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# eBRAM APEC Rules

**eBRAM APEC Rules 2022**

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## A Introduction

These APEC Rules of eBRAM (the “**Rules**” or the “**eBRAM APEC Rules**”) have been adopted by the Board of Directors of eBRAM International Online Dispute Resolution Centre Limited (“**eBRAM**”) for use by parties seeking to resolve business-to-business cross-border disputes by online dispute resolution (in particular micro, small and medium sized enterprises (MSMEs) focusing on disputes involving less than HK\$775,000 (US\$100,000) within the scope of the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes. Parties may choose to use these Rules for disputes involving more than HK\$775,000. Online dispute resolution under these eBRAM APEC Rules gives the parties speedy and cost-effective ways to resolve their disputes by negotiation, mediation and arbitration supported by a neutral and eBRAM.

As set out on the eBRAM Platform, and before any registration, the parties will be asked to consent to the Terms and Conditions of use of the eBRAM Platform and the Personal Information Collection Statement.

## **B Application**

These eBRAM APEC Rules may be adopted in a written agreement between the parties to a dispute at any time before or after a dispute has arisen. The scope of application of these Rules is set out in Article 1 of these Rules. A model clause by which the parties agree to use these eBRAM APEC Rules that may be included in their written agreement can be found in Clause 1 of the Annex to these Rules.

## **C Commencement**

The eBRAM APEC Rules came into effect on 1 June 2021.

These revised eBRAM APEC Rules will come into effect on 25 May 2022.

## **D Rules**

### **I. Introductory rules**

#### **1 Scope of application**

- 1.1 These Rules shall apply to business-to-business cross-border disputes where the parties to a sales or service contract have agreed in writing that any dispute relating to the transaction between them shall be resolved via the eBRAM Platform (as defined in Article 2 following) under these Rules. The Rules do not cover a Consumer Transaction (also as defined in Article 2 following).
- 1.2 These Rules shall govern the proceedings under these Rules, subject to such modifications as the parties may agree and subject to eBRAM's approval. Where any of these Rules is in conflict with a provision of the law applicable to the proceedings that the parties cannot contract out of, that provision of the applicable law shall prevail.
- 1.3 Unless the parties otherwise agree, the law applicable to all the proceedings under these Rules shall be the laws of Hong Kong SAR. For the avoidance of doubt this includes the law applicable to the parties' agreement to resolve any dispute between them under the eBRAM



APEC Rules and the law applicable to the procedure of the dispute resolution proceedings under the eBRAM APEC Rules.

## 2 Definitions

2.1 For purposes of these Rules:

- (a) **“Administrative Fee”** means the fee payable to eBRAM for administering these proceedings;
- (b) **“Appendix”** means the Appendix to these Rules;
- (c) **“Claimant”** means any party initiating proceedings under the eBRAM APEC Rules;
- (d) **“Communication”** means any communication (including a statement, declaration, demand, notice, response, submission, proposal, notification or request) made by means of information generated, sent, received, stored, processed, uploaded, conducted and transmitted through or derived from the eBRAM Platform;
- (e) **“Consumer Transaction”** means a contract concluded for personal, family or household purposes;
- (f) **“eBRAM”** means eBRAM International Online Dispute Resolution Centre Limited;

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- (g) “**eBRAM Platform**” means a multi-purpose hub for resolving disputes online which uses the online dispute resolution software to be adopted and revised by eBRAM from time to time and which may be accessed at [www.ebram.org](http://www.ebram.org);
- (h) “**Electronic Address**” means an information system, or portion thereof, designated by the parties to eBRAM to exchange communications;
- (i) “**Neutral**” means the person appointed under Article 11 of the eBRAM APEC Rules to conduct the Proceedings;
- (j) “**Notice of Claim**” means the written notice which sets out the details required in Article 4.4 of the eBRAM APEC Rules, including the Claimant’s claim and by which the Claimant commences the Proceedings against the Respondent;
- (k) “**Online Dispute Resolution**” or “**ODR**” means a mechanism for resolving disputes through the use of electronic communications and other information and communication technology;
- (l) “**Proceedings**” means the ODR provided by eBRAM on the eBRAM Platform for any dispute described in Article 1.1 above; and

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(m) **“Respondent”** means any party to whom the Notice of Claim produced in accordance with Article 4 is directed.

2.2 In these Rules, unless the context otherwise requires, the following rules of interpretation shall apply:

- (a) each gender includes the others; and
- (b) words and expressions in the singular include the plural and vice versa.

### **3 Communications**

3.1 Save as otherwise provided in these Rules, all communications in the course of any proceedings shall be communicated to eBRAM and uploaded to and transmitted through the eBRAM Platform.

3.2 eBRAM shall promptly acknowledge receipt of any communications by a party or the Neutral through the eBRAM Platform.

3.3 eBRAM shall promptly notify a party or the Neutral at their electronic addresses of the availability of any communication directed to that party or the Neutral on the eBRAM Platform.

3.4 In agreeing to use the eBRAM APEC Rules, a party has agreed to accept that transmission by electronic means

## Rules - Introductory rules

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through the eBRAM Platform constitutes valid service of any communication.

- 3.5 A communication transmitted by electronic means through the eBRAM Platform is deemed to have been received on the day it is uploaded to the eBRAM Platform.
- 3.6 eBRAM shall promptly notify all parties and the Neutral of the conclusion of the negotiation stage of proceedings and the commencement of the mediation stage of proceedings; the expiry of the mediation stage of proceedings; and, if relevant, the commencement of the arbitration stage of proceedings.
- 3.7 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day a communication is received pursuant to Article 3.5 above. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period. Unless the parties otherwise agree, the time zone of Hong Kong SAR shall be regarded as the basis for calculating a period of time.

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- 3.8 For the purpose of verifying the authenticity of evidence, all evidence uploaded onto the eBRAM Platform, including documents, audio, photography or videography footage, may be required by the Neutral to be certified by a regulated professional person, including a solicitor, chartered accountant or a notary public, including the parties' legal representatives in the proceedings, unless the parties otherwise agree.

## **II. Commencement of Proceedings**

### **4 Notice of Claim**

- 4.1 The Claimant shall communicate the Notice of Claim to eBRAM by:
- (a) uploading it to the eBRAM Platform; or
  - (b) completing the Notice of Claim on the eBRAM Platform,
- and uploading all supporting documents, whereupon the Proceedings shall be deemed to commence.
- 4.2 The Notice of Claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the Claimant or contain references to them.
- 4.3 Provided that the Claimant has complied with Article 4.4 below and has paid the required fee under the Appendix in force on the date the Notice of Claim is submitted, eBRAM shall notify the Claimant and the Respondent, that the Notice of Claim is available on the eBRAM Platform.
- 4.4 The Notice of Claim shall include:
- (a) The name and contact details (including Electronic Address) of the Claimant and of the

## Rules - Commencement of Proceedings

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- Claimant's representative (if any) authorized to act for the Claimant in the Proceedings;
  - (b) The name and contact details (including Electronic Address) of the Respondent and of the Respondent's representative (if any) known to the Claimant;
  - (c) Brief details of the nature of the dispute and the Claimant's reasons for the claim;
  - (d) Any solutions that the Claimant proposes to resolve the dispute;
  - (e) The Claimant's preferred language of Proceedings;
  - (f) The signature or other means of identification and authentication of the Claimant and/or the Claimant's representative; and
  - (g) Identification of the sales or service contract or other transaction documents related to the dispute.
- 4.5 Together with the Notice of Claim, the Claimant shall pay the required fee set out in the Appendix in force on the date the Notice of Claim is submitted.
- 4.6 If the Notice of Claim submitted by the Claimant does not comply with Article 4.4 above and/or if the required fee under the Appendix in force on the date the Notice of Claim is submitted is not paid, eBRAM shall request the

## Rules - Commencement of Proceedings

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Claimant to rectify the defect in the Notice of Claim and/or pay the required fee, as the case may be, within 3 calendar days. If the Claimant complies with such request(s) within the time limit, eBRAM shall notify the said Notice of Claim. If the Claimant fails to comply, the case is closed.

### **5 Response**

5.1 The Respondent shall, within 7 calendar days of being notified of the availability of the Notice of Claim on the eBRAM Platform pursuant to Article 4 above, communicate its Response (the “**Response**”) to eBRAM by:

- (a) uploading it to the eBRAM Platform; or
- (b) completing the Response to the Notice of Claim on the eBRAM Platform,

and uploading all supporting documents.

5.2 The Response should, as far as possible, be accompanied by all documents and other evidence relied upon by the Respondent or contain references to them.

5.3 The Response shall include:

- (a) The name and contact details (including Electronic Address) of the Respondent and the



## Rules - Commencement of Proceedings

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- Respondent's representative (if any) authorized to act for the Respondent in the Proceedings;
- (b) A response to the Claimant's reasons for the claim;
  - (c) Any solutions that the Respondent proposes to resolve the dispute;
  - (d) The Respondent's preferred language of Proceedings;
  - (e) The signature or other means of identification and authentication of the Respondent and/or the Respondent's representative; and
  - (f) Notice of the Respondent's counterclaim (the "**Counterclaim**"), if any, containing the Respondent's reasons for the counterclaim ("**Notice of Counterclaim**").
- 5.4 Together with the Notice of Counterclaim, the Respondent shall pay the required fee set out in the Appendix in force on the date the Notice of Counterclaim is submitted.
- 5.5 The Respondent may provide, at the time it submits its Response, any other relevant information, including information in support of its Response, and also information in relation to the Respondent's pursuit of other legal remedies.

## Rules - Commencement of Proceedings

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- 5.6 A Claimant to whom a Notice of Counterclaim is addressed shall reply to the Counterclaim (“**Reply**”) within the response period set out in Article 5.1 above and in the same manner set out in Articles 5.1, 5.2 and 5.3 as if the Claimant were the Respondent to whom a Notice of Claim has been notified.

### III. Stages of Proceedings

#### 6 Negotiation Stage

- 6.1 If the Response does not include a Counterclaim, the negotiation stage (as defined below in Article 6.2) shall commence upon communication of the Response to eBRAM and its notification to the Claimant, and upon payment of the Administrative Fee. If the Response does include a Counterclaim, the negotiation stage shall commence upon the Claimant's communication of the Claimant's Reply to that counterclaim (the "**Reply**") and its notification to the Respondent, or after the expiration of the response period set out in Article 5.6, whichever is earlier.
- 6.2 The negotiation stage of the Proceedings shall comprise negotiations directly between the parties via the eBRAM Platform (the "**Negotiation Stage**").
- 6.3 If:
- (a) the Respondent does not communicate a Response to eBRAM in accordance with Article 5; or
  - (b) one or both parties request that the Proceedings move to the mediation stage in accordance with Article 7 (the "**Mediation Stage**"); or

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- (c) a party elects not to engage in the Negotiation Stage,  
the Mediation Stage shall immediately commence.
- 6.4 If the parties have not settled their dispute by negotiation within 10 calendar days of the commencement of the Negotiation Stage, the Mediation Stage shall immediately commence.
- 6.5 The parties may agree to a one-time extension of the deadline for reaching settlement during the Negotiation Stage. No extension shall be more than 10 calendar days.

## 7 Mediation Stage

7.1 If:

- (a) the Respondent does not participate in the Proceedings; or
- (b) one or both parties request that the Proceedings move to the arbitration stage in accordance with Article 8 (the “**Arbitration Stage**”); or
- (c) a party elects not to engage in the Mediation Stage,

the Arbitration Stage pursuant to Article 8 below shall immediately commence.

7.2 Upon commencement of the Mediation Stage, eBRAM shall promptly appoint a Neutral in accordance with Article 11 below, provided that the requested advance on the Neutral’s Fees and Expenses has been paid, and notify the parties of:

- (a) the appointment of the Neutral; and
- (b) the deadline for the expiry of the Mediation Stage under Article 7.3.

7.3 Following appointment, the Neutral shall communicate with the parties to attempt to reach a settlement agreement. Once a settlement agreement is reached, the mediated settlement agreement shall be signed and executed electronically by the parties on the eBRAM

## Rules - Stages of Proceedings

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Platform. Should any party require a copy of the mediated settlement agreement certified by eBRAM, this will be couriered to the party upon receipt by eBRAM of an online request communicated via the eBRAM Platform and payment of the prescribed fees.

- 7.4 If the parties have not settled their dispute by mediation within 10 calendar days of being notified of the appointment of the Neutral under Article 11, the Proceedings shall move to the final stage of proceedings being the Arbitration Stage pursuant to Article 8, provided that if:
- (a) the subject matter of the dispute may not be arbitrated according to the laws of the place (seat) of the proceedings, the parties may agree to terminate the Proceedings; or
  - (b) the parties do not agree to terminate the proceedings as set out in the paragraph immediately above, the proceedings shall proceed to the Arbitration Stage, and the issue of whether the dispute may be arbitrated according to the laws of the place of the arbitration shall be determined by the Neutral appointed to conduct the Proceedings.

## 8 Arbitration Stage

### 8.1

- (a) Upon the commencement of the Arbitration Stage, the Neutral shall proceed to communicate a deadline to the parties by which all communications and submissions shall be made. Such deadline shall be no later than 10 calendar days from the commencement of the Arbitration Stage inclusive of any hearing conducted on the eBRAM Platform (the “**Arbitration Deadline**”) save in exceptional circumstances where time is extended by eBRAM at the request of the Neutral.
- (b) The Neutral shall have the power to disclose to any party the confidential information disclosed to the Neutral by the other party in the course of the Mediation Stage, if any, but only for the purpose of complying with any requirement of the law applicable to the arbitration.
- (c) Other than in compliance with the applicable law, the Neutral shall disregard all confidential information disclosed to him or her and shall not take the same into account for the purpose of the arbitration.

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8.2 Each party shall have the burden of proving the facts relied on to support its claim or defence.

8.3

- (a) The Neutral shall resolve the dispute based on the information and submissions submitted by the parties and shall render an award.
- (b) The Neutral shall have the power to decide on the Neutral's jurisdiction and on the arbitrability of the dispute.
- (c) The Neutral shall declare the Proceedings closed before he or she issues the award.
- (d) The award shall be made in writing and signed by the Neutral, and shall state the date on which it is made and the place of arbitration.
- (e) The Neutral shall deliver to eBRAM three (3) forms of the original of the signed award.
- (f) A true copy of the final award shall be uploaded to the eBRAM Platform.

8.4 Save as otherwise required by law, the requirement in Article 8.3(d) for:

- (a) the award to be in writing shall be met where the information contained in the award is accessible electronically so as to be usable for subsequent reference; and



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- (b) the award to be signed shall be met where data can be used to identify the Neutral and to indicate his or her approval of the information contained in the award.
- 8.5 The award shall be reasoned. The Neutral shall set out the factual and/or procedural sections of the award in the detail he or she considers necessary for the understanding of the award. The Neutral may rely on the eBRAM's summary of case setting out the procedural history, and a brief summary of material facts by referring to them. The Neutral shall state brief reasons upon which the award is based.
- 8.6 The Neutral shall issue the award no later than 10 calendar days from the Arbitration Deadline save in exceptional circumstances where time is extended by eBRAM at the request of the Neutral (the "**Award Delivery Date**").
- 8.7 The award shall be final and binding on the parties. The parties shall carry out the award without delay.
- 8.8 An award may be made public with the consent of all parties or, where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or, in relation to legal proceedings before a court or other competent authority.

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- 8.9 Should any party require an original signed paper copy of the award, this will be couriered to the party upon receipt by eBRAM of an online request communicated via the eBRAM Platform.
- 8.10 In all cases, the Neutral shall make an award in accordance with the terms of the relevant contract in dispute between the parties, taking into account any relevant facts, circumstances and the usage of trade or industrial practice applicable to the transaction, if any.
- 8.11 The Neutral shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation, the Neutral shall apply the law he or she determines to be appropriate.
- 8.12 The Neutral shall decide as *amiable compositeur* or *ex aequo et bono*, only if the parties have expressly authorized the Neutral in writing to do so.

## 9 Correction and Interpretation of the award

- 9.1 Within 5 calendar days after the uploading of the award to the eBRAM Platform, a party, with notice to the other party, may, through the eBRAM Platform, request the Neutral (i) to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature, or (ii) to interpret the award. Upon receipt of the application for correction or interpretation, the Neutral shall grant the other party a short time limit not exceeding 5 calendar days to submit any comments thereon (the “**Deadline**”). If the Neutral considers that the request is justified, he or she shall make the correction or interpretation in the form of an addendum, which shall comply with Article 8.3(d) and includes a brief statement of reasons therefor, within 5 calendar days of the Deadline.
- 9.2 On his or her own initiative, the Neutral may, within 5 calendar days after uploading the award to the eBRAM Platform, correct in the award any errors of the kind referred to in Article 9.1, in the form of an addendum, which shall comply with Article 8.3(d) and include a brief statement of the reasons therefor.
- 9.3 The addendum to the award shall be uploaded to the eBRAM Platform and shall form part of the award.

### **10 Settlement**

- 10.1 If a settlement is reached at any stage of the Proceedings, the terms of such settlement shall be uploaded to the eBRAM Platform, at which point the Proceedings shall automatically terminate.
- 10.2 If the parties reach a settlement after the appointment of the Neutral, the settlement shall be recorded in the form of an award by the Neutral by written consent of the parties, if so requested by the parties and if the Neutral agrees to do so.
- 10.3 If a settlement is reached before the appointment of the Neutral, the parties may request eBRAM to appoint a Neutral to issue an award by consent recording the parties' settlement.

## **IV. Appointment, Powers, and Functions of the Neutral**

### **11 Appointment of the Neutral**

- 11.1 The number of Neutrals to be appointed shall be one.
- 11.2 eBRAM shall appoint the Neutral promptly following commencement of the Mediation Stage. Upon appointment of the Neutral, eBRAM shall promptly notify the parties of the name of the Neutral and any other relevant or identifying information in relation to that Neutral in addition to the matters referred to in Article 7.2 above.
- 11.3 In appointing a Neutral, eBRAM shall consider the need for the Neutral to be available, independent and impartial of the parties.
- 11.4 The Neutral, by accepting appointment, confirms that he or she can devote the time necessary to conduct the Proceedings diligently, efficiently and in accordance with the time limits in the Rules.
- 11.5 The Neutral shall, at the time of accepting his or her appointment, declare his or her availability, impartiality and independence.
- 11.6 The Neutral, from the time of his or her appointment and throughout the Proceedings shall, without delay,

## Rules - Appointment, Powers, and Functions of the Neutral

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disclose to eBRAM any facts and/or circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. eBRAM shall promptly communicate such information to the parties.

- 11.7 Either party may object to the Neutral's appointment within 2 calendar days:
- (a) of the notification of the appointment without giving reasons therefor; or
  - (b) of a fact or matter coming to its attention that is likely to give rise to justifiable doubts as to the impartiality or independence of the Neutral, setting out the fact or matter giving rise to such doubts at any time during the Proceedings.
- 11.8 If no challenges are made within the period provided in Article 11.7, the appointment shall become final.
- 11.9 Where a party objects to the appointment of a Neutral under Article 11.7(a), that Neutral shall be automatically disqualified and another appointed in his or her place by eBRAM. Each party shall have a maximum of 3 challenges to the appointment of a Neutral pursuant to Article 11.7(a), following which the appointment of a Neutral by eBRAM shall be final, subject to Article 11.7(b).

## Rules - Appointment, Powers, and Functions of the Neutral

- 11.10 Where a party objects to the appointment of a Neutral under Article 11.7(b), eBRAM shall decide within 3 calendar days whether to replace the Neutral.
- 11.11 Either party may object, within 3 calendar days of the final appointment of the Neutral, to the provision by eBRAM to the Neutral of information generated during the Negotiation Stage. Following the expiration of this 3-day period, and in the absence of any objections, eBRAM shall make available to the Neutral the entire set of existing information on the eBRAM Platform.

## **12 Resignation or Replacement of the Neutral**

If the Neutral resigns or otherwise has to be replaced during the course of the Proceedings, eBRAM shall appoint a Neutral to replace him or her pursuant to Article 11. The Proceedings shall resume at the stage where the replaced Neutral ceased to perform his or her functions.

### **13 Power of the Neutral**

- 13.1 Subject to the Rules, the Neutral may conduct the Proceedings in such manner as he or she considers appropriate.
- 13.2 The Neutral, in exercising his or her functions under the Rules, shall conduct the Proceedings so as to avoid unnecessary delay and expense and to provide a fair, efficient and cost-effective process for resolving the dispute. In doing so, the Neutral shall remain at all times wholly independent and impartial and shall treat both parties equally.
- 13.3 Subject to any objections under Article 11.11, the Neutral shall conduct the Proceedings on the basis of all communications made during the Proceedings, the relevance of which shall be determined by the Neutral. The Proceedings shall be conducted on the basis of these materials only, unless the Neutral decides otherwise. If in the Arbitration Stage any party so requests, and the Neutral considers it to be fair and efficient the Neutral shall hold online hearings on the eBRAM Platform for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions by the parties or their representatives.



## Rules - Appointment, Powers, and Functions of the Neutral

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- 13.4 At any time during the Proceedings, the Neutral may request or allow the parties (upon such terms as to costs and otherwise as the Neutral shall determine) to provide additional information, produce documents, exhibits or other evidence within such period of time as the Neutral shall determine.
- 13.5 The Neutral shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence or validity of any agreement to refer the dispute to eBRAM. For that purpose, the dispute resolution clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A determination by the Neutral that the contract is null shall not automatically entail the invalidity of the dispute resolution clause.

## **V. Costs of Proceedings**

### **14 Advance to cover the Administrative Fee and Neutral's Fees**

- 14.1 After receipt of the Notice of Claim and where the amount in dispute is valued at more than HK\$775,000, eBRAM shall require the Claimant to pay the eBRAM Administrative Fee calculated by reference to the value of the claims in accordance with Schedule of Fees – Part 2. The Claimant’s payment of the Filing Fee shall be credited to the Claimant’s share of the eBRAM Administrative Fee.
- 14.2 Where a Notice of Counterclaim is submitted by the Respondent, and the counterclaims are valued at more than HK\$775,000, eBRAM shall require the Respondent to pay the eBRAM Administrative Fee calculated by reference to the value of the counterclaims in accordance with Schedule of Fees – Part 2. The Respondent’s payment of the Filing Fee shall be credited to the Respondent’s share of the eBRAM Administrative Fee.

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- 14.3 Upon commencement of the Mediation and/or Arbitration Stages,
- (a) where no counterclaims are submitted, eBRAM shall, before the case is referred to a Neutral, require the Claimant, through the eBRAM Platform, to deposit an amount as an advance to cover the fees and expenses of the Neutral. The Claimant should pay such fees calculated by reference to the value of its claims in accordance with Schedule of Fees – Parts 1 and 2.
  - (b) where counterclaims are submitted, eBRAM shall, before the respective claims and counterclaims are referred to a Neutral, require each party, through the eBRAM Platform, to deposit an amount as an advance to cover the fees and expenses of the Neutral. Each party should pay such fees calculated by reference to the value of its claims and counterclaims respectively in accordance with Schedule of Fees – Parts 1 and 2.
- 14.4 eBRAM shall communicate the file to the Neutral as soon as he or she has been appointed, provided that the advance on eBRAM's Administrative Fee and the

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Neutral's Fees and Expenses requested at this stage has been paid.

- 14.5 During the course of the Proceedings, eBRAM may request supplementary deposits from the parties.
- 14.6 If the required deposits are not paid in full within the time limit granted by eBRAM, eBRAM shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, eBRAM may order the suspension or termination of the Proceedings.

## **15 Allocation of Costs at the Arbitration Stage**

- 15.1 The costs of the Arbitration Stage shall in principle be borne by the unsuccessful party or parties. However, the Neutral may apportion each of such costs between the parties if he or she determines that apportionment is reasonable, taking into account the circumstances of the case.
- 15.2 The Neutral shall, in the award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

## 16 Costs

- 16.1 For the purposes of Article 15, the term "costs" includes only:
- (a) the reasonable fees and expenses of the Neutral fixed by eBRAM;
  - (b) the reasonable costs of expert advice and of other assistance required by the Neutral during the Arbitration Stage;
  - (c) legal and other costs incurred by the parties during the Arbitration Stage to the extent the Neutral determines reasonable; and
  - (d) eBRAM Administrative Fee.
- 16.2 eBRAM shall determine the fees payable to the Neutral in accordance with the eBRAM Schedules of Fees in the Appendix and the following rules:
- (a) In determining the fees payable to the Neutral, eBRAM shall take into account the amount in dispute, the complexity of the subject matter, the time spent by the Neutral, and any other circumstances of the case, including, but not limited to, the discontinuation of the arbitration in case of settlement or for any other reason.

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- (b) The Neutral's fees may exceed the amounts calculated in accordance with eBRAM Schedules of Fees where, in the opinion of eBRAM, there are exceptional circumstances, which include, but are not limited to, the parties conducting the arbitration in a manner not reasonably contemplated at the time when the Neutral was constituted.
- 16.3 The expenses of the Neutral shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the Neutral and any other relevant circumstances of the case.
- 16.4 eBRAM shall determine the expenses payable to a Neutral with reference to the eBRAM Guidelines on Neutral's Expenses.
- 16.5 After the termination of Proceedings or the final award, eBRAM shall render an accounting statement to the parties of the deposits received and return any unexpended balance to the parties.

## **VI. General Provisions**

### **17 Deadlines**

eBRAM, or, if relevant, the Neutral, shall notify parties of all relevant deadlines during the course of the Proceedings.

### **18 Place / Seat of Arbitration**

The Hong Kong SAR shall be the place of the arbitration (known as the seat of the arbitration) unless the parties have agreed in writing otherwise.

### **19 Language of Proceedings**

The Proceedings shall take place in the language of the parties' written agreement to submit disputes to eBRAM for ODR under these Rules or any agreement they may later reach as to this. In the absence of such agreement, eBRAM shall determine the language or languages to be used in the Proceedings.

### **20 Representation**

A party may be represented or assisted by a person or persons chosen by that party. The names and contact details (including the Electronic Address) of such persons and their authority to act shall be communicated through the eBRAM Platform.

## **21 Termination of the Proceedings and Provision of Copies of Filings**

- 21.1 The Proceedings shall terminate upon settlement or issuance of an award in accordance with these Rules or where eBRAM states in writing that Proceedings have otherwise been withdrawn, discontinued or terminated. 120 days after such termination, the case file on the eBRAM Platform will be closed.
- 21.2 For a period of 6 years following termination of Proceedings, any party to Proceedings may request eBRAM to provide true electronic or paper copies of eBRAM's file for the Proceedings upon payment of eBRAM's fee for such provision as set by eBRAM from time to time.

## **22 Exclusion of liability**

The parties waive, to the fullest extent permitted under the applicable law, any claim against eBRAM, any employee or agent of eBRAM, the Neutral, and/or any employee or agent of the Neutral in relation to any act or omission in connection with the exercise or performance of the Neutral's functions in the Proceedings under these Rules save where it is proved that the act was done, or omitted to be done, dishonestly.



## **E APPENDIX**

### **1 Required Fee (Articles 4.3, 4.5 and 5.4)**

**(i) For claims or counterclaims up to HK\$775,000 - Administrative Fee**

Where the claims are valued at no more than HK\$775,000, together with the Notice of Claim (Article 4.5), the Claimant shall pay eBRAM the Administrative Fee as determined by reference to Schedule of Fees – Part 1 in force on the date the Notice of Claim is submitted. If there is more than one Claimant, the amount shall be shared equally amongst the Claimants, unless the parties agree otherwise. If any Claimant fails to pay the Administrative Fee, eBRAM shall not proceed with the Proceedings unless the amount is paid in full within the time set by eBRAM by another on behalf of such Claimant.

Where the counterclaims are valued at no more than HK\$775,000, together with the Notice of Counterclaim (Article 5.4), the Respondent shall pay eBRAM the Administrative Fee as determined by reference to Schedule of Fees – Part 1 in force on the date the Notice of Counterclaim is submitted. If there is more than one

## APPENDIX - Required Fee

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Respondent, the amount shall be shared equally amongst the Respondents, unless the parties agree otherwise. If any Respondent fails to pay the Administrative Fee, eBRAM shall not proceed with the counterclaims unless the amount is paid in full within the time set by eBRAM by another on behalf of such Respondent.

The Administrative Fee shall not be refundable save in exceptional circumstances to be determined by eBRAM in its sole discretion.

**(ii) For claims or counterclaims higher than HK\$775,000 – Filing Fee**

Together with the Notice of Claim, where the amount in dispute is higher than HK\$775,000, the Claimant shall pay a Filing Fee as determined by reference to Schedule of Fees – Part 2 in force on the date the Notice of Claim is submitted. If there is more than one Claimant, the amount shall be shared equally amongst the Claimants, unless the parties agree otherwise. If the Claimant fails to pay the Filing Fee, eBRAM shall not proceed with the Proceedings.

Where the counterclaims are higher than HK\$775,000, together with the Notice of Counterclaim, the Respondent shall pay a Filing Fee as determined by reference to Schedule of Fees – Part 2 in force on the date the Notice of Counterclaim is submitted. If there is more than one Respondent, the amount shall be shared equally amongst the Respondents, unless the parties agree otherwise. If the Respondent fails to pay the Filing Fee, eBRAM shall not proceed with the counterclaims.

Any Filing Fee shall be credited to that party's share of the eBRAM Administrative Fee and shall not be

## APPENDIX - Required Fee

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refundable save in exceptional circumstances to be determined by eBRAM in its sole discretion.

**(iii) For the eBRAM Administrative Fees and the Neutral's fees, please refer to Schedules of Fees – Parts 1 and 2.**

## **2 Methods of Payment**

Payments may be made **(i)** directly on the eBRAM Platform, **(ii)** by Hong Kong Dollar cheque payable to “eBRAM International Online Dispute Resolution Centre Limited” or **(iii)** by bank transfer to the following account:

**Account No: 004-741-176978-838**

**Account Name: eBRAM International Online Dispute Resolution Centre Limited**

**Bank: The Hongkong & Shanghai Banking Corporation Limited  
1 Queen's Road Central, Hong Kong**

**Swift Code: HSBC HK HHH KH**

### **3 SCHEDULE OF FEES – PART 1: CLAIMS OR COUNTERCLAIMS VALUED AT NO MORE THAN HK\$775,000**

#### **1 eBRAM Administrative Fee**

For claims valued at no more than HK\$775,000, the eBRAM Administrative Fee is payable by the Claimant pursuant to Article 4.5 when a Notice of Claim is submitted. If there is more than one Claimant, the amount shall be shared equally amongst the Claimants, unless the parties agree otherwise. If any Claimant fails to pay the Administrative Fee, eBRAM shall not proceed with the claims unless the amount is paid in full within the time set by eBRAM by another on behalf of such Claimant.

For counterclaims valued at no more than HK\$775,000, the eBRAM Administrative Fee is payable by the Respondent pursuant to Article 5.4 when a Notice of Counterclaim is submitted. If there is more than one Respondent, the amount shall be shared equally amongst the Respondents, unless the parties agree otherwise. If any Respondent fails to pay the Administrative Fee, eBRAM shall not proceed with the

## APPENDIX - Schedule of Fees – Part 1: Administrative Fee

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counterclaims unless the amount is paid in full within the time set by eBRAM by another on behalf of such Respondent.

The Administrative Fee shall not be refundable save in exceptional circumstances to be determined by eBRAM in its sole discretion.

For claims or counterclaims valued at no more than HK\$775,000, eBRAM non-refundable Administrative Fee shall be determined according to the following table:

<b>Amount in dispute (HK\$)</b>	<b>Administrative Fee (HK\$)</b>
Up to HK\$20,000	HK\$1,000
HK\$20,001 – HK\$50,000	HK\$1,500
HK\$50,001 – HK\$70,000	HK\$2,000
HK\$70,001 – HK\$100,000	HK\$3,000
HK\$100,001 – HK\$200,000	HK\$4,000
HK\$200,001 – HK\$300,000	HK\$4,500
HK\$300,001 – HK\$400,000	HK\$5,000
HK\$400,001 – HK\$500,000	HK\$5,500
HK\$500,001 – HK\$600,000	HK\$6,000
HK\$600,001 – HK\$700,000	HK\$6,500
HK\$700,001 – HK\$775,000	HK\$7,000

## APPENDIX - Schedule of Fees – Part 1: Administrative Fee

Where in the opinion of eBRAM, there are exceptional circumstances, eBRAM may depart from the amount of charges above. If the amounts in dispute are not yet quantified, eBRAM shall fix the Administrative Fee after taking into account all relevant circumstances.

## APPENDIX - Schedule of Fees – Part 1: Neutral’s Fee

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### 2 Neutral's Fees

For claims or counterclaims valued at no more than HK\$775,000, the Neutral’s Fees shall be fixed in accordance with the table below:

<b>Amount in dispute (HK\$)</b>	<b>Neutral’s Fees (HK\$) (Mediation Stage)</b>	<b>Neutral’s Fees (HK\$) (Arbitration Stage - for cases resolved with an award)</b>
Up to HK\$200,000	Fixed fee of HK\$2,000 (inclusive of preparation and up to 4 hours of mediation), then HK\$500/hour for additional mediation	Fixed fee of HK\$5,000 (inclusive of all reading time, all communications and drafting including of the award), plus HK\$750/hour for hearing
HK\$200,001 – HK\$775,000	Fixed fee of HK\$4,000 (inclusive of preparation and up to 4 hours of mediation), then HK\$750/hour for additional mediation	Fixed fee of HK\$10,000 (inclusive of all reading time, all communications and drafting including of the award), plus HK\$1,000/hour for hearing

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**4 SCHEDULE OF FEES – PART 2: CLAIMS OR  
COUNTERCLAIMS VALUED AT MORE THAN  
HK\$775,000**

**1 Filing Fee**

For claims valued at more than HK\$775,000, the Filing Fee payable by the Claimant pursuant to Article 4.5 when a Notice of Claim is submitted shall be HK\$5,000. If the Claimant fails to pay the Filing Fee, eBRAM shall not proceed with the Proceedings.

For counterclaims valued at more than HK\$775,000, the Filing Fee payable by the Respondent pursuant to Article 5.4 when a Notice of Counterclaim is submitted shall be HK\$5,000. If the Respondent fails to pay the Filing Fee, eBRAM shall not proceed with the counterclaims.

Any Filing Fee shall be credited to that party's share of the eBRAM Administrative Fee and shall not be refundable save in exceptional circumstances to be determined by eBRAM in its sole discretion.

## APPENDIX - Schedule of Fees – Part 2: Administrative Fee

### 2 eBRAM Administrative Fee

For claims or counterclaims valued at more than HK\$775,000, eBRAM Administrative Fee shall be determined according to the following table:

<b>Amount in dispute (HK\$)</b>	<b>Administrative Fee (HK\$)</b>
HK\$775,001 – HK\$3,000,000	HK\$7,000 + 0.719% of amount over HK\$775,000
HK\$3,000,001 – HK\$5,000,000	HK\$23,000 + 0.6% of amount over HK\$3,000,000
HK\$5,000,001 – HK\$15,000,000	HK\$35,000 + 0.35% of amount over HK\$5,000,000
HK\$15,000,001 – HK\$50,000,000	HK\$70,000 + 0.228% of amount over HK\$15,000,000
HK\$50,000,001 – HK\$100,000,000	HK\$150,000 + 0.1% of amount over HK\$50,000,000
HK\$100,000,001 – HK\$250,000,000	HK\$200,000 + 0.055% of amount over HK\$100,000,000
HK\$250,000,001 – HK\$500,000,000	HK\$282,500 + 0.047% of amount over HK\$250,000,000
Over HK\$500,000,000	HK\$400,000

## APPENDIX - Schedule of Fees – Part 2: Administrative Fee

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Where in the opinion of eBRAM, there are exceptional circumstances, eBRAM may depart from the amount of charges above. If the amounts in dispute are not yet quantified, eBRAM shall fix the Administrative Fee after taking into account all the circumstances.

## APPENDIX - Schedule of Fees – Part 2: Neutral’s Fee

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### 3 Neutral's Fees

For claims or counterclaims valued at more than HK\$775,000, the Neutral’s Fees shall be fixed in accordance with the below table:

<b>Amount in dispute (HK\$)</b>	<b>Neutral’s Fees (HK\$)</b>
HK\$775,001 – HK\$50,000,000	Based on an hourly rate commensurate with the experience of the appointed neutral which shall not exceed HK\$3,100 per hour save in exceptional circumstances
HK\$50,000,001 and above	Based on an hourly rate commensurate with the experience of the appointed neutral which shall not exceed HK\$5,500 per hour save in exceptional circumstances

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## **F ANNEX – Model Clause**

*Any dispute, controversy or claim arising hereunder and within the scope of the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes, shall be settled in accordance with the APEC Rules of eBRAM in force when the Notice of Claim is submitted to eBRAM (the “eBRAM APEC Rules”).*

## Contact Us

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