

# CODE OF ETHICS FOR PANEL MEMBERS

## Introduction

The Steering Group for the establishment of the Engineer to Contract Panel (“the Panel”) has developed the following Code of Ethics as to the professional attitude and behaviours of a person who has been appointed to the Panel.

This set of expectations applies to the Panel member’s performance of the role of Engineer to the Contract (“EtC”). Each Panel member must acknowledge and commit to complying with this Code of Ethics.

The expectations of an EtC are twofold:

- they are grounded in the specific requirements within NZS 3910 and the Guidelines attached to NZS 3910;
- they reflect industry expectations that an EtC will demonstrate what are commonly referred to as the “soft skills” expected of an individual trusted by both parties to perform the contract administration role professionally, and where appropriate to engage the parties collaboratively in the interests of mitigating problems and avoiding disputes without departing from the contract. NZS 3910 identifies the collaborative role of the EtC in clause 5.21.2.

## Expectations of an EtC

A Panel member shall at all times when performing the role of an EtC:

1. **Be independent:** Accept appointment as an EtC only where independent of any other role in the contract (for example, an EtC must not be an employee of the Principal or of a key consultant responsible for the design, quantity surveying, project management or contract administration of the contract) which may give rise to a conflict of interest or otherwise impair the independence and impartiality of the EtC.<sup>1</sup>
2. **Resolve conflicts of interest:** Disclose, before appointment and throughout the contract, any conflict of interest which impairs or is likely to impair the ability to act fairly and impartiality in the role of

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All references are to the Guidelines attached to Standards New Zealand (NZS) 3910:2013 Conditions of Contract.

<sup>1</sup> Clause G6.2.

EtC, and resign where the conflict of interest cannot be resolved to the reasonable satisfaction of the parties to the contract.<sup>2</sup>

3. **Act professionally:** Act at all times in good faith<sup>3</sup>, and in a professional,<sup>4</sup> expeditious, diligent, orderly and timely<sup>5</sup> manner
4. **Make all decisions impartially**<sup>6</sup>: Act fairly, impartially, honestly, with integrity, without bias, consistent with and in reliance on the relevant contract, exercising professional judgment<sup>7</sup> in all decision-making under the contract including, without limitation, contractual interpretation, assessment, compliance, contractual entitlement, valuation, or certification. Obtain independent legal or other advice where necessary to inform decision-making.
5. **Principal's Representative:** Act as representative of the Principal only in issuing directions, variations, and instructions to the Contractor, and as agent in issuing payment schedules.<sup>8</sup>
6. **Advise Principal and Contractor:** Provide advisory opinions to the Principal<sup>9</sup> and the Contractor in respect of matters in relation to the contract, without at any time acting as an advocate of either party.
7. **Comply with time requirements:** Perform all duties of the EtC within the time or times stated in the contract<sup>10</sup>, or, where no time limit is stated, within a reasonable time<sup>11</sup>
8. **Delegate effectively:** Nominate in writing (where applicable):
  - a. A suitably qualified and experienced person as Engineer's Representative to perform the contract administration and other duties of the Engineer<sup>12</sup>, clearly defining the extent of their optional authorities<sup>13</sup>; and
  - b. Any assistants to the Engineer's Representative<sup>14</sup>.
9. **Be decisive:** Make decisions where required by the contract, promptly, with appropriate reasons.<sup>15</sup>
10. **Act collaboratively:** Work together with the parties as required in exploring options for avoiding or reducing the impact of matters that arise during the course of the contract<sup>16</sup>, and take active steps

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<sup>2</sup> Clause 6.1.1.

<sup>3</sup> Clause 6.1.1.

<sup>4</sup> Clauses 1.6, 6.1.1.

<sup>5</sup> Clause 6.2.2.

<sup>6</sup> Clause 6.2.1(b).

<sup>7</sup> Clause G6.2.

<sup>8</sup> Clause 6.2.1(a).

<sup>9</sup> Clause 6.1.2(a).

<sup>10</sup> For example clauses 13.2.1, 10.3.4, 10.3.5.

<sup>11</sup> Clause 6.2.2.

<sup>12</sup> Clause 6.3.1.

<sup>13</sup> Clause 6.3.3(b).

<sup>14</sup> Clause 6.3.5.

<sup>15</sup> For example, clauses 9.2.4, 9.3.4.

<sup>16</sup> Clause 5.21.2

to resolve matters by clear decision-making and/or working with the parties to avoid or reduce the risk of matters being referred to dispute.