assist in the settlement of any EQC Claims under this MoU, EQC will make that information and research available to Southern Response on request to assist in the settlement of those EQC Claims.

Vulnerable Persons and Prioritisation

- 10.5 In relation to each Claim within the scope of this MoU, each party will notify the other party if it is aware a Customer is a Vulnerable Person.
- 10.6 Each party will prioritise Claims for Vulnerable Persons notified pursuant to clause 10.5 .

Powers under s32 and s33 of the EQC Act

- 10.7 Nothing in this MoU grants Southern Response or any of its personnel any powers under section 32 or section 33 of the EQC Act.

Specialist Assessment Services

- 10.8 Subject to clause 10.9, any Specialist Assessment Services procured after the date of this MoU by Southern Response for the purposes of assessing or reaching a settlement decision must be:

- 10.8.1 procured by Southern Response, at its cost (subject to its right of reimbursement from the other party under this MoU) on arms-length commercial terms;
- 10.8.2 provided by an appropriately qualified and experienced specialist who is:
- (a) independent of the Customer;
 - (b) not subject to any conflict of interest that would, in the circumstances, reasonably be considered to prevent the engineer providing services to either party in relation to the particular Claim or generally; and
 - (c) not a person or member of a firm from which a party has advised the other party that it does not wish to obtain services from; and
- 10.8.3 also addressed to, and be for the benefit of and enforceable by EQC but without that EQC having any liability for the services to the supplier of those services.

10.9 Clause 10.8 applies only to external Specialist Assessment Services and, for clarity, the parties acknowledge that clause does not apply to any Specialist Assessment Services provided to Southern Response by Arrow International.

Training

10.10 Southern Response will ensure that all its personnel (including any contractors, sub-contractors and consultants) involved in assessing and Cash-Settling any EQC Claim or otherwise providing EQC with services under this MoU have completed and passed training as reasonably directed by that other party from time to time.

10.11 To evidence compliance with clause 10.10, Southern Response will maintain full, complete, accurate and up to date record of all personnel involved in providing EQC with services under this MoU, including:

10.11.1 the date they commenced and finished providing services under this MoU;

10.11.2 the nature of the services provided by that person;

10.11.3 the training they have received, the date on which that training was received and the results of any test in respect of that training.

Record Keeping and the Public Records Act 2005

10.12 Each party must maintain full complete and accurate records:

10.12.1 relating to all EQC Claims assessment and settlement decisions; and

10.12.2 of all other matters relating to this MoU.

10.13 As between each other, each party will provide total transparency of all EQC Claims relating to this MoU.

10.14 Without limiting any other obligation under this MoU, Southern Response will ensure that it complies with the Public Records Act 2005 in relation to any work it is doing on EQC's behalf and will transfer all records and documentation relating to the EQC Claims management process and this MoU to EQC at the end of its participation in this MoU as requested by EQC.

10.15 To facilitate Southern Response's compliance with clause 10.14, EQC will provide Southern Response with reasonable guidance on what Southern Response must do in relation to record keeping under this MoU.

Reporting

10.16 Without limiting any other provision of this MoU, each party will report to the other party in a manner and content as requested from time to time by that other party in relation to any Claims, the Claims management process or any other aspect of this MoU.

10.17 Any request by a party under clause 10.13, 10.14 or 10.16 must be reasonable having regard to that party's business and stakeholder requirements.

11 INTERNAL COSTS AND EXTERNAL ASSESSMENT EXPENSES

Internal costs

- 11.1 Each party will bear its own internal costs in managing any EQC Claim under, and otherwise in relation to, this MoU.

External Assessment Expenses are full entitlement

- 11.2 EQC's Share of External Assessment Expenses (to be reimbursed in accordance with clause 6.13) constitute Southern Response's full entitlement for the performance of its obligations under this MoU and the EQC Claims management process.
- 11.3 EQC acknowledges that Southern Response is not obliged to contribute to the cost of any External Assessment Expenses commissioned by EQC and provided to Southern Response under clause 7.6.3.

GST payable by Recipient

- 11.4 Unless otherwise stated, all amounts and values referred to in this MoU are exclusive of GST.
- 11.5 To the extent that any supply from one party (**Supplier**) to another party (**Recipient**) under this MoU 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.

GST treatment of supplies as agent (s60(2B) of the GST Act)

- 11.6 EQC and Southern Response agree for the purposes of s60(2B) of the GST Act that each payment made by Southern Response as agent for EQC will be treated for the purposes of the GST Act as two separate supplies, being:
- 11.6.1 a supply of goods and services from the customer to Southern Response (as if Southern Response was the principal for the purpose of supply); and
- 11.6.2 a supply of those goods and services from Southern Response to EQC.

Review of External Assessment Expenses and Specialist Assessment Services

- 11.7 EQC and Southern Response will review the External Assessment Expenses if requested by either party at any time following the first two months of the term of this MoU. No change in the manner in which External Assessment Expenses are shared between the parties will be effective unless agreed in writing signed by the Representatives for each party.

12 AUDIT AND ASSURANCE

Audit Right

12.1 Subject to clause 12.4, upon a party (**Party A**) giving no less than 5 Business Days' prior written notice to the other party (**Party B**), Party B shall permit Party A, any reinsurer of Party A or any duly qualified auditor (in each case, the Auditor) to have access to Party B's premises and any Party B personnel to:

12.1.1 examine records, documents, processes or other relevant information directly relating to this MoU; and

12.1.2 ask for adequate explanations from Party B which Party B shall provide,

to the extent necessary for the Auditor to satisfy itself:

12.1.3 of the correctness of any:

(a) Settlement Sum; or

(b) External Assessment Expense invoiced to Party A; and/or

12.1.4 that each party is performing its obligations under this MoU in accordance with this MoU.

12.2 Each party (including its reinsurers) will bear its own costs in relation to any such access, inspection, copying, observation, interviewing, testing or audit unless that action confirms any significant breach of this MoU by Party B in which case Party B will meet the costs of Party A and its reinsurers in relation to any such actions.

Replacing auditor

12.3 Party B may request replacement of the Auditor, and Party A shall comply with such request at its cost, if Party B reasonably considers the Auditor is unsuitable due to competitive conflict or not complying with clause 12.4.

Access conditions

12.4 Party B shall grant the Auditor access to the extent required in clause 12.1, provided that:

12.4.1 any Auditor has first produced to Party B any necessary authorisation from Party A;

12.4.2 the Auditor agrees to comply with all reasonable requirements of Party B stipulated for the purpose of protecting the confidentiality and security of information, personnel and premises;

12.4.3 Party A shall not be entitled to have access to any of Party B's accounts or financial records and information that relate to a service provided on a fixed price basis; and

12.4.4 the Auditor causes as little disruption to Party B and its personnel as is reasonably practicable.

12.5 If at any time (including following an audit) EQC is concerned that Southern Response is failing to comply with:

12.5.1 this MoU, or

12.5.2 the EQC Act,

in any systemic or material way, that party may give notice requiring Southern Response to immediately cease settlement of any EQC Claims or any particular category of Claims or Claims relating to particular type of property pending further review and EQC satisfying itself that Southern Response's Claims settlement practices are appropriate or that Southern Response has addressed EQC's concerns.

13 ADMINISTRATION

Communications

13.1 EQC must give its prior approval to:

13.1.1 all customer templates and other communications referencing EQC or in any way relating to any EQC Claim; and

13.1.2 any use of EQC's logo,

and any requests for such approval will be promptly considered by EQC and will not be unreasonably withheld.

13.2 Southern Response must give its prior approval to:

13.2.1 all customer templates and other communications referencing Southern Response or in any way relating to any SR Claim; and

13.2.2 any use of Southern Response's logo,

and any requests for such approval will be promptly considered by Southern Response and will not be unreasonably withheld.

Health and Safety

13.3 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 MoU.

13.4 Each party must have in place, and comply with, health and safety policies, processes and procedures that are appropriate for the services provided under this MoU (health and safety systems).

- 13.5 Each party will:
- 13.5.1 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; and
 - 13.5.2 will report regularly to the other party on health and safety matters as reasonably required by that other party.
- 13.6 Each party will comply with any reasonable expectations communicated by the other party in relation to its health and safety systems.
- 13.7 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.
- 13.8 Notice given under clause 13.7 will include a timeframe, at the party giving the notice's sole discretion, within which the issue must be rectified.
- 13.9 If the party receiving the notice has not rectified the issue in the notice under clause 13.8 to the party giving the notice's satisfaction within the specified timeframe, the party giving the notice may terminate this MoU with immediate effect.
- 13.10 In the event of any near miss incident or accident, a party will:
- 13.10.1 immediately advise the other party of that near miss incident or accident relating to the services under this MoU; and
 - 13.10.2 if requested by the other party:
 - (a) 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; and
 - (b) assist in or carry out any reasonable subsequent investigation relating to that incident or accident, as and when reasonably required by the other party.

Customer fraud

- 13.11 A party will notify the other party promptly on becoming aware of any suspected Customer fraud.
- 13.12 The parties will work together on a case by case basis where there is suspected Customer fraud.

Performance standards

- 13.13 Where Southern Response manages EQC Claims under this MoU, Southern Response will do so prudently, and:

- 13.13.1 in accordance with the EQC Act and the EQC policies notified in accordance with clause 10.1; and
- 13.13.2 otherwise in accordance with Southern Response's usual claims management practice from time to time, provided that this clause 13.13.2 does not limit any other right or obligation of Southern Response under this MoU.

Personnel

- 13.14 Each party must ensure that all of its personnel engaged in the Claims management process and/or the performance of this MoU (including all personnel engaged by consultants and subcontractors):
 - 13.14.1 are sufficiently experienced, qualified and skilled for those purposes; and
 - 13.14.2 conduct themselves in a professional manner at all times.
- 13.15 If a party is at any time dissatisfied on reasonable grounds with the performance of a particular person, that party may (after consulting with the other party in good faith) notify the other party that the particular person must immediately cease involvement with the performance of this MoU. The notified party must immediately remove that person from any involvement and replace that person as quickly as practicable with a suitably qualified and experienced person.

Existing Intellectual Property

- 13.16 The parties agree that all Intellectual Property owned by a party and existing prior to the commencement of this MoU will remain the exclusive property of that party during the term of this MoU and afterwards.

New Intellectual Property

- 13.17 Each party agrees that all Intellectual Property that is created jointly by the parties or any of their employees, agents, officers or subcontractors during the term of this MoU, as a result of, for the purposes of, or in connection with, this MoU 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 1993 and all other applicable laws) to use such jointly owned Intellectual Property.
- 13.18 Each party agrees that 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 MoU, as a result of, for the purposes of, or in connection with, this MoU will vest in Party A on creation and Party A may, but need not, licence any other party to use such new Intellectual Property on such terms and conditions as Party A sees fit.

Governance structure

- 13.19 The implementation of this MoU, and the Claims management process contemplated by it, is to be overseen by the parties' Representatives. As at the date of this MoU the Representatives are:

- 13.19.1 for EQC, Patricia Keith; and
 - 13.19.2 for Southern Response, Anthony Honeybone.
- 13.20 The Representatives will:
- 13.20.1 have oversight of all aspects of the Claims management process, with a view to ensuring that potential issues or differences are identified and resolved at the earliest opportunity;
 - 13.20.2 be cognisant of the intention expressed in Background B.

Customer complaints

- 13.21 As soon as reasonably practicable after the date of this MoU the parties will establish a protocol to address customer complaints setting out how complaints will be handled and the assistance to be provided by each party to the other party. The Customer complaints protocol will include:
- 13.21.1 Southern Response resolving all complaints relating to EQC Claims allocated to Southern Response under clause 5.1, unless the complaint is referred to EQC because:
 - (a) the Customer has complained to the Parliamentary Ombudsman; or
 - (b) the Customer has filed proceedings; or
 - (c) the parties have agreed, following a discussion pursuant to clause 5.6, that the complaint is to be referred to EQC.
 - 13.21.2 Southern Response providing EQC with all reasonable assistance to allow EQC to respond to any complaint, including providing records, reports and correspondence relating to the relevant Claims and using its reasonable endeavours to make available all personnel involved in the relevant Claims; and
 - 13.21.3 each party bearing its own costs in relation to the complaint (or such other cost arrangement as is agreed by the parties).

14 TERMINATION

- 14.1 A party may terminate this MoU at any time by giving 20 business days' notice to the other party.
- 14.2 A party may terminate this MoU by notice, such termination to take immediate effect on the date on which notice is given, if any of the following occurs:
- 14.2.1 the other party commits a material breach of this MoU that is not rectifiable or is not reasonably rectifiable within 10 business days.

- 14.2.2 the other party fails to rectify a material breach of this MoU that is rectifiable within 10 business days after receiving a notice specifying the breach and requiring rectification.

Effect of termination

- 14.3 In addition to any other rights, powers or remedies a party may have under this MoU or at law, if this MoU ends or is terminated, the following will apply:
- 14.3.1 each party is released from its obligations under this MoU (except those relating to confidentiality, disengagement, audit and assurance, reporting, assistance with customer complaints, final apportionment, MOU Wash-up and any other clauses expressly stated or which would reasonably be expected to survive the termination of this MoU);
- 14.3.2 each party retains the rights it has accrued under this MoU; and
- 14.3.3 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.

15 DISENGAGEMENT

- 15.1 On termination of this MoU for any reason:
- 15.1.1 Southern Response will assist EQC with a smooth transition of its EQC Claims management process to EQC or an alternative provider as requested by EQC, including by immediately transferring to EQC or at EQC's direction, all information held by Southern Response relating to the Claims being managed by Southern Response on EQC's behalf under this MoU; and
- 15.1.2 if this MoU is terminated by EQC, EQC will pay Southern Response's actual and reasonable termination costs with third parties to the extent that those costs could not be mitigated by Southern Response, including in relation to SR claims,

provided that nothing in this clause requires EQC to pay anything to Southern Response where termination was due to Southern Response's material breach of this MoU.

16 LIABILITY

- 16.1 Subject to clause 16.2, and provided a party is reasonably operating within the scope of this MoU, that party will not be liable to the other party (in contract, tort or otherwise, including negligence) for anything arising out of this MoU.
- 16.2 If Southern Response has paid a Cash Settlement under clause 6.9 that exceeds the correct amount due to a Customer under the EQC Act (including the determination of any Disregarded Work Sum), and EQC has reimbursed that Cash Settlement pursuant to clause 6.13, then EQC may require Southern Response to reimburse to EQC the amount of the

overpayment where the incorrect Cash Settlement resulted from Southern Response or its employees or contractors:

- 16.2.1 not having undertaken the EQC Act training required under this MoU; or
 - 16.2.2 not acting in accordance with the EQC Act in a systemic way; or
 - 16.2.3 failing to take proper and business like steps to meet Southern Response's obligations under clause 2.3; or
 - 16.2.4 acting in bad faith.
- 16.3 Subject to clause 16.2, but despite any other provision in this MoU, 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 MoU is limited to \$1,000,000.
- 16.4 EQC indemnifies Southern Response against any costs (including solicitor-client costs) incurred by it as a direct result of any failure by EQC to reimburse Southern Response any Settlement Sums in accordance with clause 6.13.
- 16.5 No party shall be liable to another party for any indirect, consequential or special loss, or loss of profit, in relation to this MoU however arising, whether in contract, tort or otherwise.

17 CONFIDENTIAL INFORMATION

- 17.1 Where the one party (**Recipient**) receives, or has received, whether before or after the date of this MoU, Confidential Information from the other party (**Provider**), the Recipient must, subject to the terms of this MoU:
- 17.1.1 keep the Confidential Information secret and preserve its confidential nature.
 - 17.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than a purpose permitted by this MoU.
 - 17.1.3 not, without the Provider's consent, disclose or permit the disclosure of the Confidential Information to any person except as permitted under clause 17.2.
 - 17.1.4 only copy or reproduce Confidential Information for the purposes of this MoU or with the consent of the Provider.
 - 17.1.5 establish and maintain appropriate security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.
 - 17.1.6 immediately notify the Provider of any unauthorised access to, use or disclosure of the Confidential Information.
 - 17.1.7 comply with any direction from the Provider in relation to the protection of the Confidential Information.

Further permitted use and disclosure of Confidential Information

- 17.2 This MoU does not prohibit the disclosure of Confidential Information by the Recipient in the following circumstances:
- 17.2.1 The Provider has consented to the disclosure. The 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.
 - 17.2.2 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 MoU.
 - 17.2.3 The disclosure is required by a court, or to comply with any law, binding directive of a governmental or administrative authority.
 - 17.2.4 The disclosure is required to comply with the listing rules of any stock exchange on which the Recipient's securities are listed.
 - 17.2.5 The disclosure is to EQC's responsible Minister or in connection with any Parliamentary convention.

Official Information

- 17.3 The parties acknowledge that they are each subject to the Official Information Act 1982 (OIA) and that they are 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:
- 17.3.1 promptly notify the other party of any request received by it under the OIA that relates to Confidential Information of that other party; and
 - 17.3.2 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

Giving notices

- 18.1 Any notice, consent, approval or other communication (each a Notice) given to a party under this MoU is only given if it is in writing and sent in one of the following ways:
- 18.1.1 Delivered to that party at its physical address and marked for the attention of the relevant department or officer (if any) set out below.
 - 18.1.2 Posted to that party at its postal address and marked for the attention of the relevant department or officer (if any) set out below.

- 18.1.3 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: pkeith@eqc.govt.nz
Attention: Patricia Keith

Southern Response

Name: Southern Response Earthquake Services Limited
Physical Address: 6 Show Place, Addington, Christchurch 8024
Postal Address: PO Box 9052, Christchurch 8149
Email: anthony.honeybone@southernresponse.co.nz
Attention: Anthony Honeybone

Change of address

- 18.2 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.

Time notice is given

- 18.3 Any Notice is to be treated as given at the following time:
- 18.3.1 If it is delivered, when it is left at the relevant address.
 - 18.3.2 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.
 - 18.3.3 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).

- 18.4 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 If a dispute arises under this MoU, 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 MoU.

- 19.2 If a dispute arises under this MoU, a party may, at any time, give a notice (**Dispute Notice**) to the other party:
- 19.2.1 specifying the nature of the dispute and the position that the party giving the notice believes to be correct; and
 - 19.2.2 requesting that a meeting take place to attempt to resolve the dispute.
- 19.3 The Representatives (or their nominees) must meet with the party raising the dispute within five business days of the date of the Dispute Notice and endeavour to resolve the dispute in good faith.
- 19.4 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.
- 19.5 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.
- 19.6 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 New Zealand Arbitration Act 1996.
- 19.7 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.
- 19.8 The seat or place of arbitration will be in Christchurch.
- 19.9 The parties agree:
- 19.9.1 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 MoU.
 - 19.9.2 No other provisions of the Second Schedule to the Arbitration Act 1996 apply to any such arbitration.
 - 19.9.3 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.
 - 19.9.4 The award of any arbitral tribunal constituted under this MoU shall be in writing and will be binding on the parties, who each covenant to carry out that award.

20 MISCELLANEOUS

Approvals and consents

- 20.1 Unless this MoU 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.

Assignments and transfers

- 20.2 A party must not assign any of its rights under this MoU without the prior written consent of each of the other parties.

Contracts (Privity) Act 1982

- 20.3 Nothing in this MoU limits any discretion of a party or binds a party in any way in respect of any Claim that has not been allocated to Southern Response pursuant to clause 5.1.
- 20.4 Unless this MoU expressly provides otherwise, this MoU is not intended to, and does not, confer a benefit on any person or class of persons who is not a party to it.

No set off

- 20.5 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 MoU will be paid in full without deduction or withholding. An amount owed includes any amount owed, whether actually, contingently or prospectively.

Costs

- 20.6 Except as otherwise set out in this MoU, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this MoU and any document related to this MoU.

Entire agreement

- 20.7 This MoU 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 MoU was executed.

Execution of separate documents

- 20.8 This MoU is properly executed if each party executes either this document or an identical document. In the latter case, this MoU takes effect when the separately executed documents are exchanged between the parties.

Further acts

- 20.9 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 MoU and all transactions incidental to it.

- 20.10 Nothing in clause 20.9 limits or restricts any right, discretion or power of EQC under this MoU.

Governing law and jurisdiction

- 20.11 This MoU 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.

Severability

- 20.12 Each provision of this MoU 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 MoU in the relevant jurisdiction, but the rest of this MoU will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Variation

- 20.13 No variation of this MoU will be of any force or effect unless it is in writing and signed by each party to this MoU.

Waivers

- 20.14 A waiver of any right, power or remedy under this MoU 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.
- 20.15 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this MoU does not amount to a waiver.

EXECUTION AND DATE

Executed as an agreement.

Date: 9/5/17

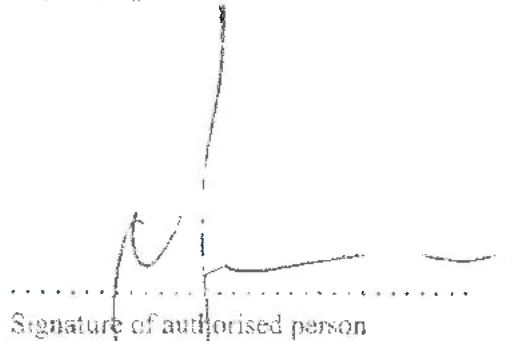
Earthquake Commission by:


.....
Signature of authorised person

... R MILLER
Name of authorised person (print)

... CE
Office held

Southern Response Earthquake Services Limited by:


.....
Signature of authorised person

... Peter James
Name of authorised person (print)

... Chief Executive
Office held