

[TO BE PLACED ON HOMEOWNER/INSURER LETTERHEAD or ENTER PROPERTY OWNER OR INSURER'S NAME, ADDRESS, EMAIL AND PHONE NUMBER HERE]

[Date]

[NAME OF ENGINEER]

By email: [Engineers email]

## Letter Of Engagement – Assessment Report – Geotechnical

# 1 INTRODUCTION

[name] (the homeowner/the insurer) (the Client) would like to engage you, under the terms and conditions set out in Schedule 3, to:

- Undertake a geotechnical assessment at [address] (the **property**).
- Identify any **land damage**, and subsequent degradation, from the storm event(s) of January/February 2023 (the **event**).
- Assess the stability of the land.
- Assess the risk posed by land instability to people.
- Recommend an appropriate reinstatement or risk reduction methodology for that land that will reduce the risk posed by land instability to a **tolerable** level.
- Make recommendations on the risk sufficient to enable the Territorial Authority to assess the property Category (where relevant) the removal or retention of RBA placards.

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 walkover visual assessment of the site, if you find that you need to undertake any additional site investigations, require input from another professional, or require any further information (such as survey information).

# 2 YOUR OBLIGATIONS

You should carry out your geotechnical 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.

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 EQC or the insurer's obligations.

We do not wish you to provide advice, comment, opinions or decisions on the legal liability, obligations or fault of any organisation, group or individual in relation to damage to the property.

To undertake this work, you should be a Chartered Professional Engineer, senior engineer, or Professional Engineering Geologist with appropriate training and experience in geotechnical engineering and in assessments of damaged property. You should also have a strong knowledge of regulatory requirements and how to apply them. You must only advise on matters within your area of competence as a geotechnical engineer or engineering geologist. If you are not a Chartered Professional Engineer or a Professional Engineering Geologist, you must undertake this work under the supervision of either a Chartered Professional Engineer or a Professional Engineering Geologist. They must review your report and sign it to confirm their agreement with your findings.

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 property for another party. Please consider this carefully and let us know before you accept this engagement if you might have a conflict of interest.

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

## 3 METHOD

### 3.1 FORMAT

Your report should be presented using the headings and in the order provided in Schedule 2, unless there is a specific reason to do otherwise. The report should be very concise and written in plain English, with any supporting information attached as appendices.

### 3.2 PRELIMINARY ASSESSMENT METHOD

#### 3.2.1 Preliminary Geotechnical & Damage Assessment (Factual)

After you review the background information about the **property** that is attached at Schedule 5 or otherwise publicly available, carry out an appropriate desktop and onsite visual inspection to assess any **land damage** and to develop an Engineering Geological Model. The assessment must include a review of the property file should be reviewed prior attending site.

##### 3.2.1.1 *Damage to be reported*

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

Damage to the land from the **event**:

- any **land damage** that has been caused by the **event**; and

- any work that has been carried out to repair the **land damage** and any aspect of that work you consider is inadequate.

Pre-existing conditions or damage:

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

Multiple events:

- if there have been multiple natural disaster events more than 48 hours apart, apportion the **damage** sustained by the **property** in each natural disaster event.

Sources of off-site risk:

- Where the **property** is damaged by, or at risk from, land instability, the full extent of the unstable land shall be assessed. A complete engineering geological model of the full feature (not limited to the subject site) shall be generated. Where such an investigation is not able to be achieved (for example, through an inability to obtain rights to access the land) these limitations shall be clearly explained in the report and conservative assumptions made about the scale of the land instability.

#### [3.2.1.2 Landslide data and map](#)

Where a landslide has occurred, it shall be mapped into the NZ Landslides Database. If the landslide has already been created in the NZ Landslides Database, the record shall be updated to reflect the findings of the site assessment (a duplication of entries shall be avoided).

Data entered into the NZ Landslides Database does not need to be re-entered into the report, except as an attachment directly exported from the NZ Landslides Database. The report shall present the unique ID of the landslide from the NZ Landslides Database as a URL to allow the Territorial Authority to easily review the data.

#### [3.2.1.3 Supporting information](#)

Your report should contain appropriate photographs, test results, and diagrams to illustrate the points you are making.

Include a scaled site plan so that a reader can understand the property layout and land damage locations.

These photographs, test results, diagrams and plans do not need to be duplicated if they are also presented in the output from the NZ Landslides Database.

Identify any house or outbuilding damage that is relevant to the land damage, including evidence of structural damage, foundation dislevelment and settlement or movement and cosmetic damage to cladding and linings. Your report should also discuss how the levels and variances relate to the land damage.

You should identify where you agree or disagree with any other engineering report/s on the property and provide reasons as to why you agree or disagree.

### 3.2.2 Land Stability Assessment (Interpretative)

Undertake a qualitative assessment of the stability of land which may affect the safe use of the **property**.

In your report, present the following (with supporting evidence appended):

- An Engineering Geological Model including a cross-section or cross sections (to scale, and showing the structures and property boundaries) through:
  - The centreline of any landslides.
  - The most critical section for slope stability hazard relative to the **property**.

### 3.2.3 Unmitigated Risk Assessment

#### 3.2.3.1 Risk of loss of life

Undertake a quantitative assessment of the Annual Individual Fatality Risk for users of the **property** in accordance with AGS (2007c) Practice Note Guidelines for Landslide Risk Management 2007 section 7.

In your report, present the following (with supporting evidence and calculations appended):

- A best estimate of Annual Individual Fatality Risk for each residential building potentially exposed to a landslide.
- An evaluation of the sensitivity arising from uncertainty.
- All parameters used in the assessment.

If an individual vulnerability,  $V_{(D:T)}$ , of less than 0.8 is selected, convincing evidence shall be presented to justify why the building is unlikely to collapse or to be inundated with debris.

The risk shall be presented in table form as presented below:

Scenario description			
	Best estimate Value	Plausible range <sup>1</sup>	Justification for selected values
$P_{(H)}$			
$P_{(S:H)}$			
$P_{(T:S)}$			
$V_{(D:T)}$			
$R_{(LoL)}$			

At least one such assessment shall be a scenario based on the **event**. Where different reasonable combinations of different input values may result in higher  $R_{(LoL)}$  – for example, a more frequent event with

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<sup>1</sup> Nominally 95<sup>th</sup> percentile range. It is not anticipated that there will be sufficient data to make a statistical analysis, so this range will be based on expert judgement.

only slightly lower consequences – these other combinations shall also be assessed and presented in the same table format.

The risk shall be assessed on the basis that no mitigation has been undertaken. This means that where land has been lost, the risk is based on an equivalent replacement structure having been built on the safest reasonable location available within the existing land parcel. Where there is insufficient land available, meaning that the building can only be on the evacuated land, the assessment shall be on the basis that no stabilisation or ground reinstatement works are undertaken. If this results in an intolerable risk, the cost of such works shall be taken into account in the reinstatement / risk mitigation methodology.

#### 3.2.3.2 Risk of loss of property

Undertake a qualitative risk assessment for the risk to property in accordance with AGS (2007c) Practice Note Guidelines for Landslide Risk Management 2007 Appendix C.

In your report, present the following (with supporting evidence):

- A best estimate of qualitative level of risk to property.
- An evaluation of the sensitivity arising from uncertainty.

#### 3.2.4 Reinstatement / Risk Mitigation methodology

If you have identified an **intolerable risk** to life or property caused by geotechnical conditions, provide your opinion on whether the **long-term risk** can be reduced to a **tolerable** or **acceptable** level.

As part of providing your opinion:

- if the **land damage** cannot be remedied, or fully remedied, explain why;
- if there are any conditions, damage, alterations or renovations that predate the **event** and/or prevent reinstatement of the land to **the required standard**, please explain why.

If the **risk** can be reduced to a **tolerable** or **acceptable** level, describe the methodology needed to achieve this, and outline the expected scope of works to be completed as part of the construction programme. If there is more than one appropriate and feasible methodology for reinstatement to **the required standard**, please describe the functional advantages and disadvantages of each possible methodology, and state the residual risk to life and property once the mitigation measures are in place.

Your recommended remediation methodology should present a cost estimate for each option (cost estimate accuracy  $\pm 50\%$ ) and be sufficiently detailed to allow an estimator to prepare a costed scope of works based on your report.

Reinstatement or risk reduction methodologies should be divided into **short-term** (to enable use of the property for a period of a year) and **long-term** (to enable ongoing use of the property).

#### 3.2.5 Placard Review

Where the property has been assigned a placard as part of a Rapid Building Assessment process, provide a information to enable the Territorial Authority to undertake an appropriately informed review of the placard. In the report:

- State the current placard type
- Describe any mitigation that has occurred since the placard was placed
- Describe any other change that may alter the risk that has occurred since the placard was placed
- Describe the **present risk** to life (not **long-term risk** or risk to **property**)
- If the **present risk** to life is **intolerable**, describe which of the mitigation actions need to be completed so that the **present risk** is **tolerable** or **acceptable**.

### 3.2.6 Mitigated Risk Assessment

Undertake a risk assessment in accordance with AGS2007c. In the report present:

- The unmitigated risk
- The mitigated risk (for each of the risk reduction methodologies presented in the previous section)

### 3.2.7 Additional information required

Where there is uncertainty in the Engineering Geological Model, or where the risk is marginal and needs further information to refine and confirm a more accurate risk assessment, provide:

- A commentary on the uncertainty.
- An description of any additional investigations or assessments needed to complete your assessment of the reinstatement recommendations.
- Where **intrusive geotechnical investigations** are required, present:
  - A draft scope in the format of the New Zealand Ground Investigation Specification Volume 2 <sup>2</sup>
  - A cost estimate for the investigation including reporting and subsequent secondary assessment as described in the following section (cost estimate accuracy  $\pm 30\%$ )

## 3.3 PRELIMINARY ASSESSMENT PRESENTATION

Allow for delivering the report summarising your work to the owner of the property and the Territorial Authority. Where the Preliminary Assessment identified the need for additional information, work shall be placed on hold at this point until the client decides whether to go ahead with the investigation.

The owner or Territorial Authority may undertake partial or full reviews at this stage. Allow for considering their feedback / questions and amending the report as appropriate.

## 3.4 SECONDARY ASSESSMENT METHOD

Where the Preliminary Assessment identified the need for additional information, and the Client has approved the additional work required, the following shall be undertaken:

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<sup>2</sup> <https://www.nzgs.org/libraries/nz-ground-investigation-specification/>

- All investigations or other work described in the Preliminary Assessment. Ground Investigation work shall be undertaken in accordance with the NZ Ground Investigation Specification.
- Update the preliminary assessment report to a secondary (detailed) assessment report, presenting the additional information gathered and amending the findings to reflect that information.
- Undertake a quantitative slope stability assessment. This shall include presenting:
  - A summary of the geotechnical parameters, using ground conditions assumed at the site (with justification given for each parameter). Parameter definition by back-analysis of failures, supported by the results of ground investigation, is preferred.
  - Quantitative slope stability analyses for the normal, elevated groundwater and seismic conditions.
  - All supporting calculations presented as appendices.

### 3.5 DETAILED ASSESSMENT PRESENTATION

Allow for delivering the report summarising your work to the owner of the property and the Territorial Authority.

The owner or Territorial Authority may undertake partial or full reviews at this stage. Allow for considering their feedback / questions and amending the report as appropriate.

## 4 FACILITATION

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

## 5 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.

## 6 FEES

The Client will pay you **\$xx [lump sum or hourly rate, to be agreed]** plus GST for the services provided under this letter of engagement.

## 7 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 complete detailed design, provide construction documentation, assist in the consent application process and/or provide construction observation and support services for your reinstatement methodology, including 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 us in this matter.

Yours sincerely

**[Name]**

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

**[signature of engineer]**

**[NAME – ENGINEER] on behalf of [FIRM/COMPANY]**  
**DATE**



# SCHEDULE 1: DEFINITIONS

## “Damage”

An element is **damaged** by a natural disaster event if,

- its physical state has been measurably or visibly altered by the natural disaster event in a negative way; and
- that alteration is more than de minimis (meaning trivial or minimal); and
- that alteration affects the original functionality of the element.

## “Event”

The event or series of events which caused the **damage**.

## “House”

The building in which one or more people live.

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”. Whatever term is used, please check the policy to see what structures on the property should be considered in your assessment and recommendations.

## “Land”

The insured land at the address given on the cover letter includes:

- the land under the **House** and outbuildings (e.g. a shed or garage);
- the land within eight metres of the **House** and outbuildings;
- the 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; and
- retaining walls that are necessary to support or protect the home, outbuildings or insured land.

## “Land Damage”

Land damage requires a physical change or loss to the body of the land that has occurred, or is imminent, as the direct result of the **event** and which affects the use and amenity of that land or reduces its ability to support a structure.

## “Non-intrusive site inspection”

means a site walkover, visual assessment and review of any data reasonably relevant to the property on the New Zealand Geotechnical Database at the time of preparing the report.

## **“Property”**

means the **house** and **land** and other improvements at the address given on the cover letter.

## **“the required standard”**

Where **land damage** from the **event** has occurred, your reinstatement methodology, whether it involves repair or replacement of the land must meet the following requirements:

- a. It needn't replace or reinstate the land exactly or completely, but only as circumstances permit and in a reasonably sufficient manner to reduce the risk to a **tolerable** level. Where the risk can be easily and cost-effectively reduced to an **acceptable** level, this option should be presented in parallel.
- b. To the extent that the land damage consists of or results from ground-forming materials or other debris on the land (including as a consequence of a natural landslide), the repair or reinstatement is limited to the removal of the debris.
- c. For retaining walls, bridges and culverts, the reinstatement work must meet current building regulatory requirements, including the Building Code to the extent required by the Building Act.

## **RISK DEFINITIONS**

### **“Acceptable risk”**

Acceptable Risks are risks which everyone affected is generally prepared to accept. Action to further reduce such risk is usually not required unless reasonably practicable measures are available at low cost in terms of money, time and effort. For the purposes of this assessment, for existing (not new) properties:

- An acceptable risk to life is an Annual Individual Fatality Risk of  $1 \times 10^{-5}$  or less (1 in 100,000 or less) for the most vulnerable user.
- An acceptable risk to property is a low or very low risk as defined in AGS (2007c) Practice Note Guidelines for Landslide Risk Management 2007 Appendix C.

### **“Intolerable risk”**

For the purposes of this assessment, for existing (not new) properties:

- An intolerable risk to life is an Annual Individual Fatality Risk of  $1 \times 10^{-4}$  or greater (1 in 10,000 or greater) for the most vulnerable user.
- An intolerable risk to property is a high or very high risk as defined in AGS (2007c) Practice Note Guidelines for Landslide Risk Management 2007 Appendix C.

### **“Tolerable risk”**

Tolerable Risks are risks within a range that society can live with so as to secure certain benefits. For the purpose of this assessment, a tolerable risk is any risk that is between **intolerable** and **acceptable**.

- A tolerable risk to life is an Annual Individual Fatality Risk between  $1 \times 10^{-5}$  and  $1 \times 10^{-4}$  (1:10,000 -1: 100,000) for the most vulnerable user.

### **“Unmitigated risk”**

The risk assessed before taking into account any future interventions.

**“Mitigated risk”**

The risk assessed before after into account specified future interventions.

**“Present risk” or “short-term risk”**

Means risk resulting from a hazard in current conditions, or conditions that are plausible in the next 12-month period.

**“Long-term risk”**

Means risk from a hazard in conditions that are foreseeable in the next century.

## SCHEDULE 2: REPORTING FRAMEWORK

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

It is recommended 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.

### ASSESSMENT REPORTING FRAMEWORK

Section	Content	Explanatory notes
1.	<b>Introduction and scope</b>	Reference and append the scope of works (this document) State if this is a preliminary or secondary assessment. Include in this section information about document version, reviews, approvals etc.
2.	<b>Summary of inspections undertaken</b>	Date, scope of inspection and personnel involved
3.	<b>Summary of documentation reviewed</b>	See Section 3.2.1. List of previous assessments, geotechnical reports, available relevant data on the New Zealand Geotechnical Database, client/owner supplied documents etc.
4.	<b>Site description</b>	See Section 3.2.1. Include topographical and geomorphological information, buildings and outbuildings, accessways, vegetative cover, relevant information about the site setting and surrounding environment (e.g. where appropriate, geological setting, upslope and downslope conditions and hazards, hydrological risks, etc).
5.	<b>Damage summary</b>	See Section 3.2.1
5.1	Homeowner comments	Relevant damage observations from the homeowner as well as any information provided by the homeowner about previous repairs, alterations and renovations.
5.2	Damage from the event	Identify current damage, establishing what was caused or exacerbated by the <b>event</b> , and differentiating from

Section	Content	Explanatory notes
		non-disaster damage, with supporting evidence. Provide where appropriate a sketch plan of the site, showing the important site features, damaged areas, etc, and where appropriate provide site cross sections.
5.3	Pre-existing condition of land	Include photographs and any other information about the pre-disaster condition of the property
5.4	Previous repairs undertaken	Identify the nature and effectiveness or otherwise of any previous repairs
6	<b>Land stability assessment</b>	See Section 3.2.2
6.1	Engineering geological model	
6.2	Geotechnical parameters used	State “none” if undertaking a qualitative assessment
6.3	Stability analysis methodology and results / findings	
7	<b>Unmitigated Risk assessment</b>	See Section 3.2.3
7.1	Risk of loss of life	
7.2	Risk of loss of property	
8.	<b>Mitigation methodology</b>	See Section 3.2.4
8.1	Long-term mitigation options available	Outlining how the damage attributable to the <b>event</b> is to be remedied (taking into account any previous repairs) in order to meet the required standard, and the residual <b>long-term</b> risk once implemented.
8.2	Short-term mitigation options available	A description of any urgent construction works recommended to improve the short-term geotechnical stability of the property and/or robustness or weather-tightness of any structure to reduce the risk of additional avoidable damage, and the residual <b>short-term</b> risk once implemented.
8.2	Recommended option(s)	
9	<b>RBA Placard Review</b>	See section 3.2.5

Section	Content	Explanatory notes
<b>9.1</b>	Summary of current situation	
<b>9.4</b>	Recommended mitigation actions	List any mitigation actions recommended before a change to a placard can be made
<b>10</b>	<b>Additional information required</b>	See Section 3.2.7.
<b>11</b>	<b>Limitations</b>	Describe any uncertainty in the assessment and recommendations.

# SCHEDULE 3: SHORT FORM CONDITIONS OF ENGAGEMENT

1. The Consultant shall perform the Services as described in the attached documents.
2. 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. 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.
4. In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional.
5. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her 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.
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 paid within twenty (20) working days of the relevant invoice being mailed to the Client. Late payment shall constitute a default, and the Client shall pay default 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% and in addition the costs of any actions taken by the Consultant to recover the debt.
9. 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.
10. 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.
11. 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 maximum limit of \$NZ500,000.
12. 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 6 years from completion of the Services.
13. 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 11. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
14. 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.
15. Intellectual property prepared or created by the Consultant in carrying out the Services ("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. Intellectual property owned by a Party prior to the commencement of this Agreement and intellectual property created by a Party independently of this Agreement remains the property of that Party. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property for any purpose other than the Services or any other use stated in the Agreement.
16. The Consultant and the Client will be aware of, and comply with, any relevant obligations imposed on them under the Health and Safety at Work Act 2015 (the "Act"). The Consultant has not and will not assume any duty imposed on the Client from time to time pursuant to the Act arising out of this engagement.
17. 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) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
18. The Parties shall attempt in good faith to settle any dispute by mediation.
19. 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.

**2A** 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.

**2B** 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

3. In any evidence given by an expert witness, the expert witness must—
  - a. acknowledge that the expert witness has read this code of conduct and agrees to comply with it;
  - b. state the expert witness' qualifications as an expert;
  - c. state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise;
  - d. state the facts and assumptions on which the opinions of the expert witness are based;
  - e. state the reasons for the opinions given by the expert witness;
  - f. specify any literature or other material used or relied on in support of the opinions expressed by the expert witness;
  - g. 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.
4. 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.
5. 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

6. An expert witness must comply with any direction of the court to—
  - a. confer with another expert witness;
  - b. try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses;
  - c. 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.
7. 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 PROPERTY