[TO BE PLACED ON HOMEOWNER/INSURER LETTERHEAD]

[Date]

[Name of engineer]
**By email:** [Email]

## Letter of Engagement – Residential Assessment Report – Structural[ADDRESS]

[Name] (the client) would like to engage you, under the terms and conditions set out in Schedule 3, to undertake a structural assessment at [address] (the **house**), identify anystructural **damage** from a [specify the natural disaster] and recommend an appropriate reinstatement methodology for the **house**.

Please provide your assessment and recommendations in the form of a written report, using the framework in Schedule 2.

All bolded words in this letter are defined in Schedule 1. Please use these definitions when completing your assessment and report.

Please let the client know as soon as possible (after reading through the relevant documentation in Schedule 4 and completing your initial inspection of the site), if you find that you need to undertake any additional investigations, require input from another professional, or require any further information (such as geotechnical or survey information).

### Your obligations

You should carry out your assessment objectively and not act as an advocate for any party. You must act without bias. Your role is to give your client technically accurate advice, regardless of whether that advice aligns with your client’s interests or opinion.

You must also comply with the Engineering New Zealand Code of Ethical Conduct when carrying out this work. Please ensure you have read, understood and complied with the High Court Code of Conduct for Expert Witnesses, enclosed in Schedule 4.

We are not asking you to interpret the Earthquake Commission Act, the insurance policy, comment on the cost of reinstatement, advise, comment or make decisions on the extent of the Natural Hazards Commission Toka Tū Ake (NHC) or the insurer’s obligations.

To undertake this work, you should be a Chartered Professional Engineer (Structural) or senior engineer with experience in structural engineering, and in assessments of damaged buildings. You should also have a strong knowledge of building regulatory requirements and how to apply them. You must only advise on matters within your area of competence as a structural engineer.

You may find that you have a conflict of interest and cannot carry out the assessment we are asking for. For example, if you or someone else at your firm has previously provided an assessment or reinstatement advice in relation to the house for another party. Please consider this carefully and if you might have a conflict of interest, let the client know before you accept this engagement.

You should ensure that as part of your assessment you discuss with the homeowner their observations of structural **damage** from the natural disaster.

### Damage assessment

After you review the background information about the house enclosed in Schedule 4, please carry out an onsite non-intrusive inspection of the **house**.

In your report, please make all reasonable efforts to identify and explain the following (with supporting evidence):

* whether a physical change has occurred to any structural element of the **house**
* the cause of the physical change
* the function of that element
* any change in function of that element due to the physical change it has suffered.

Pre-existing conditions or damage:

* any pre-existing conditions or damage that have been **exacerbated** by the natural disaster
* any conditions or damage you consider to be pre-existing and not **exacerbated** by the natural disaster.

Multiple natural disaster event:

* if more than one occurrence of one type of natural disaster causes damage to the **house** within a 48-hour period (or seven days if a natural disaster fire), all damage from those natural disaster occurrences are to be treated as the result of a single event
* determine the **damage** sustained to the house in each type of natural disaster occurrence and the remediation methodology required for each.

Alterations or renovations

* any alterations or renovations to the **house** that addressed or failed to address, pre-existing conditions or damage.

### Supporting information

In respect of supporting evidence, your report should:

* contain photographs and diagrams to illustrate the points you are making including photographs of visible indicators of probable hidden **damage**
* if appropriate, include a floor plan so that a reader can understand the **house** layout and **damage** locations
* if the **house** may have moved or settled as a result of the **natural disaster**, the following information should be included: (delete as appropriate)
	+ separate geotechnical report, if required
	+ floor levels (at two meter centres and at obvious high and low points)
	+ ceiling levels
	+ windowsill levels
	+ benchtop Levels
	+ door head levels
	+ levels for any other fixed features deemed by you to be noteworthy such as tiling, external weatherboards or guttering
	+ commentary/discussion around the levels, variance(s) and how this relates to damage or otherwise
	+ for two or more storey dwellings, discussion around how the ground floor slopes correlate with upper floor slopes
	+ if floor slopes do not correlate, discussion on how the ground floor has moved independent of the upper floor.
* if any of the above information is not included, state why it is not necessary or applicable to the assessment
* identify where you agree or disagree with any report/s provided by the NHC, the homeowner and/or private insurer’s expert(s) and provide reasons for why you agree or disagree.

### Reinstatement methodology

If you have identified either **damage** to structural elements or repair work that is inadequate from a structural perspective, please provide your opinion on whether the elements can be reinstated to the required standard.

As part of providing your opinion:

* if the damage cannot be remedied, explain why
* if there are conditions, damage, alterations or renovations that predate the natural disaster event or prevent reinstatement to **the required standard**, please explain why.

If the **damage** can be remedied, describe the methodology needed to reinstate the **damage** to **the required standard**, the scope of works and likely construction risk. If there is more than one possible methodology for reinstatement to **the required standard**, please describe the functional advantages and disadvantages of each possible methodology.

Your recommended remediation methodology should be sufficiently detailed to allow a quantity surveyor to prepare a costed scope of works based on your report.

It is acknowledged that there may be other methodologies available for reinstating the structural **damage**. Your report should reflect what you consider the appropriate strategy for reinstating the structural **damage** to the required standard at the time of writing.

### Facilitation

If there is disparity between your report and the report of an engineer for another party, you may be asked to participate in an Engineering New Zealand Facilitation process with that other engineer. You are obliged to participate openly and professionally in that process at an agreed additional fee if asked.

### Expert witness

If there is a dispute between the parties, you may be asked to attend a dispute resolution process such as a facilitation, determination or tribunal or court proceedings. Before you issue your report, please ensure you have read, understood and complied with the High Court Code of Conduct for Expert Witnesses, enclosed in Schedule 4.

### Fees

The client will pay you $xx [hourly rate or fixed fee to be agreed] for services provided under this letter of engagement.

### Engagement

You may not assign or subcontract this engagement without the client’s prior written consent.

After you issue your report, you may be engaged under a new contract with the homeowner to carry out your reinstatement methodology including; completing detailed design, providing construction documentation, assisting in the consent application process and/or provide construction observation and support services for your reinstatement methodology, and issuing a Producer Statement 1: Design (PS1) and Producer Statement: Construction Review (PS4), if necessary.

Please contact the client if you need to discuss any part of this letter. Otherwise please sign below and return by email by [date] or as otherwise discussed. Thank you for assisting in this matter.

Yours sincerely

[Name]

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I am a suitably competent engineer to undertake this work and I accept the terms as set out in this letter of engagement.

[Signature of engineer]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of engineer]

[Date]

# Schedule 1: definitions

#### “Natural Disaster”

A natural disaster means either:

1. an earthquake, natural landslip, volcanic eruption, hydrothermal activity, or tsunami
2. a natural disaster fire
3. in the case only of residential land, a storm or flood.

#### “House”

The insurance policy will define what structures on the property are covered by the policy and what are not. For example, the dwelling, garages, glasshouse, swimming pools, retaining walls, driveways, and so forth. Residential house policies do not provide cover for **land**.

Some policies refer to the term “house” when defining what structures are covered by the policy. Other policies may refer to the term “building” or “dwelling”. Whatever term is used, please check the policy to see what structures on the property should be considered in your assessment and recommendations. In particular, cover for retaining walls varies between policies and should be checked.

#### “Land”

The term **land** in this letter refers to residential **land**, which comprises, in relation to the house:

* land under the **house** and outbuildings (eg a shed or garage)
* land within eight metres of the **house** and outbuildings
* land under or supporting the main accessway, up to 60 metres from the **house** (but not the driveway surfacing)
* bridges and culverts within the above areas
* retaining walls and their support systems, within 60 metres of the **house**, if they are necessary to support or protect the **house**, outbuildings or the insured **land**.

#### “Damage”

A structural element is damaged by a **natural disaster** if:

* its physical state has been measurably or visibly altered by the **natural disaster** in a negative way (the alteration)[[1]](#footnote-1)
* the alteration is more than de minimis[[2]](#footnote-2)
* the alteration affects the original functionality of the structural element.

#### "Exacerbated damage”

Exacerbated damage means:

* there is pre-existing damage, weakness, or deterioration in part of the **house**
* the natural disaster causes an additional physical effect/s to the **house** (the additional physical effect/s)
* the additional physical effect/s is more than de minimus to the use or value or amenity of the house.

Please note that **damage** includes **exacerbated damage**.

#### “The required standard”

Where **damage** from the **natural disaster** has occurred to a structural element, or previous repair work to the damaged structural element is inadequate, your reinstatement methodology, whether it involves repair or replacement, must meet the following requirements:

1. the reinstatement methodology of a structural element must restore the functionality and durability:
	1. equivalent to when it was originally constructed; and/or
	2. equivalent to as if it was built today.
2. where the structural building element also has an aesthetic purpose, the reinstatement methodology will also need to restore the former aesthetic to its condition when originally constructed
3. the reinstatement methodology of a structural element does not have to make the damaged structural element an exact replica of the original
4. current materials and methods must be used
5. the reinstatement work must meet current building regulatory requirements, including the Building Code to the extent required by the Building Act, including:
	1. no general obligation to upgrade the structure of the **house** even if it doesn’t comply with current Building Code requirements
	2. the reinstatement work must not make the **house** less compliant with the Building Code than it was before the **damage** and reinstatement work
	3. the reinstatement work must not accelerate or worsen the risk of natural **disaster damage** on the **land** or any other property.

# Schedule 2: Reporting framework

Engineering New Zealand recommends that engineers reporting on damage assessments and reinstatement set out their reports using the following framework.

The purpose of this framework is to provide greater consistency in the way engineers report their assessments of damage from a natural disaster and reinstatement methodologies. This helps homeowners and insurers more easily compare reports and identify where their engineers agree and disagree.

Engineering New Zealand recommends that engineers set out their reports using the following headings and make sure that, at a minimum, they address the points in the explanatory notes for each heading.

|  |  |  |
| --- | --- | --- |
| Section  | Content | Explanatory notes |
| 1.  | **Executive summary** | Set out a brief summary of your report. This should include your obligations, damage findings and recommended reinstatement methodology. |
| 2. | **Introduction** | Include the property address and natural disaster in question. |
| 3. | **Scope of engagement** | Set out the damage test and the required standard, stated in the relevant insurance policy and this engagement letter.  |
| 4.  | **The site** |
| 4.1 | Site inspection  | State the date, scope of your inspection and personnel involved. |
| 4.2 | Site description | Include age and type of construction, main dwelling and other structures. |
| 5. | **Geotechnical considerations** | Summarise key relevant points from geotechnical reports (eg general topography, types of soils present and soil characteristics, site performance, presence of uncontrolled fill/compressible soils etc), as well as disaster specific factors as listed in Appendix 1 of this schedule. |
| 6.  | **Input from other disciplines** | Incorporate assessments and expertise from other engineering and related disciplines as required, based on the specific natural disaster and its impact.Disaster specific recommended inputs are listed in Appendix 1 of this schedule.  |
| 7. | **Summary and discussion of natural disaster damage and any previous repairs** |  |
| 7.1 | Homeowner comments | Relevant damage observations from the homeowner as well as any information provided by the homeowner about previous repairs, alterations and renovations. |

|  |  |  |
| --- | --- | --- |
| 7.2 |  Damage to structural elements | Identify current damage, establishing what was caused or exacerbated by the natural disaster, and differentiating from non-natural disaster damage, with supporting evidence. Set out and apply the damage test under “Damage” in Schedule 1. If applicable, set out and apply the exacerbated test under “Exacerbated” in Schedule 1. Disaster-specific structural damage considerations include those listed in Appendix 1 of this schedule. |
| 7.3 | Pre-existing condition of structural elements | Include photographs and any other information about the pre-disaster condition of the property. |
| 7.4 | Multiple natural disaster event | If there have been multiple natural disaster occurrences more than 48 hours apart (seven days for a natural disaster fire), determine the damage sustained as a direct result of each occurrence and the remediation methodology required for the damage caused by each occurrence. Seek supporting evidence (eg photographs) before and after each occurrence if possible.  |
| 7.5 | Any previous repairs undertaken | Identify the nature and effectiveness or otherwise of any previous repairs. |
| 7.6 | Other engineering reports (if provided) | Summarise the key areas of disagreement between other engineering reports, including damage assessment reports, and your position on these matters. |
| 8. | **Reinstatement methodology** |
| 8.1 | The required standard  | Explain how your reinstatement methodology meets the required standard requirements.  |
| 8.2 | Recommended remediation | Outline how the damage attributable to the natural disaster is to be remedied (taking into account any previous repairs) in order to meet the required standard.  |
| 8.3 | Further investigations or information required | Please state this, if applicable. |
| 8.4 | Further engineering design input required | Please state this, if applicable. |
| 9. | **Conclusion**  | Summarise key findings and recommended remediation methodology. |
| 10. | **Limitations/disclaimers** | State any limitations/disclaimers for your report. |

# Appendix one: Disaster-specific structural damage considerations

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| Structural damage consideration for specific natural disasters  |
| **Earthquake damage*** Ground shaking effects: Assess structural damage caused by seismic vibrations, including cracking, permanent lateral deformation (lateral stretch), or collapse of walls, columns and beams.
* Foundation settlement: Identify differential settlement or tilting of foundations due to soil liquefaction or seismic forces.
* Structural connections: Evaluate the integrity of joints, welds, and bolted connections in steel, concrete, and timber structures, including bracing elements subject to buckling or fracture.
* Resonance effects: Determine if the building's natural frequency amplified seismic forces, leading to excessive vibrations or structural failure.
* Non-structural damage: Assess damage to non-load-bearing elements such as facades, partitions, and ceilings, which may pose safety risks.
* Pounding effects: Identify damage caused by adjacent buildings impacting during seismic activity.
* Soil liquefaction: Evaluate the impact of soil liquefaction on foundations, including loss of bearing capacity and lateral spreading.
* Aftershock vulnerability: Assess the potential for further damage from aftershocks, especially in already weakened structures.

Additional discipline input to consider* Geotechnical Engineering: Evaluate soil liquefaction, settlement, and lateral spreading effects on foundations and surrounding areas, and bearing capacity.
* Civil Engineering: Inspect damage to infrastructure such as drainage, roads, bridges and retaining walls.
* Surveying/Remote Sensing: Use geospatial data to map ground displacement and structural deformation.
* Materials Engineering: Analyse cracking, fatigue, and material degradation in concrete, steel and other structural components.
 |
| **Hydrothermal damage*** Heat exposure: Evaluate weakening of materials due to sustained high temperatures.
* Corrosive effects: Identify material degradation from acidic or mineral-laden steam and water exposure.
* Ground instability: Assess damage from thermal expansion, ground heaving, and subsurface void formation.
* Steam and water ejection: Consider pressure effects from hydrothermal explosions and geysers.
* Chemical alteration of soil and materials: Identify long-term structural integrity concerns due to chemical reactions in materials exposed to hydrothermal fluids.

Additional discipline input to consider* Geotechnical Engineering: Assess ground instability caused by thermal expansion, ground heaving and subsurface void formation.
* Materials Engineering: Evaluate material degradation from exposure to acidic or mineral-laden steam and water.
* Structural Engineering: Assess damage caused by heat exposure, steam ejection and pressure effects.
* Environmental Engineering: Identify long-term impacts of chemical reactions in materials and surrounding soil.
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| **Landslip damage** * Damage progression risk: Assess ongoing movement risks and potential for further structural compromise.
* Structural displacement: Assess movement, tilting, or rotation of foundations, walls and floors due to ground instability.
* Foundation integrity: Identify cracking, settlement, or loss of bearing capacity in foundations, including moisture ingress affecting subfloor timber elements.
* Lateral forces: Evaluate lateral earth pressures exerted on retaining walls, basement walls and other structural elements.
* Soil and debris accumulation: Determine if deposited material is imposing additional loads on structures.

Additional discipline input to consider* Geotechnical Engineering: Analyse slope stability, ground movement, soil characteristics affecting structural foundations, and proximity of waterways and any drainage issues.
* Civil Engineering: Inspect retaining walls, roads, and other infrastructure impacted by landslip movement.
* Surveying/Remote Sensing: Use drones or satellite imagery to map landslip extents and affected areas.
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| **Tsunami damage*** Hydrodynamic forces: Assess impact loads from fast-moving water, including debris strikes and wave pressure effects on walls and foundations.
* Erosion and scour: Evaluate foundation undermining and soil loss due to strong water flow.
* Structural inundation: Determine water ingress effects on materials, including saturation of timber, corrosion of metals and loss of adhesion in concrete and masonry.
* Debris impact: Identify structural damage caused by floating debris such as vehicles, trees and other objects.
* Uplift and buoyancy forces: Assess damage from hydrostatic pressures, including floor uplift and flotation of lightweight structures.

Additional discipline input to consider* Geotechnical Engineering: Analyse slope stability, ground movement and soil characteristics affecting structural foundations.
* Structural Engineering: Assess displacement, tilting, or rotation of foundations, walls and floors due to ground instability.
* Civil Engineering: Inspect retaining walls, roads, and other infrastructure impacted by landslide movement.
* Surveying/Remote Sensing: Use drones or satellite imagery to map landslide extents and affected areas.
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| **Volcanic activity damage** * Ash loading: Evaluate the impact of ash accumulation on roof structures and the potential for collapse.
* Heat exposure: Assess structural integrity degradation due to extreme temperatures, including spalling of concrete and charring of timber.
* Lava flow: Identify direct damage from lava encroachment, including foundation undermining or complete structural loss.
* Seismic and explosion effects: Consider damage from volcanic tremors and pressure-induced explosions.
* Corrosive gases and chemical damage: Assess long-term deterioration due to exposure to acidic volcanic gases and particulates.

Additional discipline input to consider* Materials Engineering: Assess degradation of materials due to extreme heat, corrosive gases and ash accumulation.
* Environmental Engineering: Identify long-term environmental impacts of ash and gas deposition on surrounding areas.
* Geotechnical Engineering: Analyse ground instability caused by volcanic tremors or subsurface void formation.
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| **Flood damage** * Hydrostatic pressure: Assess structural damage caused by water pressure on walls, foundations, and floors, including cracking or bowing.
* Foundation scour and erosion: Evaluate the undermining of foundations due to soil erosion or scouring caused by floodwaters.
* Material saturation: Identify the effects of prolonged water exposure, such as swelling, warping, or loss of strength in timber and corrosion in steel.
* Debris impact: Assess structural damage caused by floating debris, such as logs, vehicles or other objects carried by floodwaters.
* Structural inundation: Determine the impact of water ingress on structural materials, including weakening of masonry, loss of adhesion in concrete and damage to insulation.
* Uplift forces: Evaluate damage caused by buoyancy forces lifting lightweight structures or floor slabs.
* Mould and long-term deterioration: Assess the potential for long-term structural degradation due to mould growth, rot or corrosion from residual moisture.
* Flood-induced settlement: Identify differential settlement or tilting of structures caused by water-saturated soils losing strength.

Additional discipline input to consider* Geotechnical Engineering: Evaluate soil erosion, saturation, and bearing capacity impacts, proximity of waterways, drainage issues, as well as slope stability and sediment deposition effects on site conditions.
* Hydrology/Hydraulic Engineering: Assess water flow, erosion, and scouring impacts on foundations and surrounding areas.
* Environmental Engineering: Identify contamination risks to soil and water systems caused by floodwaters.
* Materials Engineering: Assess material saturation, corrosion, and long-term durability of structural components.
* Civil Engineering: Inspect drainage systems, culverts, and embankments for damage or failure.
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| **Storm damage*** Wind loads: Assess structural damage caused by high wind pressures on walls, roofs, and other exposed elements, including deformation or collapse.
* Roof damage: Identify damage to roof coverings, trusses, and framing caused by wind uplift or flying debris.
* Debris impact: Evaluate structural damage caused by windborne debris striking walls, windows and other structural components.
* Water ingress: Assess damage caused by rainwater penetration through damaged roofs, walls, or windows, leading to material saturation and weakening.
* Foundation erosion: Identify damage caused by heavy rainfall leading to soil erosion around foundations.
* Tree impact: Evaluate structural damage caused by falling trees or branches during storms.
* Lightning strikes: Assess damage to structural elements caused by lightning, including charring of timber, spalling of concrete or damage to electrical systems.
* Dynamic loading: Determine the effects of fluctuating wind forces causing fatigue or failure in structural components.

Additional discipline input to consider* Civil Engineering: Inspect damage to transportation networks, drainage systems and public infrastructure.
* Electrical Engineering: Evaluate damage to power lines, transformers, and electrical systems caused by wind or lightning strikes.
* Environmental Engineering: Assess debris accumulation and its environmental effects.
* Fire Protection Engineering: Review fire-related damage caused by lightning strikes or electrical failures during storms.
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| **Natural disaster fire*** Material degradation: Evaluate charring of timber, spalling of concrete and weakening of steel components due to high temperatures.
* Structural load capacity loss: Assess reductions in material strength and deformation in beams, columns and floor systems.
* Smoke and soot damage: Determine effects of smoke and corrosive residues on structural components.
* Heat-induced expansion/contraction: Identify warping or deformation of materials due to rapid heating and cooling cycles.
* Fire protection failure: Review the performance of fire-rated elements and potential reinstatement needs.

Additional discipline input to consider* Fire Protection Engineering: Assess the performance of fire-rated materials and systems, and identify areas requiring reinstatement.
* Structural Engineering: Evaluate charring of timber, spalling of concrete, and weakening of steel components due to high temperatures.
* Materials Engineering: Analyse heat-induced expansion, contraction, and warping of structural materials.
* Environmental Engineering: Assess smoke and soot damage to structural components and surrounding areas.
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# Schedule 3: Short form conditions of engagement

1. The Consultant shall perform the Services as described in the attached documents.
2. The Client and the Consultant agree that where all or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services. However, nothing in this Agreement shall restrict, negate, modify or limit any of the Client’s rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.
3. In providing the Services the Consultant must use the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.
4. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in the Client’s power to obtain which may relate to the Services. The Consultant shall not, without the Client’s prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
5. As soon as either Party becomes aware of anything that will materially affect the scope or timing of the Services, the Party must notify the other Party in writing and where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant shall notify the Client accordingly.
6. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a Variation the Consultant shall notify the Client as soon as practicable.
7. The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
8. All amounts payable by the Client shall be due on the 20th of the month following the month of issue of each GST Invoice or at such other timing as stated elsewhere in this Agreement. If the Client fails to make the payment that is due and payable and that default continues for 14 days, the Consultant may provide written notice to the Client specifying the default and requiring payment within seven days from the date of the notice. Unless payment has been made by the Client in full, the Consultant may suspend performance of the Services any time after expiration of the notice period. The Consultant must promptly lift the suspension after the Client has made the payment. Regardless of whether or not the Consultant suspends the performance of the Services in accordance with this clause, the Consultant may charge interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant’s overdraft rate plus 2 percent and in addition the costs of any actions taken by the Consultant to recover the debt.
9. Where the nature of the Services is such that it is covered by the Construction Contracts Act 2002 (CCA) and the Consultant has issued a payment claim in accordance with the CCA, the provisions of the CCA shall apply. In all other cases, if the Client, acting reasonably, disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount in accordance with clause 8.
10. Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.
11. Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client’s indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
12. The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a minimum of $NZ100,000 and a maximum limit of $NZ500,000.
13. Without limiting any defences, a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within six years from completion of the Services.
14. The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability under clause 12. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
15. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
16. Intellectual property prepared or created by the Consultant in carrying out the Services, and provided to the Client as a deliverable, (“New Intellectual Property”) shall be jointly owned by the Client and the Consultant. The Client and Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use New Intellectual Property. The Clients’ rights in relation to this New Intellectual Property are conditional upon the Client having paid all amounts due and owing to the Consultant in accordance with clauses 7 and 8. Intellectual property owned by a Party prior to the commencement of this Agreement (Pre-existing Intellectual Property) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant accepts no liability for the use of New Intellectual Property or Pre-existing Intellectual Property other than to the extent reasonably required for the intended purposes.
17. The Consultant has not and will not assume any duty imposed on the Client pursuant to the Health and Safety at Work Act 2015 (“the Act”) in connection with the Agreement.
18. The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default that has not been remedied within 14 days of receiving the other Party’s notice of breach) either suspend or terminate the Agreement by notice to the other Party. If the suspension has not been lifted after two months the Consultant has the right to terminate the Agreement and claim reasonable costs as a result of the suspension. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
19. The Parties shall attempt in good faith to settle any dispute themselves but, failing that, by mediation.
20. This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

Schedule 4: High Court Code of Conduct for expert witnesses

### Duty to the Court

1. An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert’s area of expertise.
2. An expert witness is not an advocate for the party who engages the witness.
3. If an expert witness is engaged under a conditional fee agreement, the expert witness must disclose that fact to the court and the basis on which he or she will be paid.
4. In subclause 2A, conditional fee agreement has the same meaning as in rule 14.2(3), except that the reference to legal professional services must be read as if it were a reference to expert witness services.

### Evidence of expert witness

1. In any evidence given by an expert witness, the expert witness must:
2. acknowledge that the expert witness has read this code of conduct and agrees to comply with it
3. state the expert witness’ qualifications as an expert
4. state the issues the evidence of the expert witness addresses and that the evidence is within the expert’s area of expertise
5. state the facts and assumptions on which the opinions of the expert witness are based
6. state the reasons for the opinions given by the expert witness
7. specify any literature or other material used or relied on in support of the opinions expressed by the expert witness
8. describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
9. If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
10. If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

### Duty to confer

1. An expert witness must comply with any direction of the court to:
2. confer with another expert witness
3. try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses
4. prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
5. In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

# Schedule 5: Additional information about the house

1. A negative way means a negative effect on the amenity value or utility of the property (per NHC). Amenity value and utility relate to structural, functional and/or aesthetic value or usefulness (per NHC). [↑](#footnote-ref-1)
2. More than de minimus means beyond being minor and/or immaterial. [↑](#footnote-ref-2)