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MEMORANDUM OF UNDERSTANDING RELATING TO KAIKOURA EARTHQUAKE CLAIMS MANAGEMENT

EARTHQUAKE COMMISSION

**AA INSURANCE LIMITED
FARMERS' MUTUAL GROUP & FMG INSURANCE LIMITED
IAG NEW ZEALAND LIMITED
MEDICAL INSURANCE SOCIETY LIMITED
QBE INSURANCE (AUSTRALIA) LIMITED
TOWER NEW ZEALAND LIMITED
VERO INSURANCE NEW ZEALAND LIMITED
YOU1 NZ PTY LIMITED**

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PARTIES

Earthquake Commission (EQC)

AND

AA Insurance Limited

Farmers' Mutual Group & FMG Insurance Limited

IAG New Zealand Limited

Medical Assurance Society New Zealand Limited

QBE Insurance (Australia) Limited

Tower New Zealand Limited

Vero Insurance New Zealand Limited

YOUI NZ Pty Limited

(each an Insurer)

BACKGROUND

- A** The parties wish to facilitate the provision of a good claim experience for people making contents and residential building insurance claims arising out of the Kaikoura earthquake event.
- B** EQC and the Insurers have together worked hard, in urgent circumstances, to identify a basis on which each Insurer can assess and settle EQC claims in order to achieve the objective of Background A.
- C** EQC and the Insurers each acknowledge that in the time available it has not been possible to resolve all operational issues relating to this MoU. The parties agree to continue to work together in good faith and in a partnering spirit, with regular meetings, close and timely communication at a senior level and with a goal of identifying and resolving potential issues at the earliest opportunity.
- D** EQC and the Insurers have agreed that each of the Insurers will be appointed as an agent of EQC and will be responsible, on EQC's behalf, for lodging, assessing and settling certain claims arising out of the Kaikoura earthquake event 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:**

Agreed Fee means, in respect of each Claim, the fee agreed between EQC and the Insurer for that Claim;

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;

Canterbury Earthquake Events means earthquakes centred in Canterbury from and including 4 September 2010 through to and including 14 February 2016;

Cap means:

- (a) in the case of a Contents Claim, the statutory amount set out in s20 of the EQC Act; and
- (b) in the case of a Residential Building Claim, the statutory amount set out in s18 of the EQC Act;

Cash Settle means a cash settlement of a Claim and **Cash Settlement** and **Cash Settling** have the corresponding meaning;

Claims means a Contents Claim, a Residential Building Claim or a Land Claim received by either EQC or the Insurer within 3 months of the relevant Kaikoura Earthquake Event;

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:

- (d) It is in the public domain, unless it came into the public domain by a breach of confidentiality;

- (e) 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;
- (f) 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 Kaikoura Earthquake Event;

Customer means an Insurer's customer holding a contract of fire insurance insuring personal property and/or a residential building (each as defined under the EQC Act), and includes any other person with an insurable interest in the property concerned.

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

Excess means the applicable excess under the EQC Act in respect of any claim;

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.

Insolvency Event in relation to a party means anything that reasonably indicates that there is a significant risk that that party is or will become unable to pay its debts as they fall due. This includes any of the following:

- (a) A meeting of the party's creditors being called or held;
- (b) A step being taken to wind-up the party;
- (c) A step being taken to have a receiver, receiver and manager, administrator, liquidator or interim liquidator appointed to the party or any of its assets or such an appointment taking place;
- (d) The party entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors including any formal arrangement or compromise under the Companies Act 1993;
- (e) The party ceases or threatens to cease to carry on its main business;
- (f) The party is declared at risk or a recommendation is made by the Financial Markets Authority to appoint a statutory manager of the person, under the Corporations (Investigation and Management) Act 1989;
- (g) Any similar event under another jurisdiction;

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.

Kaikoura Earthquake Event means earthquake damage arising from earthquakes centred in and around Kaikoura (including Scargill) from and including 14 November 2016 continuously through to and including 13 December 2016 (being 30 days after the initial Kaikoura earthquake event);

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

Over-Cap Claim means a Claim in excess of the Cap;

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

Settlement means the sum required to Cash Settle a Contents Claim or a Residential Building Claim in accordance with the EQC Act;

Steering Group means the steering group referenced in clause 13.20.

Under-Cap Claim means a Claim 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

- 2.1 EQC appoints the Insurers as agents of EQC for the purpose of lodging, assessing and Cash Settling any Claims within the terms of this MoU, related to the Kaikoura Earthquake Event.
- 2.2 The agency appointments in clause 2.1 is 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 Each Insurer 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 the relevant Insurer.

4 DEED OF ACCESSION

- 4.1 Any insurer that is not already party to this MoU may, with EQC's consent, accede to this MoU by entering into a deed of accession in the form set out in Schedule 2.

5 TERM

- 5.1 Subject to clauses 14.1 to 14.3, this MoU will remain in force until the processing of all Claims is completed.

6 CONTENTS CLAIMS AND RESIDENTIAL BUILDING CLAIMS

- 6.1 Each Insurer will receipt, assess and Cash Settle Contents Claims and Residential Building Claims for its Customers in accordance with the EQC Act and the following applies:

6.1.1 For Under-Cap Claims the Insurer will determine in accordance with the EQC Act the amount of the Cash Settlement for each Claim;

6.1.2 For Over-Cap Claims:

- (a) the Insurer will determine in accordance with the EQC Act the amount of the Cash Settlement for the Claim up to the relevant Cap; and
- (b) the balance of the Claim will be settled by the Insurer (as principal) in accordance with the Customer's policy wording;

6.1.3 The Insurers will pay the Settlement, less the applicable Excess, to:

- (a) the Customer directly; or
- (b) to the Insurer if requested to do so by the Insurer and EQC is satisfied that the necessary documentation has been provided to allow for the Insurer to receive the Settlement, including where necessary a deed of assignment or other direction from the Customer.

6.1.4 Each Insurer 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.



- 6.1.5 All Settlements up to the Cap paid by the Insurer to a Customer within the terms of this MoU, shall be binding on EQC. Upon receipt of an invoice from the Insurer the Settlement will become a debt due by EQC to the Insurer and EQC will reimburse the Insurer within 5 business days of the Insurer making payment and confirming that fact to EQC by way of a bordereau statement (provided weekly or at such other frequency at the Insurer's option) with accompanying tax invoice. EQC is not required to pay the Insurer any Settlement or part of a Settlement that the Insurer has not paid to the Customer except where payment is made to the Insurer as contemplated in clause 6.1.3(b).
- 6.1.6 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 that are consistent with the Insurers' and EQC's internal requirements and which ensure that the Insurers' balance sheet liabilities in relation to Settlement payments are removed.

7 OUT OF SCOPE CLAIMS

- 7.1 The following Claims are out of the scope of this MoU:
- 7.1.1 all Land Claims;
- 7.1.2 all Claims relating to properties with prior EQC earthquake claims that are still open or otherwise unresolved (including all outstanding remedial claims, complaints and litigation from the Canterbury Earthquake Events); and
- 7.1.3 part or all of any other Claim or category of Claim notified by EQC to an Insurer.

8 MULTIPLE INSURER CLAIMS

- 8.1 As soon as reasonably practicable after the date of this MoU, the parties will form a Multiple Insurer Claims Resolution Group (MICRG) as a forum for discussion and resolution of crossover issues.
- 8.2 The MICRG will not have authority to bind any party in any way.

9 CONFLICT ACKNOWLEDGEMENT

- 9.1 EQC acknowledges and accepts that each Insurer has an interest in ensuring that its Customers are satisfied with the Insurer's service and that the Insurer's commercial approach might differ from EQC's approach under the EQC Act.
- 9.2 Each Insurer 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 Claims Settled in accordance with the EQC Act.



- 9.3 Nothing in clause 9.1 allows any Insurer to do anything in breach of the EQC Act.
- 9.4 No Insurer may make an ex gratia payment on EQC's behalf without EQC's prior written approval on each occasion.

10 EQC POLICIES, TRAINING, RECORD KEEPING AND REPORTING

EQC Policies

- 10.1 EQC will provide the Insurers with policies as to how it applies the EQC Act and Insurers are entitled to rely on such policies (as updated and notified to the Insurers in writing from time to time) for the purpose of acting in accordance with the EQC Act.
- 10.2 Each Insurer 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 each Insurer, at no cost, a subject matter expert who will be the Insurer's primary point of contact in relation to this MoU.
- 10.4 Where EQC has research and/or other technical expertise that is unavailable to Insurers and which may assist in the settlement of any Claims under this MoU, EQC will make that information and research available to Insurers on request to assist in the settlement of those Claims.

Apportionment

- 10.5 The parties will work together to develop and agree on an Apportionment process. Any Apportionment in relation to Claims must be in accordance with the process agreed with EQC.

Vulnerable Persons and Prioritisation

- 10.6 Promptly following receipt of each Claim, each Insurer will identify whether a Customer is a Vulnerable Person and will prioritise Claims for all Vulnerable Persons.
- 10.7 Each Insurer will also prioritise any other type of Claim or Customer reasonably requested by EQC.

Powers under s32 and s33 of the EQC Act

- 10.8 Nothing in this MoU grants any Insurer or any of their personnel any powers under section 32 or section 33 of the EQC Act.

Engineering Services

- 10.9 Any engineering services procured by an Insurer for the purposes of assessing or reaching a Settlement decision must be:

- 10.9.1 procured by the Insurer, at its cost (subject to its right of reimbursement from EQC under this MoU) on arms-length commercial terms;
- 10.9.2 provided by an appropriately qualified and experienced engineer 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 EQC in relation to the particular Claim or generally; and
 - (c) not a person or member of a firm that EQC has advised the relevant insurer that EQC does not wish to obtain services from that person or firm; and
- 10.9.3 also addressed to, and be for the benefit of and enforceable by EQC but without EQC having any liability for the services to the supplier of those services.

Training

- 10.10 Each Insurer will ensure that all personnel (including any contractors, sub-contractors and consultants) involved in receiving, assessing and Cash-Settling any Claim or otherwise providing the Insurer's services under this MoU have completed and passed training as reasonably directed by EQC from time to time.
- 10.11 To evidence compliance with clause 10.10, each Insurer will maintain full, complete, accurate and up to date record of all personnel involved in providing the Insurer's 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 EQC 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 Insurer must maintain full complete and accurate records:
 - 10.12.1 relating to all Claims assessment and Settlement decisions; and
 - 10.12.2 of all other matters relating to this MoU.
- 10.13 As between each Insurer and EQC, that Insurer will provide total transparency of all Claims and other information relating to this MoU.
- 10.14 Without limiting any other obligation under this MoU, each Insurer will ensure that it complies with the Public Records Act 2005 and will transfer all records and documentation

relating to the Claims management process and this MoU to EQC at the end of their participation in this MoU as requested by EQC.

- 10.15 To facilitate Insurers' compliance with clause 10.14, EQC will provide the Insurers with reasonable guidance on what the Insurer must do in relation to record keeping under this MoU.

Reporting

- 10.16 Without limiting any other provision of this MoU, each Insurer will report to EQC in a manner and content as requested from time to time by EQC in relation to any Claims, the Claims management process or any other aspect of this MoU.
- 10.17 Each Insurer will provide EQC with its internal reporting against key performance indicators relating to the Insurer's performance of Claims managed under this MoU.
- 10.18 Any request by EQC under clause 10.14, 10.16 or 10.17 must be reasonable having regard to EQC's business and stakeholder requirements.

11 AGREED FEES

Agreed Fees

- 11.1 Each Insurer will be entitled to be paid the Agreed Fee for each Claim managed by that Insurer in accordance with this MoU.

Payment of Agreed Fees

- 11.2 Insurers may invoice the Agreed Fee for each Claim upon payment of Settlement of that Claim. EQC will pay Insurers the Agreed Fees within 5 business days of receipt of a bordereau statement (provided weekly or at such other frequency at the Insurer's option) with accompanying tax invoice, other than any Agreed Fee disputed in good faith.

GST payable by Recipient

- 11.3 Unless otherwise stated, all amounts and values referred to in this MoU are exclusive of GST.
- 11.4 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.

Review of Agreed Fees

- 11.5 EQC and each Insurer may review their Agreed Fees at any time during the term of this MoU.

The Agreed Fees are the Insurers full entitlement

- 11.6 The Agreed Fees constitute each Insurer's full entitlement for the performance of its obligations under this MoU and the Claims management process.

12 AUDIT AND ASSURANCE

- 12.1 EQC (including any reinsurer of EQC or other person nominated by EQC) may at any time and on reasonable notice to an Insurer, audit, observe, test or inspect (or, in relation to any Insurer personnel, interview, and where relevant take copies of), any or all:

- 12.1.1 documents (including any agreements, arrangements or undertakings between that Insurer (or any person associated with that Insurer) and any other person), records (including financial records and Claims records), and data (including operational data) associated with that Insurer's performance of Claims management services or this MoU;
- 12.1.2 practices or procedures of that Insurer relating to this MoU;
- 12.1.3 EQC equipment or confidential information in that Insurer's possession, custody or control;
- 12.1.4 premises from which the whole or any part of that Insurer's Claims management services are being or have been provided; and
- 12.1.5 other premises, documents, data, records, resources, practices, tools and matters as EQC may from time to time wish to audit and inspect in connection with that Insurer's participation in this MoU,

for the purposes of determining whether that Insurer has complied with this MoU and each Claim managed by that Insurer has been dealt with in accordance with the EQC Act.

- 12.2 EQC (including its reinsurers) and each Insurer will bear their own costs in relation to any such access, inspection, copying, observation, interviewing, testing or audit unless that action identifies any significant breach of this MoU by an Insurer in which case that Insurer will meet the costs of EQC and its reinsurers in relation to any such actions in relation to the Insurer.
- 12.3 If at any time (including following an audit) EQC is concerned that an Insurer is failing to comply with the EQC Act or this MoU in any systemic or material way, EQC may give notice requiring that Insurer to immediately cease settlement of any Claims or any particular category of Claims or Claims relating to particular type of property pending further review and EQC satisfying itself that the Insurer's Claims settlement practices are appropriate or that the Insurer has addressed EQC's concerns.

13 ADMINISTRATION

Privacy issues

- 13.1 Where required by law or EQC, an Insurer will obtain a privacy waiver from any of its Customers allowing information sharing amongst EQC and that Insurer.
- 13.2 EQC and the Insurers may also seek a specific exemption under section 54 of the Privacy Act 1993 in respect of certain information sharing between EQC and the relevant Insurers.

Information systems and information provision

- 13.3 As soon as reasonably practicable after the date of this MoU, EQC and the Insurers will develop and implement a mechanism for data sharing and storage, including historic settlement information where EQC (acting reasonably) considers that appropriate.

Communications

- 13.4 EQC must give its prior approval to:
- 13.4.1 all customer templates and other communications referencing EQC or in any way relating to any Claim; and
- 13.4.2 any use of EQC's logo,

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

Health and Safety

- 13.5 Each Insurer 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 the Insurers acknowledge their collective goal of "zero harm" in the provision of services under this MoU.
- 13.6 Each Insurer 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).
- 13.7 Each Insurer will:
- 13.7.1 provide reasonable details of its health and safety systems to EQC, and if requested, will allow EQC to audit those systems from time to time; and
- 13.7.2 will report regularly to EQC on health and safety matters as reasonably required by EQC.
- 13.8 Each Insurer will comply with any reasonable expectations communicated by EQC in relation to the Insurer's health and safety systems.

- 13.9 EQC may suspend an Insurer's services (or any part thereof) with immediate effect by giving Notice to the Insurer if it is not satisfied with any aspect of the Insurer's health and safety systems or conduct.
- 13.10 Notice given under clause 13.9 will include a timeframe, at EQC's sole discretion, within which the issue must be rectified.
- 13.11 If the Insurer has not rectified the issue in the notice under clause 13.10 to EQC's satisfaction within the specified timeframe, EQC may terminate this MoU in relation to that Insurer with immediate effect.
- 13.12 In the event of any near miss incident or accident, each Insurer will:
- 13.12.1 immediately advise EQC of that near miss incident or accident relating to the services under this MoU; and
 - 13.12.2 if requested by EQC:
 - (a) undertake its own investigation into that near miss incident or accident and provide EQC 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 EQC.

Customer fraud

- 13.13 The parties will work together to develop an agreed approach (that may be joint or individual to each Insurer) for reporting of suspected customer fraud.

Performance standards

- 13.14 Each Insurer will manage its Customers' Claims that are within the scope of this MoU prudently, and:
- 13.14.1 in accordance with the EQC Act; and
 - 13.14.2 otherwise in accordance with the Insurer's usual claims management practice from time to time, provided that this clause 13.14.2 does not limit any other obligation of the Insurer under this MoU.

Personnel

- 13.15 Each Insurer 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):
- 13.15.1 are sufficiently experienced, qualified and skilled for those purposes; and
 - 13.15.2 conduct themselves in a professional manner at all times.

- 13.16 If EQC is at any time dissatisfied on reasonable grounds with the performance of a particular person, EQC may (after consulting with the relevant Insurer in good faith) notify the Insurer that the particular person must immediately cease involvement with the Claims management process and/or the performance of this MoU. The relevant Insurer 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

- 13.17 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

- 13.18 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.
- 13.19 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

- 13.20 The implementation of this MoU, and the Claims management process contemplated by it, is to be overseen by a steering group comprising senior executives of EQC and each Insurer (**Steering Group**).
- 13.21 The Steering Group will:
- 13.21.1 be established as soon as reasonably practicable after the date of this MoU;
 - 13.21.2 be led by an EQC representative;
 - 13.21.3 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;
 - 13.21.4 establish appropriate key performance indicators (including time to assess, time to settle, errors, complaints upheld) and establish a process for monitoring each Insurer's performance against those key performance indicators (such process to be bilateral between EQC and each Insurer); and
 - 13.21.5 be cognisant of the intention expressed in Background C.

Customer complaints

- 13.22 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 Insurers. The Customer complaints protocol will be agreed having regard to the Fair Insurance Code and will include:
- 13.22.1 one or more thresholds nominated by EQC from time to time, above which all complaints are notified to EQC;
 - 13.22.2 the relevant Insurer providing EQC with all reasonable assistance to allow EQC to respond to the 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 Claim;
 - 13.22.3 the Insurer will not be obliged to act as EQC's agent in relation to any Claim after the Insurer has made a Settlement payment for that Claim; and
 - 13.22.4 each party bearing its own costs in relation to the complaint (or such other cost arrangement as is agreed by the parties).

Post-Claims review

- 13.23 When the Claims processing is completed, the parties may appoint an independent person to carry out a review of the process outlined in this MoU and its performance. The cost of that review will be met by the parties in proportions to be agreed by the parties.

14 TERMINATION

- 14.1 An Insurer may terminate its participation in this MoU at any time by giving 20 business days' notice to the other parties.
- 14.2 EQC may terminate this MoU at any time by notice to the Insurers, at any time by giving 20 business days' notice to the other parties.
- 14.3 EQC may terminate an Insurer's participation in this MoU by notice, at any time by giving 20 business days' notice to the other parties.
- 14.4 EQC may terminate an Insurer's participation in this MoU by notice, such termination to take immediate effect on the date on which notice is given, if any of the following occurs:
- 14.4.1 that Insurer commits a material breach of this MoU that is not rectifiable or is not reasonably rectifiable within 10 business days.
 - 14.4.2 that Insurer 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.
 - 14.4.3 an Insolvency Event happens to that Insurer.

- 14.4.4 that Insurer ceases to be licenced to carry on an insurance business in New Zealand.

Effect of termination

- 14.5 In addition to any other rights, powers or remedies a party may have under this MoU or at law:

- 14.5.1 if this MoU ends or is terminated, the following will apply:

- (a) each party is released from its obligations under this MoU (except those relating to confidentiality, disengagement, assistance with customer disputes, reporting and any other clauses expressly stated or which would reasonably be expected to survive the termination of this MoU);
- (b) each party retains the rights it has accrued under this MoU.
- (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.

- 14.5.2 if a party's participation in this MoU is terminated,

- (a) that party is released from its obligations under this MoU (except those relating to confidentiality, disengagement, assistance with customer disputes, reporting and any other clauses expressly stated or which would reasonably be expected to survive the termination of this MoU);
- (b) that party retains the rights it has accrued under this MoU.
- (c) that party must return any Confidential Information in its possession to the relevant party or, if requested by the relevant party, destroy the Confidential Information.
- (d) this MoU continues in force as between EQC and the remaining Insurer parties

15 DISENGAGEMENT

- 15.1 On termination of this MoU (or an Insurer's participation in this MoU) for any reason:

- 15.1.1 each Insurer (or the relevant Insurer) will at its cost assist EQC with a smooth transition of the 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 the Insurer relating to the EQC claims received and EQC claims assessed under this MoU; and

- 15.1.2 if this MoU or an Insurer's participation is terminated by EQC, EQC will pay each Insurer's actual and reasonable termination costs with third parties to the extent that those costs could not be mitigated by the Insurer, including in relation to claims under the Insurer's policy,

provided that nothing in this clause requires EQC to pay anything to any Insurer whose persistent or material breach of this MoU resulted in EQC ending that Insurer's participation in this MoU.

16 LIABILITY

- 16.1 Subject to clause 16.2, and provided the Insurer is reasonably operating within the scope of this MoU, the Insurer will not be liable to EQC (in contract, tort or otherwise, including negligence) for anything arising out of this MoU.
- 16.2 If an Insurer has determined a Cash Settlement under clause 6 that exceeds the correct amount due to a Customer under the EQC Act, and EQC has paid that Cash Settlement, then EQC may require the Insurer to reimburse to EQC the amount of the overpayment where the incorrect Cash Settlement resulted from the Insurer 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 the Insurer'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 an Insurer is liable to EQC (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 each Insurer against any costs (including solicitor-client costs) incurred by it as a direct result of any failure by EQC to reimburse that Insurer any Settlement amounts in accordance with clause 6.1.5.
- 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 Each Insurer acknowledges that EQC is subject to the Official Information Act 1982 (OIA) and that EQC is 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. EQC acknowledges the importance of each Insurer's commercially sensitive Confidential Information and will:

- 17.3.1 promptly notify an Insurer of any request received by it under the OIA that relates to Confidential Information of that Insurer; and
- 17.3.2 consult with that Insurer in relation to the Confidential Information that EQC 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 in Schedule 1.
- 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 in Schedule 1.
- 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 in Schedule 1.

Change of address

- 18.2 If a party gives another 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, emailed or faxed 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 or its participation in this MoU.
- 19.2 If a dispute arises under this MoU, a party may, at any time, give a notice (**Dispute Notice**) to one or more other parties:
- 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 notified parties' representatives 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 Wellington.
- 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.
- 20.2 Where this MoU refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

Assignments and transfers

- 20.3 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

- 20.4 Unless this MoU expressly provides otherwise, this MoU is not intended to confer a benefit on any person or class of persons who is not a party to it. For clarity, the parties acknowledge that the Insurance Council of New Zealand is not a party to this MoU.

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:

Earthquake Commission by:

.....
Signature of authorised person

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

.....
Office held

AA Insurance Limited by:

.....
Signature of authorised person

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

.....
Office held

**Farmers Mutual Group and FMG Insurance
Limited by:**

.....
Signature of authorised person

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

.....
Office held



MEMORANDUM OF UNDERSTANDING RELATING TO KAIKOURA
EARTHQUAKE CLAIMS MANAGEMENT

IAG New Zealand Limited by:

.....
Signature of authorised person

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

.....
Office held

Medical Insurance Society Limited by:

.....
Signature of authorised person

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

.....
Office held

QBE Insurance (Australia) Limited by:

.....
Signature of authorised person

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

.....
Office held



MEMORANDUM OF UNDERSTANDING RELATING TO KAIKOURA
EARTHQUAKE CLAIMS MANAGEMENT

Tower New Zealand Limited by:

.....
Signature of authorised person

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

.....
Office held

Vero Insurance New Zealand Limited by:

.....
Signature of authorised person

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

.....
Office held

Youi NZ Pty Limited by:

.....
Signature of authorised person

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

.....
Office held



SCHEDULE 1

Addresses for Notices

Earthquake Commission

Physical Address: Level 11, Majestic Centre, 100 Willis Street, Wellington
Postal Address: PO Box 311, Wellington 6140
Email Address: 9(2)(a) [REDACTED]
Attention: Jeremy Ford

AA Insurance Limited

Physical Address: Level 17, AA Centre, 99 Albert Street, Auckland
Postal Address: Level 17, AA Centre, 99 Albert Street, Auckland
Email Address: 9(2)(a) [REDACTED]
Attention: [REDACTED]

Farmers' Mutual Group & FMG Insurance Limited

Physical Address: Level 5 Grant Thornton House, 215 Lambton Quay, Wellington 6011
Postal Address: PO Box 521 Wellington 6140
Email Address: 9(2)(a) [REDACTED]
Attention: [REDACTED]

IAG New Zealand Limited

Physical Address: 14 Show Place, Christchurch
Postal Address: PO Box 2159, Christchurch
Email Address: 9(2)(a) [REDACTED]
Attention: [REDACTED]

Medical Assurance Society New Zealand Limited

Physical Address: 19-21 Broderick Road, Johnsonville, Wellington
Postal Address: PO Box 13042, Johnsonville, Wellington 6440
Email Address: 9(2)(a) [REDACTED]
Attention: [REDACTED]

QBE Insurance (Australia) Limited

Physical Address: 29 Customs Street, Level 6 AMP Centre, Auckland 1010
Postal Address: PO Box 44, Auckland 1140
Email Address: 9(2)(a) [REDACTED]
Attention: [REDACTED]

Tower New Zealand Limited

Physical Address: Level 14, 45 Queen Street, Auckland
Postal Address: PO Box 90347, Auckland 1142
Email Address: corporate.counsel@tower.co.nz
Attention: General Counsel

**Vero Insurance New Zealand Limited**

Physical Address: Vero Centre, 48 Shortland Street, Auckland 1010

Postal Address: Vero Centre, 48 Shortland Street, Auckland 1010

Email Address:

Attention:

9(2)(a)

YOUI NZ Pty Limited

Physical Address: Building 1, 660 Great South Road, Ellerslie, Auckland 1051

Postal Address: PO Box 1174, Ellerslie, Auckland 1542

Email Address:

Attention:

9(2)(a)



SCHEDULE 2

Form of Deed of Accession

BY:

[Proposed New Insurer] Company Number [] of [Address] (Proposed New Insurer))

IN FAVOUR OF:

[Existing Insurers and EQC] [] of [Address] (Existing Parties)

BACKGROUND

- A** The Existing Parties entered into or acceded to a MoU dated [date] (MoU).
- B** The Proposed New Insurer wishes to become a party to the MoU and has agreed to be bound by the terms of the MoU.

OPERATIVE PROVISIONS

1 EQC CONSENT

- 1.1** Pursuant to clause 4.1 of the MoU, EQC has consented to the Proposed New Insurer becoming a party to the MoU and evidence of EQC's consent is attached to this Deed.

2 COPY OF MOU

- 2.1** The Proposed New Insurer confirms that it has received a copy of the MoU.

3 AGREEMENT TO BE BOUND BY TERMS OF MOU

- 3.1** The Proposed New Insurer covenants with all parties currently bound by the MoU (whether by being original parties to the agreement or by accession) to observe, perform and be bound by all the terms of the MoU as if the Proposed New Insurer is a party to the MoU.
- 3.2** The Proposed New Insurer will be deemed to be party to the MoU on and from the date of this Deed.

4 ADDRESS FOR SERVICES

4.1 The address of the Proposed New Insurer for the purposes of the MoU is set out below:

Proposed New Insurer

Name: [Insert name]
Physical Address: [Insert physical address]
Postal Address: [Insert postal address]
Email: [Insert email address]

5 GOVERNING LAW

5.1 This Deed is governed by the laws of New Zealand.

EXECUTION AND DATE

Executed as a deed poll

Date:

[Name of Proposed New Insurer] by, and in the presence of:

.....
Signature of witness

.....
Signature of director/authorised person

.....
Name of witness (print)

.....
Name of director/authorised person (print)

.....
Occupation of witness

.....
Signature of director/authorised person

.....
Address of witness

.....
Name of director/authorised person (print)