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Short and long form sample clauses - RICS Conflict Avoidance Process (CAP)

CAP Clause

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Resolving a Construction Dispute Using the RICS Conflict Avoidance Process

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## Introduction

What follows are sample clauses for parties seeking to incorporate the RICS Conflict Avoidance Process into their contracts to proactively manage and resolve potential disputes.

The clauses can be adopted just as they are written here, or they can be tailored to suit the specific needs of contracting parties.

The RICS Conflict Avoidance Process, and these clauses, may also be used:

* to resolve disagreements which arise during a project where express provisions for CAP have not been incorporated into the contracts initially, or
* to deal with differences which have existed for any length of time and remain unresolved.

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## Short Form

#### The Royal Institution of Chartered Surveyors (RICS) Conflict Avoidance Process (CAP)

The Parties agree

1. to co-operate with each other in the early identification, notification and resolution of any disagreement between them arising from the contract and works which could give rise to a formal dispute capable of being referred to adjudication, arbitration, other alternate dispute resolution process or litigation (qualifying disagreement)
2. to refer any qualifying disagreement to the RICS CAP before referring it to adjudication, arbitration, other alternate dispute resolution process or litigation.
3. to adhere to the RICS CAP Rules.

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## Long Form

1. The Royal Institution of Chartered Surveyors (RICS) Conflict Avoidance Process (CAP)

The Parties agree:

1. to cooperate with each other in the early identification, notification and resolution of any disagreement between them arising from the contract and works, which could give rise to a formal dispute capable of being referred to adjudication, arbitration, other alternate dispute resolution process or litigation (qualifying disagreement)
2. to refer any qualifying disagreement to the RICS CAP before referring it to adjudication, arbitration, other alternate dispute resolution process or litigation.
3. to adhere to the RICS CAP Rules.
4. Prior to referral to RICS

Prior to making an application, the Parties should endeavour to agree upon:

1. a clear definition of the question(s) or issue(s) on which they want the CAP Panel to provide a Report and Recommendations.
2. whether the CAP Panel should consist of one or three persons, and
3. any person(s) whom the Parties jointly consider suitable to act as the CAP Panel.
4. Referral to RICS

The Applicant, or both parties jointly, shall complete and submit a ‘Request for Appointment of CAP Panel’ by email to RICS (copied as appropriate to the other Party).

1. Appointment of CAP Panel

Where the Parties have agreed the number and identity of a suitable person(s) who they would like to appoint as the CAP Panel, RICS will, in consultation with the Parties, undertake due diligence checks to ensure each of the proposed CAP Panel members:

1. is willing to take on the appointment
2. has subject matter knowledge
3. has the expertise and qualifications required by the parties
4. can undertake the reference within timescales required by the parties
5. will adhere to fee arrangements agreed between the parties
6. will act impartially, and
7. is free from conflicts of interest.

If satisfied, RICS will appoint them.

In the event of the Parties failing to reach agreement on the identity of a person or person to act as the CAP Panel, or the CAP Panel proposed by the Parties being unavailable, unwilling or otherwise unsuitable to act, RICS will, in consultation with the Parties, select and appoint an appropriately qualified and impartial CAP Panel.

1. Initial Joint Meeting

As soon as possible after appointment, the CAP Panel will meet (or otherwise correspond) with both Parties and/or their representatives to:

1. Ensure the question(s) or issue(s) on which they want the CAP Panel to provide Recommendations are clearly defined
2. Agree on the timescales, and
3. Ensure the Parties and CAP Panel are aligned on how to proceed.

Where agreement between the Parties cannot be obtained, the CAP Panel will decide the procedure to be followed, and the Parties shall cooperate with the CAP Panel in following its directions.

1. CAP Procedure

The CAP Panel will undertake an investigative role. The Panel will normally invite the Parties to make oral and/or written submissions but may also make its own enquiries and rely on its own expertise.

1. CAP Panel’s Recommendations

The Recommendations of the CAP Panel will be provided in a written CAP Report which will include details of the CAP Panel’s findings and the reasons for its Recommendations.

Where the Parties and CAP Panel agree, the CAP Panel may meet with the Parties or a Party to discuss the Recommendations and the practical implementation of them. Where the CAP Panel is comprised of three persons, this meeting may, with the agreement of the Parties, involve only one member of the CAP Panel.

1. Acceptance, Notice of Dissatisfaction and Implementation

The Parties can choose to implement, reject, or use the Recommendations for further negotiation or resolution.

In any case, the Recommendations provided by the CAP Panel will be non-binding on the Parties, unless they agree otherwise.

Once the Parties communicate their satisfaction with the Recommendations to each other, the Recommendations become final and binding on the Parties and shall be implemented as soon as reasonably practicable.

The Parties alone, or with the assistance of the CAP Panel, if they so request, may then take such further steps as they agree are necessary to settle the disagreement.

1. Costs

Each Party shall:

1. bear its own costs and expenses in relation to any reference of a qualifying disagreement to the CAP Panel,
2. bear in equal shares the remuneration and expenses of the CAP Panel,
3. bear as agreed or directed by the CAP Panel such additional expenses as are required for the conduct of the CAP process.

The responsibility for the costs involved in securing additional information from an expert will be agreed by the Parties, or in the absence of agreement, determined by the CAP Panel.

1. Confidentiality

Save as required by law, the Parties and the CAP Panel shall keep confidential all information of whatever nature provided by or on behalf of the Parties.

1. RICS CAP Rules

The Parties agree the RICS CAP Rules will apply.