



**CONSTRUCTING
EXCELLENCE**
South West

Construction Mediation

Guide and Protocol



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The *Contract for the Appointment of a Mediator* and *The Mediation Agreement* have been supplied courtesy of Mediation for Construction (M4C).



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Toolkit

Toolkit Documentation

A Incorporation Clause

If any dispute arises in connection with this [Agreement][Contract], the parties agree to enter into mediation to settle such a dispute and will do so in accordance with the Constructing Excellence Guide to Mediation Protocol ('the Protocol'). Unless otherwise agreed between the parties shall within 14 days of notice of the dispute, the mediator will be nominated by (delete all but one. If no nominator is selected, the nominator shall be Mediation for Construction):

[The Mediation for Construction (M4C) of Innovation Centre, Copse Road, Yeovil, Somerset BA22 8RN]

[The Royal Institute of Chartered Surveyors (RICS) of 12 Great George Street, (Parliament Square), London, SW1P 3AD]

[The Centre for Effective Dispute Resolution (CEDR) of 70, Fleet Street, London, ECEY 1EU]

[The Royal Institute of British Architects (RIBA) of 66 Portland Place, Marylebone, London, W1B 1NT]

[name one of the mediation bodies listed on the Constructing Excellence South West's website at www.constructingexcellencesw.org.uk]

('the **Nominator**'). To initiate the mediation a party must give notice in writing (Referral) to the other party or parties to the dispute referring the dispute to mediation. A copy of the Referral should be sent to the Nominator. Unless otherwise agreed, the mediation will start not later than 28 days after the Referral in accordance with the Protocol. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this [Agreement][Contract] until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay."



B Contract for the Appointment of a Mediator
<https://goo.gl/pbN330>



C Mediation Agreement
<https://goo.gl/IYOqiz>



D Referral Letter
<https://goo.gl/ICGX54>



E Settlement Agreement
<https://goo.gl/bEBtKN>

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The Mediation Process

	Stage 1 Referral	Stage 2 Agreement to Mediate and Terms	Stage 3 Briefing the Mediator
Who is involved	<ul style="list-style-type: none"> • The parties to the dispute • The administrator 	<ul style="list-style-type: none"> • The parties to the dispute • The administrator • The Mediator 	<ul style="list-style-type: none"> • The parties • The Mediator
Purpose	<ul style="list-style-type: none"> • Agree to mediate • Initial steps to appoint Mediator 	<ul style="list-style-type: none"> • Identify agreed Mediator • Establish Mediator fees and expenses • Record terms of appointment of Mediator • Record terms on which mediation will be conducted • Set a date for the mediation meeting 	<ul style="list-style-type: none"> • Provide Mediator with enough information to understand the disputes • Ensure mediation agreement has been completed
Responsibility	<ul style="list-style-type: none"> • The parties to the dispute • The administrator 	<ul style="list-style-type: none"> • The parties to the dispute • The administrator 	<ul style="list-style-type: none"> • The parties • The Mediator
Information	<ul style="list-style-type: none"> • Details of the parties to the dispute • The amount of the dispute • Outline of dispute • Identify any connected parties for the purposes of the conflict check 	<ul style="list-style-type: none"> • Conflict of interest check or any other reason why the Mediator should not act • Dates for mediation • Fees and expenses of mediation 	<ul style="list-style-type: none"> • Documents to assist the Mediator to understand the issues
Time period	7 days	7 days	14 days

Stage 4 Setting of the Procedure	Stage 5 Exchange of Information	Stage 6 The Mediation Meeting	Stage 7 The Outcome
<ul style="list-style-type: none"> • The parties • The Mediator 	<ul style="list-style-type: none"> • The parties • The Mediator 	<ul style="list-style-type: none"> • The parties to the dispute • The administrator • The Mediator 	<ul style="list-style-type: none"> • The parties • The Mediator
<ul style="list-style-type: none"> • Establish the best approach to the mediation and highlight any issues of particular importance 	<ul style="list-style-type: none"> • Identify any additional documentation that would assist the Mediator or the parties 	<ul style="list-style-type: none"> • To conduct meeting sessions with the Mediator in private with the aim of reaching settlement of the dispute 	<ul style="list-style-type: none"> • To record the terms of settlement or identify any reasons for settlement not being reached and consider how to resolve them
<ul style="list-style-type: none"> • The parties • The Mediator 	<ul style="list-style-type: none"> • The parties • The Mediator 	<ul style="list-style-type: none"> • The administrator 	<ul style="list-style-type: none"> • The parties • The Mediator
<ul style="list-style-type: none"> • The amount of the dispute • Whether there are any time constraints having regard to any live adjudication, arbitration or court proceedings • The stage at which any live project has reached having regard to the interests of the project • The identity of any third parties who may be contacted by the Mediator with the agreement of the parties and invited to join the mediation process (in the interests of promoting settlement of all issues) • Disclosure of documents • The need or otherwise for any expert evidence • The proposed date for the Mediation Meeting 	<ul style="list-style-type: none"> • Any documents requested by the parties subject to any reasonable objection 	<ul style="list-style-type: none"> • Position statements • Documents relevant to the dispute 	<ul style="list-style-type: none"> • Settlement agreement • Reasons for not reaching a settlement
7 days	7 days	1 day	n/a



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Promotion of the Guide:

- collaborative culture
- education / events
- dispute resolution clause
- other CE regions