

eBRAM Rules for the Covid-19 ODR Scheme

I. Introductory Rules

1 Article 1 - Scope of Application

- 1.1 These Rules shall apply to Covid-19 Related Disputes below the value of HK\$500,000 where the parties, one of which is a resident of Hong Kong SAR, a company registered in Hong Kong SAR under the Companies Ordinance (Cap. 622) or the predecessor Companies Ordinance (Cap.32), or a sole proprietor or partnership registered in Hong Kong SAR under the Business Registration Ordinance (Cap.310) where that sole proprietor or at least one of the partners in that partnership is a resident of Hong Kong SAR, have agreed to resolve any dispute relating to the dealings between them shall be resolved via the Scheme under these Rules. These Rules do not cover the arbitration of disputes which are not arbitrable under the laws of Hong Kong SAR.
- 1.2 These Rules shall govern the dispute resolution proceedings provided by eBRAM, on the eBRAM Platform for the disputes described in Article 1.1 above, subject to such modifications as the parties may agree and/or eBRAM may accept. Where any of these Rules is in conflict with a provision of the law applicable to the Proceedings from which the parties cannot derogate, that provision of the law applicable shall prevail.
- 1.3 The law applicable to all the Proceedings under these Rules shall be the laws of Hong Kong SAR.

2 Article 2 - Definitions

- 2.1 For purposes of these Rules:

Arbitrator means the Neutral appointed to act as an arbitrator and to conduct the arbitration stage of the Proceedings pursuant to Article 8.1;

Claimant means any party initiating proceedings under these Rules;

Communication means any communication (including a statement, declaration, demand, notice, response, submission, proposal, notification or request) made by means of information generated, uploaded, conducted and transmitted through the eBRAM Platform;

Covid-19 Related Dispute means any commercial, contractual, tortious, property, family or tenancy disputes arising out of or in connection with directly or indirectly the outbreak of the Covid-19 pandemic in any part of the world;

eBRAM means eBRAM International Online Dispute Resolution Centre Limited or any other person or body authorised by eBRAM International Online Dispute Resolution Centre Limited to carry out any function under these Rules;

eBRAM Platform means the Online Dispute Resolution software developed, adopted and/or revised by eBRAM for the Scheme from time to time;

E-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;

Electronic Address means an information system, or portion thereof, designated by the parties to eBRAM to exchange communications;

Hong Kong SAR means Hong Kong Special Administrative Region of the People's Republic of China;

Mediator means the Neutral appointed to act as the mediator and to conduct the mediation stage of the Proceedings pursuant to Article 7.1;

Neutral means the mediator or the arbitrator appointed to conduct the Proceedings at the relevant time;

ODR Agreement means the agreement to be made between the intended Claimant and the intended Respondent substantially similar to the form set out in the Annex to these Rules;

Online Dispute Resolution or **ODR** is a mechanism for resolving disputes through the use of electronic communications and other information and communication technology;

Proceedings means the dispute resolution proceedings provided by eBRAM on the eBRAM Platform for any dispute described in Article 1.1 above;

Respondent means any party responding to the Claimant's initiation of Proceedings under these Rules and a party to the ODR Agreement (other than the Claimant);

Scheme means the Online Dispute Resolution Scheme funded by the Government of the Hong Kong SAR and operated by eBRAM to handle Covid-19 Related Disputes.

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 Article 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 Communication by a party or the Neutral at their Electronic Addresses.
- 3.3 eBRAM shall promptly notify a party or the Neutral of the availability of any Communication directed to that party or the Neutral at the eBRAM Platform.
- 3.4 In agreeing to make use of the eBRAM Platform, a party shall be regarded as having agreed to accept that transmission by electronic means through the eBRAM Platform constitutes valid service of any Communication.
- 3.5 A communication transmitted by electronic means through the eBRAM Platform shall be deemed to have been received when eBRAM notifies the parties of the availability of the Communication on 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 notice is received pursuant to Article 3.5 above. If the last day of such period is an official holiday or a non-business day in Hong Kong SAR, 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.
- 3.8 If considered necessary by both Parties or the Neutral, all evidence uploaded onto the eBRAM Platform, including documents, audio, photography or videography footage, may be certified by a solicitor, chartered accountant or a notary public, including the parties' legal representatives in the Proceedings.

II. Commencement of Proceedings

4 Article 4 – ODR Agreement

- 4.1 The intended Claimant and the intended Respondent shall first enter into the ODR Agreement and the Claimant shall communicate the ODR Agreement to eBRAM by:
- (a) uploading it to the eBRAM Platform; and
 - (b) any means of communication that provides or allows for a record of its transmission.
- 4.2 The ODR Agreement 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 eBRAM shall promptly notify the parties that the ODR Agreement is available on the eBRAM Platform. The Proceedings shall be deemed to commence from the date of notification by eBRAM that the ODR Agreement is available on the eBRAM Platform.
- 4.4 The ODR Agreement shall include:
- (a) The name and contact details (including Electronic Address) of the Claimant and of the 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, and proof of authorization of representation;
 - (c) The grounds on which the claim is made and brief details of the nature of the dispute;
 - (d) Any solutions proposed to resolve the dispute;
 - (e) The parties' preferred language of Proceedings;
 - (f) The waiver by the relevant party the part of its claim or counterclaim which exceeds HK\$500,000; and
 - (g) The signature or other means of identification and authentication of the parties and/or the parties' representatives.
- 4.5 Together with the ODR Agreement, the Claimant and the Respondent shall pay the online registration fees required by the Appendix hereto in force on the date the ODR Agreement is submitted.
- 4.6 Notwithstanding the submission of the ODR Agreement, and the commencement of the Proceedings under the eBRAM Platform, eBRAM shall have the absolute discretion on its own motion or a request of a party or Neutral to terminate any Proceedings on the ground that the same is:
- (a) Not a Covid-19 Related Dispute;
 - (b) an abuse of process; or
 - (c) frivolous, vexatious and scandalous.

eBRAM shall not be required to give any reason to the parties in the exercise of such discretion and the decision of eBRAM shall be final and conclusive. The online registration fee shall not be refundable to the parties.

5 Article 5 - Response

- 5.1 The Respondent shall, within **three (3)** calendar days of being notified of the availability of the ODR Agreement on the eBRAM Platform pursuant to Article 4.3 above, communicate the response to eBRAM by:
- (a) uploading it to the eBRAM Platform; and
 - (b) any means of communication that provides or allows for a record of its transmission.
- 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 Respondent's representative (if any) authorized to act for the Respondent in the Proceedings;
 - (b) A response to the grounds on which the claim is made;
 - (c) Any solutions proposed to resolve the dispute;
 - (d) The signature or other means of identification and authentication of the Respondent and/or the Respondent's representative; and
 - (e) Notice of any counterclaim containing the grounds on which the counterclaim is made.
- 5.4 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 pursuit of other legal remedies.
- 5.5 A Claimant to whom a notice of counterclaim is addressed shall respond to the counterclaim within the response period set out in Article 5.1 and in the same manner set out in Articles 5.1, 5.2, 5.3 and 5.4, where applicable, as if the Claimant were the Respondent to whom a commencement notice had been notified.

III. Stages of Proceedings

6 Article 6 - Negotiation Stage

- 6.1 If the response does not include a counterclaim, the negotiation stage shall commence upon communication of the response to eBRAM and notification thereof to the Claimant. If the response does include a counterclaim, the negotiation stage shall commence upon the Claimant's communication of the response to that counterclaim and notification thereof to the Respondent, or after the expiration of the response period set out in Article 5.5, whichever is earlier.
- 6.2 The Negotiation Stage of Proceedings shall comprise negotiation between the parties via the eBRAM Platform or otherwise as the parties may agree.

- 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 of the Proceedings; or
 - (c) a party elects not to engage in the negotiation stage of the Proceedings,
- the mediation stage of the Proceedings shall immediately commence.
- 6.4 If the parties have not settled their dispute by negotiation within three (3) calendar days of the commencement of the negotiation stage of the Proceedings or within any other period that they may agree, the mediation stage of the Proceedings shall immediately commence.
- 6.5 The parties may agree to a one-time extension of the deadline for reaching settlement during the negotiation stage of the Proceedings. No extension shall be more than **three (3)** calendar days.

7 Article 7 - Mediation Stage

- 7.1 Upon commencement of the mediation stage of the Proceedings, eBRAM shall promptly generate a list of five (5) names from whom the parties may agree to appoint a Neutral to conduct the Proceedings as a mediator. The parties shall notify eBRAM of their agreed choice of the Neutral through the eBRAM Platform. eBRAM shall appoint the Neutral as the Mediator and inform the parties of the deadline for the expiry of the mediation stage. Should the parties fail to agree on such appointment within three (3) calendar days, eBRAM shall appoint the Neutral in accordance with Article 11 from outside of the list, and notify the parties of:
- (a) the appointment of the Mediator; and
 - (b) the deadline for the expiry of the mediation stage of the Proceedings under Article 7.3.
- 7.2 Following the appointment, the Mediator shall communicate with the parties through the eBRAM Platform 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 Platform. Should any party require an original signed copy of the mediated settlement agreement certified by eBRAM, this will be couriered to that party upon receipt by eBRAM of an online request communicated via the eBRAM Platform.
- 7.3 If the parties have not settled their dispute by mediation within **three (3)** calendar days of being notified of the appointment of the Mediator under Article 7.1, the Proceedings shall move to the final (arbitration) stage of Proceedings pursuant to Article 8 PROVIDED THAT if the subject matter of the dispute is not arbitrable according to the laws of the seat of the Proceedings, the parties may elect to terminate the Proceedings, and if the parties fail to agree on the arbitrability of the dispute, the Proceedings shall nonetheless proceed to the arbitration stage, and the issue shall be determined by the Neutral appointed to conduct the arbitration pursuant to Article 8.1 below.

8 Article 8 - Arbitration Stage

- 8.1 Upon the case moving to the arbitration stage of the Proceedings, eBRAM shall generate a list of five (5) names for the parties to choose from to act as arbitrator for the further conduct of the Proceedings. The parties shall notify eBRAM of their agreed choice of the Neutral through the eBRAM Platform. eBRAM shall appoint the Neutral as the Arbitrator and inform the parties of such appointment. Should the parties fail to agree on such appointment within **three (3)** calendar days of the commencement of the arbitration stage of the Proceedings, eBRAM shall appoint a Neutral to act as Arbitrator to conduct the Proceedings at the arbitration stage in accordance with Article 11 from outside of that list.
- 8.2 Upon appointment of the Arbitrator under Article 8.1, the Arbitrator 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 **one (1) calendar month** from the appointment of the Arbitrator.
- 8.3 Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 8.4 The Neutral shall resolve the dispute based on the information submitted by the parties and shall render an award. The Neutral shall have jurisdiction to decide on the tribunal's jurisdiction and on the arbitrability of the dispute. Electronic copy of the award shall be uploaded to the eBRAM Platform.
- 8.5 The award shall be made in writing and signed by the Neutral and shall indicate the date on which it was made and the seat of arbitration.
- 8.6 The requirement in Article 8.5 for:
- (a) the award to be in writing shall be met where the information contained in the award is accessible so as to be usable for subsequent reference; and
 - (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.
- 8.7 The award shall state brief reasons upon which the award is based.
- 8.8 The award shall be rendered within **seven (7)** calendar days from the filing of the last submission.
- 8.9 The award shall be final and binding on the parties. The parties shall carry out the award without delay.
- 8.10 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.
- 8.11 Should any party require an original signed paper copy of arbitral award, this will be couriered to the party upon receipt by eBRAM of an online request communicated via the eBRAM Platform.
- 8.12 In all cases the Neutral shall make an award in accordance with the terms of the contract in dispute (if any), taking into account any relevant facts, circumstances and the usage of trade or industrial practice applicable to the dispute, if any.

8.13 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 which it determines to be appropriate.

8.14 The Neutral shall decide as amiable compositeur or *ex aequo et bono*, only if the parties have expressly authorized the Neutral to do so.

9 Article 9 - Correction of award

9.1 Within **five (5)** calendar days after the uploading of the award, a party, with notice to the other party, may, through the eBRAM Platform, request the Neutral to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the Neutral considers that the request is justified, he or she shall make the correction including a brief statement of reasons therefor, within **two (2)** calendar days of receipt of the request. Such corrections shall be uploaded on the eBRAM Platform and shall form part of the award.

9.2 The Neutral may, within **five (5)** calendar days after uploading the award to the eBRAM Platform, make such corrections on its own initiative.

10 Article 10 - Settlement

If 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. The Neutral may, if considered necessary, draw up a mediated settlement agreement for signature by the parties or an award by consent (as the case may be) for the purpose of enforcement.

IV. Appointment, Powers, and Functions of the Neutral

11 Article 11 - Appointment of Neutral

11.1 For each stage of the Proceedings, the number of Neutral to be appointed shall be one.

11.2 eBRAM shall appoint the Neutral promptly upon commencement of each of the mediation stage and arbitration stage of the Proceedings. 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 7.1 above.

11.3 In appointing a Neutral, eBRAM shall consider the need for the Neutral to be independent and impartial of the parties and representatives.

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 these Rules.

11.5 The Neutral shall, at the time of accepting his or her appointment, make a declaration of his or her impartiality and independence substantially similar to the form set out in the Annex hereto.

11.6 The Neutral, from the time of his or her appointment and throughout the Proceedings shall, without delay, disclose to eBRAM any 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 **two (2)** calendar days:
- (a) of the notification of the appointment without giving reasons therefor, unless such appointment was made in accordance with the parties' agreement on the choice of Neutral, in which case the parties may not raise any objection to the Neutral's appointment; 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 pursuant to 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 three (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).
- 11.10 Where a party objects to the appointment of a Neutral under Article 11.7(b), eBRAM shall make a determination within **three (3)** calendar days on whether a Neutral shall be replaced. A determination by eBRAM under this Article shall be final.
- 11.11 Either party may object, within **three (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 of the Proceedings. Following the expiration of this **three (3)** day period, and in the absence of any objections, eBRAM shall convey a complete set of existing information on the eBRAM Platform to the Neutral.

12 Article 12 - Resignation or Replacement of Neutral

If the Neutral resigns or otherwise has to be replaced during the course of the Proceedings, eBRAM shall appoint another 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 Article 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.
- 13.4 Subject to Article 13.2, 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.

13.6 The Neutral, after making such inquiries as he or she may deem necessary, may, in his or her discretion, extend any deadlines under these Rules.

V. General Provisions

14 Article 14 - Deadlines

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

15 Article 15 - Seat of Arbitration

If the parties have not determined the seat of arbitration, the seat of arbitration shall be Hong Kong SAR, unless eBRAM otherwise selects having due regard to the circumstances of the case.

16 Article 16 - Language of Proceedings

The Proceedings shall be conducted in Cantonese, Mandarin or English. Taking into account the parties' preferred language of Proceedings, eBRAM shall determine the language or languages to be used in the Proceedings. In the event that a party indicates in a notice or response that it wishes to proceed in another language in the Proceedings, eBRAM shall identify available languages that the parties can select for the Proceedings, and the Proceedings shall be conducted in the language or languages that the parties select.

17 Article 17 - Representation

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

18 Article 18 - Exclusion of liability

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against eBRAM and the Neutral based on any act or omission in connection with the Proceedings under these Rules.

19 Article 19 - Allocation of Costs at the Arbitration Stage

19.1 The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the Neutral may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

19.2 The Neutral shall, in the final award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

20 Article 20 - Definition of Costs

20.1 The term 'costs' includes only:

- (a) the reasonable costs of expert advice and of other assistance required by the Neutral during the arbitration stage of the Proceedings; and

- (b) legal and other costs incurred by the parties during the arbitration stage of the proceedings to the extent the Neutral determines reasonable.

ANNEX

A. Model ODR Agreement

ODR Agreement for COVID-19 Online Dispute Resolution Scheme

IMPORTANT NOTICE: THIS IS A LEGAL DOCUMENT, PLEASE SEEK LEGAL ADVICE BEFORE SIGNING FOR PROTECTION OF YOUR INTERESTS

1. AGREEMENT TO RESOLVE DISPUTE UNDER THE COVID-19 ONLINE DISPUTE RESOLUTION SCHEME (the "Scheme")

Each of the parties hereto acknowledges and agrees that he has read and fully understands the following documents and confirms that he agrees to all the terms contained therein:

- (i) Terms and Conditions of Services for COVID-19 Online Dispute Resolution Scheme; and
- (ii) Personal Information Collection Statement for eBRAM's COVID-19 Online Dispute Resolution Scheme; and
- (iii) Terms of the ODR Agreement for the COVID-19 Online Dispute Resolution Scheme; and
- (iv) eBRAM Rules for the Covid-19 ODR Scheme,

which are published on the website www.ebram.org, and form part of this ODR Agreement.

2. DETAILS OF PARTIES

PARTY A:	PARTY B:
Name: _____	Name: _____
Address: _____	Address: _____
Tel. No.: _____	Tel. No.: _____
E-mail: _____	E-mail: _____

3. DISPUTE: (Provide brief particulars of (i) nature, circumstances and location of Dispute, (ii) issues for settlement/determination, and (iii) amount at issue.) Enclose a copy of the contract/supporting documents.

4. AMOUNT IN DISPUTE: HK\$ _____

5. LANGUAGE: English / Cantonese / Mandarin (delete as appropriate)

SIGNED by / for or on behalf of PARTY A:

SIGNED by / for or on behalf of PARTY B:

Signature: _____	Signature: _____
Date: _____	Date: _____
Name and Title/Capacity: _____	Name and Title/Capacity: _____
Tel. No.: _____	Tel. No.: _____
E-mail: _____	E-mail: _____

B. Model Statement of Independence pursuant to Article 11.5 of these Rules

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and eBRAM, any such circumstances that may subsequently come to my attention during these proceedings.

APPENDIX

Online Registration Fees: HK\$400 being HK\$200 for each party (i.e. HK\$200 x 2)