

# Model Early Neutral Evaluation Agreement

Including guidance notes



## Model Early Neutral Evaluation Agreement

### Introduction

Early Neutral Evaluation:

- is quick, inexpensive and confidential;
- is informal; and
- produces a non-binding result that aims to provide an objective and independent assessment of the merits of a case.

Early Neutral Evaluation differs from arbitration in that it is non-binding and has greater informality. Unless the Parties agree that it should be, it is not subject to “due process” and can therefore be more flexible. In particular there is no need for a trial-type hearing. Unless the Parties agree otherwise, the Evaluator may conduct investigations independently of the Parties, and make the Recommendation based on those investigations without reference to the Parties. Parties should obtain legal advice when embarking on an Early Neutral Evaluation, but do not strictly need to be legally represented during the procedure.

## Model Early Neutral Evaluation Agreement

*Text in Italics indicates where information has to be added.*

*Text in square brackets indicates where a choice has to be made.*

*Please refer to the guidance notes for commentary on and help with the completion of this Agreement.*

Date:

Parties

\_\_\_\_\_ (“Party A”)

\_\_\_\_\_ (“Party B”)

[ \_\_\_\_\_ (“Party C”)  
etc.]

(jointly “the Parties”)

*Add full names and addresses*

\_\_\_\_\_ (“the Evaluator”)

Centre for Effective Dispute Resolution Limited (“CEDR Solve”) of 70 Fleet Street, London, EC4Y 1EU

Dispute  
 (“the Dispute”)

*Here set out details of the contract(s) or other legal relationship(s) and brief details of the dispute(s) to be resolved by Early Neutral Evaluation.*

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### **Appointment of Evaluator**

- 1 CEDR Solve has appointed the Evaluator to provide a non-binding recommendation on the Dispute.

### **Purpose of Early Neutral Evaluation**

- 2 Unless the Parties subsequently agree otherwise, this Early Neutral Evaluation leads to a non-binding Recommendation ("the Recommendation") being issued by the Evaluator.

### **Confidentiality**

- 3 The Early Neutral Evaluation process is private and confidential. The Parties, the Evaluator and CEDR Solve will keep the matter entirely confidential except as is required by law.

### **Independence**

- 4 The Evaluator and CEDR Solve are independent of the Parties, neutral and impartial, and do not act as advisers to the Parties.

### **Conduct of Early Neutral Evaluation**

- 5 The Evaluator will conduct the Early Neutral Evaluation in accordance with procedural directions which the Evaluator will seek to agree with the Parties. If they cannot be agreed, the Evaluator's directions will prevail.

### **Mediation Option**

- 6 At any time before the issue of the Evaluator's Recommendation the Parties may agree to refer the Dispute to mediation, in accordance with CEDR's Model Mediation Procedure. In that case each of the Parties notifies the Evaluator and CEDR Solve, and the Early Neutral Evaluation is suspended. If the Dispute is settled by mediation, the Early Neutral Evaluation comes to an end and the Parties settle the fees and expenses of the Evaluator and of CEDR Solve. If the Dispute is not settled by mediation, the Early Neutral Evaluation resumes.

### **Reasons in the Recommendation**

- 7 The Recommendation of the Evaluator [shall/shall not] include reasons.

### **Fees and Expenses**

- 8 Unless the Parties agree otherwise, the fees and expenses of the Early Neutral Evaluation will be borne by the parties in equal shares. The fees and expenses will be estimated by CEDR Solve and paid to CEDR Solve as a condition precedent for the Early Neutral Evaluation to start. The Evaluator will be paid fees and expenses. Interim bills may be raised by CEDR Solve to cover the Evaluator's fees at the Evaluator's option. A final account of the fees and expenses will be sent to the parties by CEDR Solve when the Recommendation is ready for issue to the Parties and the Recommendation will be released on payment by the Parties of any further amounts due. CEDR Solve will reimburse the Evaluator. If the Parties agree not to proceed with Early Neutral Evaluation, CEDR Solve will refund a proportionate

amount of the fees and expenses advanced, depending on the amount of work done by the Evaluator and CEDR Solve.

**No Liability**

- 9 The Parties expressly acknowledge that neither the Evaluator nor CEDR Solve shall be liable to the Parties for any act or omission whatsoever in connection with this Early Neutral Evaluation.

**Role of CEDR Solve**

- 10 CEDR Solve appoints the Evaluator. The Evaluator is responsible for the procedure from then on. CEDR Solve may be consulted by any of the Parties to this Agreement in case of difficulty. Should the Evaluator be unable to complete the task, CEDR Solve will appoint a substitute Evaluator within a reasonable time.

**After the Recommendation**

- 11 None of the Parties will call the Evaluator or CEDR Solve (or any employee, consultant, officer or representative of CEDR Solve) as a witness, consultant or arbitrator in any litigation or arbitration in relation to the Dispute and the Evaluator and CEDR Solve will not act voluntarily in any such capacity without the written agreement of all the Parties.

**Law and Jurisdiction**

- 12 This Agreement shall be governed by English law and under the jurisdiction of the English courts. All the Parties to this Agreement agree to refer any dispute arising in connection with it to mediation first.

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Signed on behalf of Party A

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Signed on behalf of Party B

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Signed by the Evaluator

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Signed on behalf of CEDR Solve

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## Guidance Notes

### Essential Information

The CEDR Model Early Neutral Evaluation Agreement includes CEDR Solve as well as the Parties to the Dispute and, of course, the Evaluator. The role of CEDR Solve is defined in paragraph 10 of the Agreement.

The section "Dispute", when completed, sets out how the dispute arose with a brief description of the issue(s).

Paragraphs 1 and 2 establish the appointment of the Evaluator, that the process is Early Neutral Evaluation, and that the result is a Recommendation which will be non-binding on the Parties.

Paragraphs 3 and 4 establish the confidentiality of the process and the independence of the Evaluator and CEDR Solve.

### The Procedure

Once appointed, the Evaluator will wish to establish the procedure. Paragraph 5 states that the Evaluator will seek to agree the procedure with the Parties, and that if agreement cannot be reached, the Evaluator's directions will prevail.

Procedural directions may deal with any or all of the following:

- a timetable for the submission of case summaries and supporting documents to the Evaluator with copies to each other;
- whether submissions are to be simultaneous or sequential;
- whether there should be one round or two rounds of submissions;
- whether the Evaluator has the power to call for documents; or
- whether the Evaluator has the power to award costs.

### Mediation Option

Paragraph 6 provides that the Parties may agree to refer the dispute to mediation at any time before the Recommendation is made, provided the fees and expenses to date are paid, and that CEDR Solve will organise the mediation.

### Reasons in the Recommendation

Paragraph 7 gives the Parties a choice as to whether to include reasons in the Recommendation. The inclusion of reasons increases the cost, but may make the resolution of the Dispute by this means more attractive and therefore worth the extra cost.

### Fees and Expenses

Paragraph 8 deals with fees and expenses, some of which are payable in advance.

### **No Liability**

Paragraph 9 gives immunity from liability to the Evaluator and CEDR Solve.

### **Role of CEDR Solve**

Paragraph 10 explains CEDR Solve's role, in making the appointment and other arrangements, and collecting the fees and expenses.

### **After the Recommendation**

Paragraph 11 ensures that those involved in the Early Neutral Evaluation do not get involved in future proceedings without the consent of all the Parties.

### **Law and Jurisdiction**

Paragraph 12 establishes English law as the governing law of the Agreement, with disputes referred first to mediation and then to the English court. It may be necessary in international cases to provide that the language of the Early Neutral Evaluation is to be English.