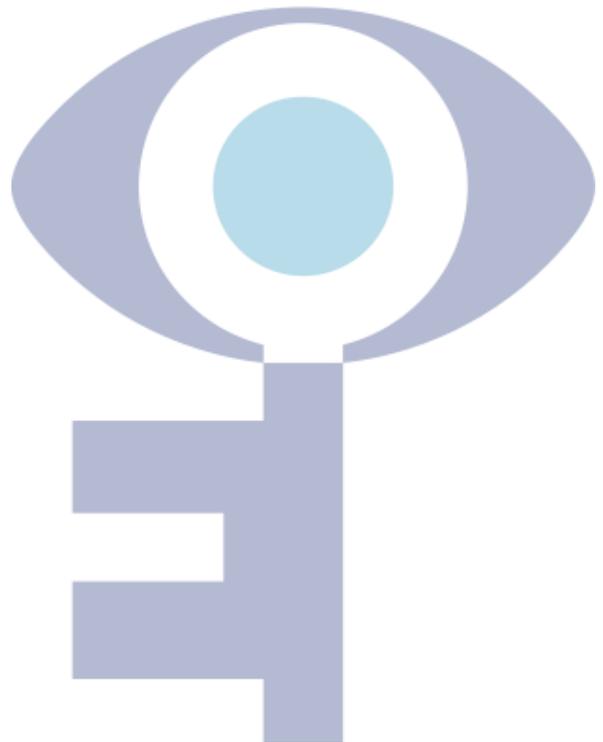


# CEDR Project Mediation Protocol and Agreement



**Second Edition**

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## Explanatory notes for CEDR Model Project Mediation Protocol and Agreement (2nd Edition, September 2015)

[These notes do not form part of the CEDR Model Project Mediation Protocol and Agreement]

### What is project mediation?

Project mediation is a pre-emptive intervention where one or more independent and impartial persons (mediators) help support the successful delivery of a project by managing relationships and identifying and addressing problems before they turn into disputes. While it is always possible to point to problems arising out of any number of technical and operational management activities, they all involve human communication which can both cause and be caused by project problems.

Unlike project management, project mediation focuses on team communication and interaction, and does not rely on the application of management and contract mechanisms. Project mediation, therefore, does not replace project management. It aims to encourage collaborative working which is often difficult because it places heavier demands on relationships which can increase the likelihood of conflict. However, conflict is not all bad. It is also a source of creativity and change, and fundamental to decision-making and problem-solving. Accepting, managing and recognising the diversity of conflict lies at the heart of collaborative working. Project mediation provides a structure for that to happen and addresses conflict management and dispute resolution at strategic level.

### When to use project mediation?

Project mediation is suitable for major long-term projects or programmes which involve a number of projects and/or a large number of stakeholders. It is also suitable for joint ventures, mergers or strategic alliances and major organisational change and restructuring programmes. Its emphasis on collaborative working and preventing disputes means that it is best adopted at the start of a project rather than waiting for a problem or crisis to emerge. However, it can still be adopted at a later stage.

### Documentation

The CEDR Model Project Mediation Protocol and Model Project Mediation Agreement are short and simple to use. They are the only documents required for adopting project mediation and may be included within a contract.

The Model Protocol sets out the terms and conditions which the Parties and the Project Mediator will follow. It also refers to the CEDR Model Mediation Procedure in the event that the Parties require a Formal Mediation to resolve a dispute.

The CEDR Model Project Mediation Agreement incorporates the Model Project Mediation Protocol ("the Model Protocol"). The Project Mediation Agreement ("the Agreement") can vary the Model Protocol and any variations can be set out in the body of the Agreement or the Agreement can state the variations on the incorporated Model Protocol.



## Appointment of the Project Mediation

Once the Parties have decided that they want to adopt project mediation, CEDR will assist them in identifying the Project Mediator and preparing the documentation.

CEDR will appoint a Project Mediator who will be chosen on the basis of the skills, experience and professional background the parties think will be most appropriate for the project. On some projects, it may be appropriate to have two Project Mediators.

CEDR will charge an appointment fee for the Project Mediator(s).

## Key components and cost basis

Project mediation under CEDR consists of three components:

- (1) Access to the Project Mediator for the duration of the project - At regular intervals the Project Mediator (one or both if there are two Project Mediators) will meet with the Parties to discuss progress and identify any actual or potential communication or project team problems. The Project Mediator may also ask to see project documents.

In addition to, or alternatively, for some projects a project mediator may act as an independent chair on a project board acting in the strategic interest of the project.

Outside the regular meetings, it is for the Parties to keep the Project Mediator informed about any issues that might affect the project and their working relationship. The Parties may call the Project Mediator at any time to discuss their concerns and seek guidance.

*Cost basis:* monthly retainer and hourly rate for each Project Mediator. A daily rate is also agreed should the need arise, for example, for a Formal Mediation [See (3) below]

- (2) Project mediation workshop(s) – Before the start of the project, CEDR will arrange a project initiation workshop attended by all project decision-makers including any team members and other participants the decision-makers wish to invite. The aim of the initiation workshop is to enable project and team members to familiarise themselves with each other, the Project Mediator and aspects of the project mediation process.

The Project Mediator will set out the format of the workshop in agreement with the Parties.

The initiation workshop may be combined with a training workshop aimed at bringing together new, highly diversified teams or existing teams which want to improve particular aspects of how they work together. The training workshop is delivered by an experienced CEDR trainer(s) together with the Project Mediator.



In addition, interim review workshops at key stages of the project and a final review workshop at the end of the project may be agreed with the Parties either before or during the project initiation workshop.

*Cost basis:* separate fee for each workshop

- (3) Formal Mediation (if required) – Should a dispute emerge between the Parties which they have not been able to resolve through discussions with the Project Mediator, the Parties may enter into a Formal Mediation conducted by the Project Mediator using the CEDR Model Mediation Procedure.

*cost basis:* daily rate and pro rata hourly rate for additional hours related to the Formal Mediation.

All fees are shared equally by the Parties.



## CEDR Model Project Mediation Protocol

### Definitions

|                         |   |
|-------------------------|---|
| <b>Formal Mediation</b> | A mediation conducted under the CEDR Model Mediation Procedure.   |
| <b>Lead Negotiator</b>  | The representative of each Party who has full authority to conclude any agreement or settlement of a dispute.   |
| <b>Project Mediator</b> | The Project Mediator or Project Mediators appointed by the Parties in accordance with paragraphs 2-7 inclusive of this Model Project Mediation Protocol. (The term "Project Mediator" shall also apply when two Project Mediators are appointed). |

### Project Mediation Agreement

1 The Parties, the Project Mediator and CEDR will enter into an agreement based on the CEDR Model Project Mediation Protocol ("the Model Protocol"). The Model Protocol will be incorporated into, form part of, and may be varied by, the Project Mediation Agreement.

### The Project Mediator

2 The Project Mediator shall comprise either one or two mediators.

3 The Parties shall, unless the Project Mediator has already been nominated, nominate either one or two Project Mediators by agreement within [21] days of the date on the CEDR Model Project Mediation Agreement.

4 The terms of remuneration of the Project Mediator shall be mutually agreed by the Parties when agreeing the terms of the Project Mediator's appointment. The Parties shall be jointly and severally responsible for paying an equal share of the Project Mediator's remuneration.

5 The appointment of the Project Mediator may be terminated by the Parties acting together but shall not be terminated by any Party acting alone. The appointment of the Project Mediator shall terminate if:

- the Project Mediator declines to act or is unable to act due to death, disability or resignation;
- the project comes to an end
- at such other time as the Parties may mutually agree.

6 If the Project Mediator's appointment is terminated the Parties may appoint an appropriately qualified person to replace the Project Mediator. Any Party may, on 7 days' written notice to the other, request CEDR to nominate a new Project Mediator.



7 If there is any issue about the conduct of the Project Mediation (including the nomination of any Project Mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of any party, decide the issue for the parties, having consulted with them.

### **Conduct of Project Mediation**

8 Before the start of the project the Project Mediator shall, with the assistance of the Parties and CEDR, organise a project initiation workshop to provide an overview of the project mediation process to representatives of the Parties and any other participants the Parties may wish to invite. This may be combined, if the Parties agree, with a training workshop to improve particular aspects of how they will work together.

9 The Project Mediator shall meet with the Parties at regular intervals agreed with the Parties and may meet more frequently during key phases of the project at the request of the Parties.

10 The time and agenda of each meeting shall be agreed between the Parties and the Project Mediator.

11 The purpose of the Project Mediator meeting with the Parties is to enable the Project Mediator to become and remain acquainted with the project and to address any actual or potential communication or project team problems.

12 Meetings shall be attended by the Project Mediator, the Parties and any other participants the Parties and the Project Mediator together agree to invite.

13 If there are two Project Mediators they may discuss project matters in private at any time.

14 Any and all written communications between one Party and the Project Mediator shall be copied to the other Party unless the Party sending the written communication states in writing on the communication that it is to be seen only by the Project Mediator.

15 The Project Mediator may, during meetings, make notes for his/her own use as a reminder of the content of discussions.

### **Project Mediator's Powers**

16 In fulfilling his/her role, the Project Mediator may:

- establish and agree with the Parties the process to be followed to facilitate the resolution of any problems.
- meet with any of the Parties together or meet any Party privately
- conduct any meetings or discussions as s/he thinks appropriate and decide who shall attend any particular meeting



- request any party to supply the Project Mediator with such documents as the Project Mediator may reasonably require. This may include any documentation that is relevant to the project or the performance of the contract between the Parties, or short written summaries to be provided before a meeting
- make use of his/her own specialist knowledge, if any
- take the initiative in ascertaining the facts relating to any problem or potential dispute
- question any of the Parties and their representatives, agents, or employees
- give other directions that s/he considers reasonably necessary in an effort to prevent a problem from escalating.

### Referring a dispute

**17** Where a dispute has arisen between the Parties which they have not been able to resolve through discussions with the Project Mediator, then the Parties may at any time agree to a Formal Mediation conducted by the Project Mediator. In that event, the CEDR Model Mediation Procedure, current at the time the Parties agree to a Formal Mediation, will apply.

**18** The referral of any dispute under this Model Framework shall not affect any Parties' right to refer at any time a dispute to any other applicable dispute resolution process arising under the agreement between the Parties, including but not limited to arbitration or court proceedings.

### Lead Negotiations

**19** A Lead Negotiator may be replaced on [7] days' written notice to the Project Mediator, CEDR, and the Parties current at the date of issue of the written notice.

### Termination

**20** This Project Mediation Agreement may be terminated by the Parties acting together, CEDR or the Project Mediator giving CEDR 28 days' written notice of termination. This Project Mediation Agreement shall then terminate on the expiry of the period of 28 days from the date of issue of the written notice.

**21** In the event of insolvency by any of the Parties, CEDR, or the Project Mediator, this Project Mediation Agreement shall immediately terminate.

### Stay of proceedings

**22** Any litigation, arbitration or other dispute resolution process in relation to any dispute may be commenced or continued notwithstanding the project mediation process or Formal Mediation referred to in paragraph 24 unless the applicable parties agree otherwise or a court so orders.



## Confidentiality

**23** Every person involved in the project mediation process or Formal Mediation referred to in paragraph 17 will keep confidential and not use for any collateral or ulterior purpose any information (whether given orally, in writing or otherwise) arising out of, or in connection with, the project mediation process or Formal Mediation, including the fact of any settlement and its terms, save for the fact that project mediation or a Formal Mediation is to take place or has taken place.

**24** All information (whether oral, in writing or otherwise) arising out of, or in connection with, the project mediation process or Formal Mediation referred to in paragraph 17 will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation, arbitration or other proceedings whatsoever. This does not apply to any information which would in any event have been admissible or disclosable in any such proceedings.

**25** The Project Mediator will not disclose to any other party any information given to him/her by a Party in confidence without the consent of that Party.

**26** Paragraphs 29-31 inclusive shall not apply if, and to the extent that:

- all Parties consent to the disclosure; or
- the Project Mediator is required under the general law to make disclosure; or
- the Project Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or
- the Project Mediator reasonably considers that there is a serious risk of him/her being subject to criminal proceedings unless the information in question is disclosed.

**27** None of the parties to the CEDR Model Project Mediation Agreement will call the Project Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation, arbitration, or other proceedings whatsoever arising from, or in connection with, the matters in issue in the project mediation process or a Formal Mediation. The Project Mediator and CEDR will not voluntarily act in any such capacity without the written agreement of all the parties.

## Assignment

**28** No party to the Project Mediation Agreement shall assign the Project Mediation Agreement or any right under it.

## Contracts (Rights of Third Parties) Act 1999

**29** Any party that is not expressly a party to the Project Mediation Agreement shall not receive any rights or benefits under or in connection with the Project Mediation Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.



### **Exclusion of liability**

**30** Neither the Project Mediator nor CEDR shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the project mediation process or any Formal Mediation referred to in paragraph 17, unless the act or omission is shown to have been in bad faith.



## CEDR Model Project Mediation Agreement

This agreement dated [ ] is made between

### Party A

[Add full names and registered office]

### Party B

[Add full names and registered office]

(jointly "the Parties")

[ ] ("the Project Mediator(s)")

and

The Centre for Effective Dispute Resolution Limited, 70 Fleet Street, London EC4Y 1EU ("CEDR")

### Project ("the Project")

[Add brief description of project]

## Participation in Project Mediation

1 The Parties agree to follow the CEDR Model Project Mediation Protocol ("the Model Protocol") in relation to the conduct of the Project Mediation process. The Model Protocol [as varied by this Project Mediation Agreement] is incorporated into, and forms part of, this Project Mediation Agreement.

## Participants

2 The Parties will each identify a Lead Negotiator in writing within [7] days of the date on this Project Mediation Agreement. The Lead Negotiator shall have full authority to conclude any agreement or settlement of a dispute.

3 Each person in signing this Project Mediation Agreement is deemed to be agreeing to the provisions of this Project Mediation Agreement on behalf of the organisation he/she represents.

## Confidentiality

4 The Parties, the Project Mediator and CEDR will be bound by the confidentiality provisions of the Model Protocol.



## Project Mediation fees, expenses and costs

5 CEDR's fees will be borne equally by the Parties and shall comprise:

- a fee for each workshop;
- a monthly retainer fee for the Project Mediator with disbursements;
- an hourly rate with disbursements in respect of the Project Mediator for reasonable time spent over and above the time allowed by the Project Mediator in respect of the monthly retainer;
- a fee for any Formal Mediation conducted in accordance with the CEDR Model Mediation Procedure referred to in paragraph 17 of the Model Protocol.

6 The Parties, CEDR and the Project Mediator shall agree when any reduced retainer fee shall apply.

7 Each party will bear its own costs and expenses of its participation in project mediation.

8 CEDR's fees, including the Project Mediator's fees, shall remain fixed for the first 12 months of each Project Mediator's appointment and thereafter may be adjusted as agreed by the Parties, CEDR and the Project Mediator. Adjusted fees shall be applicable from the anniversary date of the date on which the Project Mediator's appointment became effective.

9 Each person signing this agreement on behalf of the organisation he/she represents is agreeing on behalf of that organisation to participate in project mediation on the basis of CEDR's fees agreed by the Parties and CEDR.

## Contracts (Rights of Third Parties) Act 1999

10 Any party that is not expressly a party to this Project Mediation Agreement shall not receive any rights or benefits under or in connection with this Project Mediation Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

## Law and language

11 The Project Mediator and the Parties shall conduct the Project Mediation process in the English language. This Project Mediation Agreement shall be governed by, construed and take effect in accordance with English law. The court of England shall have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Project Mediation Agreement.

## Human Rights

12 The referral of a dispute to mediation under the Model Protocol does not affect any rights that may exist under Article 6 of the European Convention on Human Rights.



## Model Framework Amendments

13 Set out any amendments to the Model Protocol.

Signed

On behalf of Party A

Date

On behalf of Party B

Date

On behalf of [add name of Project Mediator(s)]

Date

On behalf of CEDR

Date