[Date]

[NAME]

**By email**: [EMAIL]

## letter of engagement – assessment and reinstatement report

## [address]

[name] (**the homeowner/the insurer**) would like to engage you, under the terms and conditions set out in Schedule 3, to assess [address] (the **house**), identify any structural earthquake **damage** 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.

If, after reading through the relevant documentation in Schedule 4 or your initial inspection, 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), please let us know as soon as possible.

## Your obligations

You should carry out your assessment objectively and not act as an advocate for either 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 insurance policy, comment on the cost of reinstatement, make decisions or advise on the extent of the insurer’s obligations.

To undertake this work, you should be a Chartered Professional Engineer or senior engineer with experience in structural engineering, and in assessments of earthquake 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 us know before you accept this engagement.

You should ensure that as part of your assessment you discuss with the home owner their observations of structural earthquake **damage**.

## 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 (with supporting evidence):

### Earthquake damage to structural elements

* any **damage** that has been caused by the earthquakes; and
* any work that has been carried out to repair the earthquake **damage**, and any aspect of that work you consider is inadequate from a structural perspective.

### Pre-existing conditions or damage

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

### Alterations or renovations

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

## Reinstatement methodology

If you have identified either earthquake 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.** Schedule 1 contains two options for the definition of required standard. You should discuss with your client which definition to apply (whether you should apply a(i) or a(ii) or both or another definition).

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 earthquakes 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**, and the scope of works. 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.

## 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 [homeowner/insurer] will pay you $xx for services provided under this letter of engagement.

## Engagement

You may not assign or subcontract this engagement without [name]’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 issuing a PS1 and PS4 if necessary.

Please contact [your name] 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]

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[NAME – ENGINEER]

# schedule 1: definitions

### “House”

The insurance policy will define what structures on the property are covered by the policy and what are not. For example, garages, glasshouse, swimming pools, retaining walls, driveways, and so forth.

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.

### “Damage”

A structural element is earthquake **damaged** if,

* its physical state has been measurably or visibly altered by the earthquakes in a negative way; and
* that alteration is more than de minimis; and
* that alteration affects the original functionality of the structural element.

This requires you to assess:

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

### “the required standard”

Where earthquake damage has occurred to a structural element, or previous repair work to the earthquake 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.

*You should discuss with your client whether you should apply (i) or (ii) or, in the case of GCCRS, both and indicate in your report which option you have applied.*

1. the reinstatement methodology of a structural element does not have to make the damaged structural element an exact replica of the original; and
2. current materials and methods must be used; and
3. the reinstatement work must meet current building regulatory requirements, including the Building Code to the extent required by the Building Act.

# 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 earthquake damage 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.

## damage assessment and REINSTATEMENT reporting framework

|  |  |  |
| --- | --- | --- |
| Section  | Content | Explanatory notes |
| 1.  | **Scope of engagement** | Reference the standard set out in the policy, as well as the definition of the standard from the instruction. Limitations/disclaimers  |
| 2. | **Summary of inspections undertaken** | Date, scope of inspection and personnel involved |
| 3. | **Documentation reviewed** | Previous assessments; geotechnical reports |
| 4. | **Building and site description** | Include age and type of construction; main dwelling and other structures |
| 5. | **Geotechnical considerations** | Key relevant points from geotechnical reports, e.g. site performance, bearing capacity, SLS settlement, lateral stretch status, presence of uncontrolled fill/compressible soils etc. |
| 6. | **Summary and discussion of earthquake damage and previous repairs** |  |
| 6.1 | Homeowner comments | Relevant damage observations from the homeowner as well as any information provided by the homeowner about previous repairs, alterations and renovations. |
| 6.26.3 | Earthquake damage to structural elementsPre-existing condition of structural elements | Identify current damage, establishing what was caused or exacerbated by the earthquakes, and differentiating from non-earthquake damage, with supporting evidence  |
| 6.4 | Previous repairs undertaken | Identify the nature and effectiveness or otherwise of any previous repairs |
| 7. | **Reinstatement methodology** |  |
| 7.1 | Definition of required standard applied |  |
| 7.2 | Recommended remediation | Outlining how the damage attributable to the earthquake is to be remedied (taking into account any previous repairs) in order to meet the required standard |
| 7.3 | Further investigations or information required |  |
| 7.4 | Further engineering design input required |  |
| 8. | Summary | Summarising the key findings and recommended remediation approach (options) |

####

# 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 clause11. 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)](http://www.legislation.govt.nz/regulation/public/2016/0225/latest/link.aspx?id=DLM6952105" \l "DLM6952105), 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—
	1. acknowledge that the expert witness has read this code of conduct and agrees to comply with it:
	2. state the expert witness’ qualifications as an expert:
	3. state the issues the evidence of the expert witness addresses and that the evidence is within the expert’s area of expertise:
	4. state the facts and assumptions on which the opinions of the expert witness are based:
	5. state the reasons for the opinions given by the expert witness:
	6. specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:
	7. 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.
2. 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.
3. 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—
	1. confer with another expert witness:
	2. try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:
	3. 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.
2. 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