



CIC

**BUILT ENVIRONMENT
PROFESSIONS TOGETHER**

**CIC MODEL MEDIATION
AGREEMENT AND PROCEDURE**
FIRST EDITION

A Model Agreement and Procedure to assist parties
compromise a construction and engineering dispute
using mediation.

CIC Model Mediation Agreement and Procedure

CIC 2019: A Model Agreement and Procedure to assist parties compromise a construction and engineering dispute using mediation.

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Original drafting of the CIC Model Mediation Agreement and Procedure carried out by Niall Lawless.

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CIC MODEL MEDIATION AGREEMENT AND PROCEDURE

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A Model Agreement and Procedure to assist parties compromise a construction and engineering dispute using mediation.

CIC Members

Association of Consultant Approved Inspectors
Association for Consultancy and Engineering
Association for Project Management
Association for Project Safety
Association for Specialist Fire Protection
British Approvals for Fire Equipment
Chartered Institute for IT
British Institute of Interior Design
Building Research Establishment
Building Services Research and Information Association
Chartered Association of Building Engineers
Chartered Institute of Architectural Technologists
Chartered Institution of Building Services Engineers
Chartered Institute of Building
Chartered Institution of Highways & Transportation
Chartered Institute of Plumbing and Heating Engineering
Construction Industry Research and Information Association
Ground Forum
Institution of Civil Engineers
Chartered Institution of Civil Engineering Surveyors
Institute of Clerks of Works and Construction Inspectorate
Institution of Engineering and Technology – Built Environment Sector
Institution of Fire Engineers
International Institute of Risk and Safety Management
Institute of Specialist Surveyors and Engineers
Institution of Structural Engineers
Institute of Workplace and Facilities Management
Local Authorities Building Control
Landscape Institute
National House-Building Council
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Royal Town Planning Institute
The Safety Assessment Federation

Scope

1. Mediation can help disputing parties acquire a better understanding of each other's needs and interests so that they can directly or indirectly negotiate a settlement agreement which accommodates those needs and interests to the greatest possible extent. The parties agree to work together and get the mediator to help them resolve their dispute amicably. Mediation is not adversarial and works best where the parties are willing to cooperate together to solve a shared problem. As nothing is agreed until an agreement is recorded in writing and signed, it allows the parties to take risks on a without prejudice basis when they come to deal with individual items.

The CIC Model Mediation Agreement and Procedure is based on perspective that where the dispute resolves around issues of fact, the best mediation approach is evaluative carried out by an experienced construction and engineering professional.

This CIC Model Mediation Procedure sets out rules for CIC Mediation, and the ways in which the CIC can help the parties select a mediator, or appoint a mediator if asked. Unless agreed otherwise, where a Mediation Agreement provides for mediation under the CIC Model Mediation Procedure, the latest version of the Procedure shall be deemed to have been referred to as part of that agreement.

Definitions

2. In this Procedure:

"BATNA" is a party's Best Alternative to a Negotiated Agreement, i.e. the most advantageous alternative course of action a party can take if the mediation fails.

"CIC" means the Construction Industry Council.

"Contract" is the formal agreement between the disputing parties for the provision of construction and engineering equipment, materials, services, or work.

"Lead Negotiator" is the business principal who will act as lead negotiator with full authority to settle the dispute and to sign the settlement agreement.

"Mediation fee" is the fee charged by the CIC for providing the parties with a list of Mediators or nominating a Mediator from the CIC Panel of Mediators.

"Mediation Agreement" is a written agreement by the parties to attempt to resolve any dispute arising out of or in connection with the Contract through mediation under the CIC Mediation Procedure.

"Mediation Request" is a formal request made by a party or the parties to the CIC for it to provide a list of Mediators or nominate a Mediator from the CIC Panel of Mediators using the form set out in Schedule One.

"Mediation Procedural Agreement" is the agreement prepared by the Mediator after discussing with the parties the manner in which the mediation shall be conducted.

“Mediator” is the mediator or mediators chosen by the parties or appointed by the CIC.

“Panel of Mediators” is the CIC list of experienced accredited Mediators who are members of CIC member organisations, and who have a minimum of 10 years’ post professional qualification experience in their primary profession.

“Settlement Agreement” is the agreement that records the terms of the settlement or partial settlement reached by the parties as a result of mediation, and which is dated and signed by them.

“Validation” is the procedure whereby the CIC ensures that the Parties have provided the required information for the mediation to commence.

Model mediation clause

Parties can use this boilerplate mediation clause in their Contract to refer a dispute for mediation under the CIC Mediation Procedure

3. *“The parties agree to attempt to resolve any dispute arising out of or in connection with the Contract via mediation in accordance with the CIC Model Mediation Agreement and Procedure”.*

Language of the Mediation

Setting out the language to be used in the Mediation

4. Mediations under the CIC Model Mediation Procedure will be conducted in the English language.

Commencement of the Mediation

Detailing the process for commencing the Mediation

5. CIC Mediation begins when the CIC acknowledges it has received and validated the Mediation Request set out in Schedule One, and following payment of the CIC Mediation Fee. After nomination or selection the Mediator shall expeditiously discuss with the parties the manner in which the mediation will be conducted. Following such discussions the mediator will prepare a Mediation Procedural Agreement.

Choosing a Mediator

Outlining the methods for appointing a Mediator

6. The parties may agree on a mediator chosen from a list of mediators provided by the CIC, or from another list. Alternatively the parties may ask the CIC to nominate a Mediator from the CIC Panel of Mediators.

When providing a list of Mediators or nominating a Mediator, the CIC shall consider the prospective Mediator’s suitability in terms of availability, nationality, experience and qualifications based on the parties’ reasonable needs and preference. The CIC shall provide only a list of prospective mediators who have confirmed to the CIC in writing that they have no current relationship towards or with either party or any connection with the subject matter of the dispute or interest in the outcome thereof; that they have no conflict of interest, and agree to be nominated as Mediator.

The CIC shall obtain from prospective mediators their proposed basis of remuneration for acting as Mediator in the dispute. The CIC will provide the parties with the prospective mediator’s name, contact details, biography, and the proposed basis of remuneration.

Role of the Mediator

Summarising the Mediator's role

7. The Mediator shall assist the disputing parties to compromise their dispute using communication and negotiation skills, so that they can reach a solution mutually satisfactory to their interests. The role of the Mediator is to be the guardian and guide of the mediation process, to facilitate the exchange of information, to develop creative solutions, to help the parties reality check their position, and to reach an agreement.

European Code of Conduct for Mediators

The Mediator commits to follow the European Code of Conduct for Mediators

8. Members of the CIC Panel of Mediators commit to follow the European Code of Conduct for Mediators, and in particular to conduct the proceedings in an appropriate manner to a professional standard, taking into account the circumstances of each case.

Representation of the parties in mediation

Summarising the role of the Party' lead negotiator, as well as representatives

9. The mediation outcome and success will be affected by whom the parties choose to attend the mediation meetings on their behalf. In addition to legal or other representation, each party will bring a business principal who will act as lead negotiator with full authority to settle the dispute and to sign the settlement agreement. The role of lead negotiator is challenging as it requires the evaluation and development of options, and being able to respond wisely to any new information provided by the other party.

The parties' lawyers or representatives can make or break the mediation. Good mediation lawyers or representatives can shift seamlessly to advisor from advocate. In their role as advocate they will succinctly summarise legal arguments, but not in an adversarial or combative way. They allow the business principal to take the lead, preparing their clients offering advice, guidance and information on negotiation and mediation. Good mediation lawyers or representatives cope well with being challenged privately by the mediator. They are experienced and wise, and they are committed to find the best possible solutions for their client.

Mediation Procedural Agreement

Summarising the components of the Mediation Procedural Agreement

10. The Mediation Procedural Agreement will describe the background to the dispute, the parties' respective claims, contentions and interests, listing relevant documentation, setting out the mediation timetable, and recording the mediator's basis of remuneration. The Mediator will prepare the Mediation Procedural Agreement, which the Mediator and the parties will sign.

Outlining the preparation of case summaries

Case summaries

11. As set out in the Mediation Procedural Agreement, case summaries prepared by each party including the background to the dispute, the issues, and other relevant support documents and information will be exchanged in good time and no less than 7 days before the mediation meetings. Case summaries should be succinct, they are usually relatively limited in size and contain only key documents.

The parties will supply the Mediator with any information reasonably requested. The Mediator will encourage the parties to share any additional confidential information with the Mediator which may be relevant to the dispute and its resolution. Documentation intended to be treated as confidential by the Mediator must be clearly marked as such.

Setting out the basis for the mediator's remuneration

Fees of the Mediator

12. When prospective Mediators confirm to the CIC that they have no conflict of interest, and agree to be nominated as mediator, they will also outline their proposed basis of remuneration for acting as mediator in the dispute.

The Mediator may propose an hourly rate with an estimate of the read-in preparation and face-to-face time the Mediator believes that the mediation will require and / or provide a lump sum fee for acting as Mediator. The Mediator and the parties will confirm the basis of the Mediator's fees and expenses when they complete and sign the Mediation Procedural Agreement. The parties may agree to revoke the appointment of the Mediator at any time. In such circumstances the parties are liable for the Mediator's fees incurred to that time.

The Mediator may ask the parties to pay the Mediator's anticipated fees and expenses in advance. In the amount set out in the Mediation Procedural Agreement the parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the Mediator.

Describing the fundamentals of the mediation process

Conduct of the Mediation

13. The CIC mediation process is confidential, private and structured. In general, it has five stages: Introduction, Information Exchange, Option Generation, Negotiation, and Conclusion.

The parties will approach the mediation with practical optimism and realism. They will consider in advance what options might satisfy their interests, and they will establish what their BATNA is at the outset, accepting that it could be formulated or shaped differently during the mediation. The parties will undertake mediation preparation as requested by the Mediator.

The Mediation Procedural Agreement will record which party will be responsible for organising the venue where mediation meetings will take place there. The mediation venue will provide for each party to have its own meeting room. In addition, another room will be available which is large enough to hold joint meetings with the mediator and parties present. The mediation venue will be a place which both parties consider as neutral.

Seven calendar days in advance of meetings with the Mediator and the other party, the parties will advise each other and the Mediator of the names and job titles of the people who will be attending meetings on their behalf, and the names and job titles of their representatives if any.

Unless otherwise agreed with the parties, the Mediator will meet with the parties separately. Following the separate meetings the Mediator and the parties will work together in round-table session. The parties agree that they will not withdraw from the mediation until after the Mediator and the parties have held at least one joint meeting and one private meeting with the Mediator.

Conclusion of the Mediation

Settlement Agreement and non-binding conclusion

14. The parties agree that no binding settlement shall have been reached between the parties unless and until the terms of the agreement have reached the stage of a written Settlement Agreement and signed by authorised representatives of each party.

Where the Mediation Agreement provides that in the event a settlement is not reached the Mediator will offer a non-binding conclusion, the Mediator will do that within seven (7) days after the conclusion of the joint meeting between the Mediator and the parties.

Dealing with confidentiality and privacy

Confidentiality

15. Unless otherwise agreed by the parties or required by applicable law, the mediation (but not the fact it is taking place, has taken place or will take place) is private and confidential.

During the mediation, the Mediator may hold meetings or conference calls with all of the parties present and may also hold separate meetings or calls with each of the parties alone. Private meetings or discussions between the Mediator and a party will be confidential. During private meeting the parties are encouraged to share any additional confidential information which may be germane or relevant to the dispute and its resolution.

Any confidential information given to the Mediator is on the understanding that the Mediator will not disclose the information to the other party without express permission or request.

No verbatim recording or transcript shall be made of the mediation, but the parties may make their own private notes which will not be disclosed to anyone else, including in any subsequent arbitration or litigation.

The terms of any Settlement Agreement are confidential unless agreed to the contrary. The Settlement Agreement may be disclosed where necessary to implement and enforce the settlement terms. The Settlement Agreement may be disclosed to insurers, legal and accounting advisers, and insurance brokers, providing they have agreed in writing to keep it confidential.

Termination of the Mediation

Basis for the mediator or the Parties terminating the mediation

16. The mediation shall be terminated when either: the parties date and sign a Settlement Agreement; or when the Mediator withdraws on the basis of conflict of interest or ill health; or the Mediator informs the CIC and the parties in writing that in the Mediator's judgment mediation is unlikely to lead to a resolution of the dispute; or when after the first joint meeting between the Mediator and the parties, either party informs the CIC, the Mediator and the other party that it wishes to withdraw from the mediation.

CIC Mediation Fee

Basis of remuneration for the CIC

17. The CIC Mediation Fee will be £300 plus VAT. The CIC Mediation Fee includes for the CIC to provide a list of 3 Mediators, or for nominating a Mediator after consulting the parties.

Costs

Allocation of parties costs

18. The parties are responsible for their own legal and other costs incurred in connection with the mediation.

Exclusion of Liability

Limiting CIC and Mediator liability

19. The parties agree that no liability whatsoever shall extend to the CIC nor the Mediator including their employees, co-workers, business partners or agents for any act or omission in connection with a CIC mediation, unless the act or omission is in bad faith.

The parties agree that neither the CIC nor the Mediator including their employees, co-workers, business partners or agents is a necessary party to any subsequent hearing, arbitration or litigation involving either of the parties and arising from or related to the dispute in full or in part.

Waiver of Defamation

Limiting action for defamation, libel, slander or any related complaint

20. The parties agree that statements or comments made in connection with the mediation will not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint.

Suspension of Running of Limitation Period under the Statute of Limitations

Suspending the running of the limitation period during the mediation

21. The parties agree that the running of any contractual or statutory limitation period is suspended from the date of signature of the Mediation Request by the last person to sign the same until the termination of the Mediation in accordance with clause 16, or at the latest six months after the date of the last person signing the Mediation Request, unless otherwise agreed by the parties in writing.

Pupillage

Supporting the development of pools of mediators

22. At no cost to the mediation or the parties, the Mediator may be supported by a mediator pupil. Any mediation pupil will comply with the rules of this CIC Model Mediation Agreement, in particular the confidentiality clauses thereof.

Evaluation

Providing feedback on the service provided by the CIC and the Mediator

23. At the conclusion of the mediation the Mediator will inform the CIC whether or not the parties settled their dispute through the mediation. The CIC will invite the parties to complete a questionnaire evaluating the CIC and the Mediator.

Fixed Fee Mediation

Offering a fixed fee mediation for all construction and engineering disputes concerning a sum under £100,000

24. All Mediators on the CIC Panel of Mediators will conduct a £6,000 (excluding expenses) fixed fee mediation for any construction and engineering disputes concerning a sum under £100,000 (exclusive of VAT).

Schedule One Mediation Request – Request to the CIC for the Nomination of a Mediator

This application form is to be used where you wish to make a request to the CIC for the provision of a list of 3 Mediators, or for the CIC to nominate a Mediator from the CIC Panel of Mediators. Please email completed form to mediation.register@cic.org.uk.

| Name and address of Party A | Name and address of Party B |
|------------------------------------|------------------------------------|
| Address: | Address: |
| | |
| | |
| Name of Lead Negotiator: | Name of Lead Negotiator: |
| E-mail: | E-mail: |
| Telephone: | Telephone: |

| Representative (if applicable) | Representative (if applicable) |
|---------------------------------------|---------------------------------------|
| Contact name: | Contact name: |
| E-mail: | E-mail: |
| Telephone: | Telephone: |

| |
|--|
| Project name: |
| Project scope: |
| Details of the contract: |
| Amount and brief description of the dispute: |
| Contract Dispute Resolution Clause including mediation provisions: |
| Desired attributes of the Mediator: |
| Time limit for the Mediation: |

Whereas there is a dispute or difference between the parties arising out of or in connection with the Contract, I / We apply to the CIC to (delete as applicable):

- Provide a list of three Mediators from the CIC list of Mediators.
- Nominate a Mediator from the CIC Panel of Mediators.

I enclose a cheque made payable to Construction Industry Council for £360 (VAT inclusive) for the CIC Nomination Fee. For electronic payment please contact CIC for information. On receipt of payment, a receipted invoice will be sent directly to the applicant.

I confirm that I will comply with and be bound by the CIC Model Mediation Procedure.

| | |
|-------------|-------|
| Signed: | Date: |
| Print name: | |

