

# **eBRAM Arbitration Rules**

(Adopted by eBRAM on 1 June 2021)

## **SECTION I. Introductory Rules: Scope of Application**

### **Preamble**

- (A) This Preamble shall form part of the eBRAM Arbitration Rules (the “eBRAM Arbitration Rules” or the “Rules”).
- (B) In these Rules:
  - (i) references to "eBRAM" are to the Board of Directors of eBRAM International Online Dispute Resolution Centre Limited (the “eBRAM Centre”) or to any other person or body duly authorised in writing by the eBRAM Centre’s Board of Directors to carry out any function that is to be undertaken under these Rules;
  - (ii) the eBRAM Platform shall mean a multi-purpose hub for resolving disputes online which uses the on-line 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);
  - (iii) **Online Dispute Resolution** or **ODR** means a mechanism for resolving disputes through the use of electronic communications and other information and communication technology;
  - (iv) transmission through the eBRAM Platform shall include all data input and communications conducted through the eBRAM Platform;
  - (v) words and expressions importing the masculine gender include the feminine and neuter genders; and
  - (vi) words and expressions in the singular include the plural and words and expressions in the plural include the singular.

### **Scope of Application**

#### **1 Article 1**

- 1.1 Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration conducted on the eBRAM Platform under the eBRAM Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree and eBRAM may accept.
- 1.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a mandatory provision of the law applicable to the arbitration that mandatory provision shall prevail.
- 1.3 These Rules include all Annexes attached thereto, as amended from time to time by eBRAM, in force on the date the Notice of Arbitration is submitted.

## **Notice and calculation of periods of time**

### **2 Article 2**

- 2.1 Save as otherwise provided in these Rules, a notice, including a notification, communication or proposal, shall be uploaded to and transmitted through the eBRAM Platform.
- 2.2 In agreeing to make use of the eBRAM Platform, a party has agreed to accept transmission by electronic means through the eBRAM Platform and agrees that such transmission constitutes service of any notice, communication or proposal.
- 2.3 A notice transmitted by electronic means through the eBRAM Platform is deemed to have been received on the day it is uploaded to the eBRAM Platform.
- 2.4 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. 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.
- 2.5 For the purpose of verifying the authenticity of evidences, all evidences uploaded onto the eBRAM Platform, including electronic and physical documents, audio files, photography or videography footage, shall be certified by a regulated professional person such as a lawyer, chartered accountant or a notary public, including the parties' legal representatives in the arbitration proceedings , unless the arbitral tribunal directs otherwise.

## **Notice of arbitration**

### **3 Article 3**

- 3.1 The party or parties initiating recourse to arbitration (herein after called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration by:
  - (a) Uploading it to the eBRAM Platform; and
  - (b) Any means of communication that provides or allows for a record of its transmission.
- 3.2 For the purpose of Article 3.1(b),
  - (a) If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice of arbitration shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.
  - (b) In the absence of such designation or authorization, a notice of arbitration is:
    - (i) Received if it is physically delivered to the addressee; or
    - (ii) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
  - (c) If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs

(a) or (b), a notice of arbitration is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

(d) A notice of arbitration shall be deemed to have been received on the day it is delivered in accordance with paragraphs (a), (b) or (c), or attempted to be delivered in accordance with paragraph (c). A notice of arbitration transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

3.3 Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent in accordance with Article 3.2.

3.4 The notice of arbitration shall include the following:

- (a) A request that the dispute be referred to arbitration via the eBRAM Platform;
- (b) The names and contact details of the parties;
- (c) Identification of the arbitration agreement that is invoked;
- (d) Identification of any contract or other legal instrument (s) out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (e) A brief description of the claim and an indication of the amount involved, if any;
- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
- (h) A request that the respondent or the respondents shall make use of the eBRAM Platform for the purpose of arbitral proceedings and communication.

3.5 The notice of arbitration may also include:

- (a) A proposal for the designation of an appointing authority referred to in Article 6.1;
- (b) A proposal for the appointment of a sole arbitrator referred to in Article 8.1;
- (c) Notification of the appointment of an arbitrator referred to in Article 9 or 10.

3.6 The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

3.7 If the Notice of Arbitration does not comply with these Rules or if the Registration Fee is not paid, eBRAM may request the Claimant to rectify the defect within an appropriate time limit. If the Claimant complies with such requests within the time limit, the arbitration shall be deemed to have commenced under Article 3.3 on the date the initial notice was received by eBRAM. If the Claimant fails to comply, the arbitration shall be deemed not to have commenced under Article 3.3, without prejudice to the Claimant's right to submit a fresh Notice of Arbitration at a later date.

## **Response to the notice of arbitration**

### **4 Article 4**

- 4.1 Within 30 days of receipt of the notice of arbitration in accordance with Article 3.2, the respondent shall upload a response to the notice of arbitration to the eBRAM Platform, which shall include:
- (a) The name and contact details of each respondent;
  - (b) A response to the information set forth in the notice of arbitration, pursuant to Article 3.4(c) to 3.4(g).
- 4.2 The response to the notice of arbitration may also include:
- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
  - (b) A proposal for the designation of an appointing authority referred to in Article 6.1;
  - (c) A proposal for the appointment of a sole arbitrator referred to in Article 8.1;
  - (d) Notification of the appointment of an arbitrator referred to in Article 9 or 10;
  - (e) A brief description of counterclaims or claims for the purpose of a set -off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
  - (f) A notice of arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
- 4.3 The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to upload a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

## **Representation and Assistance**

### **5 Article 5**

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal through the eBRAM Platform. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

## **Designating and Appointing Authorities**

### **6 Article 6**

- 6.1 The appointing authority under the eBRAM Arbitration Rules shall be eBRAM.

In exercising its functions under these Rules, eBRAM may require from any party and the arbitrators the information it deems necessary and it shall give the parties and, where appropriate,

the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from eBRAM shall also be provided through the eBRAM Platform to all other parties.

- 6.2 When eBRAM is requested to appoint an arbitrator pursuant to Articles 8, 9, 10 or 14, the party making the request shall ensure that copies of the notice of arbitration and, if it exists, any response to the notice of arbitration have been uploaded to the eBRAM Platform.
- 6.3 eBRAM shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## **SECTION II. Composition of the arbitral tribunal: Number of arbitrators**

### **7 Article 7**

- 7.1 If the parties have not previously agreed on the number of arbitrators, and if within 30 days after receipt by the respondent of the notice of arbitration the parties have not agreed on the number of arbitrators, eBRAM shall decide whether only one arbitrator or three arbitrators shall be appointed.
- 7.2 Notwithstanding paragraph 7.1, if no other parties have responded to a party's proposal to nominate a sole arbitrator within the time limit provided for in paragraph 7.1 and the party or parties concerned have failed to nominate a second arbitrator in accordance with Article 9 or 10, eBRAM may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in Article 8.2, if it determines that, in view of the circumstances of the case, this is more appropriate.

## **Appointment of arbitrators (Articles 8 to 10)**

### **8 Article 8**

- 8.1 If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by eBRAM
- 8.2 eBRAM shall appoint the sole arbitrator as promptly as possible. In making the appointment, eBRAM shall use the following list-procedure described in this paragraph, unless the parties agree that the list-procedure should not be used or unless eBRAM determines in its discretion that the use of the list - procedure is not appropriate for the case:
  - (a) eBRAM shall communicate to each of the parties via the eBRAM Platform an identical list containing at least three names;
  - (b) Within 15 days after the receipt of this list, each party may in return upload the list to eBRAM Platform after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
  - (c) After the expiration of the above period of time, eBRAM shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
  - (d) If for any reason the appointment cannot be made according to this procedure, eBRAM may exercise its discretion in appointing the sole arbitrator.

## **9 Article 9**

- 9.1 If three arbitrators are to be appointed, each party shall nominate one arbitrator for appointment by eBRAM. The two arbitrators thus appointed shall nominate the third arbitrator who upon appointment by eBRAM, will act as the presiding arbitrator of the arbitral tribunal.
- 9.2 If, within 30 days after a party uploads a notification of the nomination of an arbitrator, the other party has not uploaded its notification of nomination of arbitrator, the first party may request eBRAM appoint the second arbitrator.
- 9.3 If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by eBRAM. eBRAM shall have regard to such considerations as are likely to secure the appointment of an independent and impartial presiding arbitrator and shall take into account the advisability of appointing a presiding arbitrator of a nationality other than the nationalities of the parties or the other two arbitrators.

## **10 Article 10**

- 10.1 For the purposes of Article 9.1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, the multiple parties jointly, whether as claimant or as respondent, shall nominate an arbitrator for appointment by eBRAM.
- 10.2 In the event of any failure to constitute the arbitral tribunal under these Rules, eBRAM shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

## **Disclosures by and challenge of arbitrators (Articles 11 to 13)**

### **11 Article 11**

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose in writing any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her in writing of these circumstances.

### **12 Article 12**

- 12.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 12.2 A party may challenge the arbitrator nominated by it only for reasons of which it becomes aware after the appointment has been made.
- 12.3 In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in Article 13 shall apply.

### **13 Article 13**

- 13.1 A party that intends to challenge an arbitrator shall upload to the eBRAM Platform notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in Articles 11 and 12 became known to that party. The notice of challenge shall state the reasons for the challenge.
- 13.2 When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 13.3 If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by eBRAM.

### **Replacement of an arbitrator**

### **14 Article 14**

- 14.1 Subject to paragraph 14.2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
- 14.2 If, at the request of a party, eBRAM determines that, in view of the exceptional circumstances of the case it should appoint the substitute arbitrator, or a substitute arbitrator should not be appointed eBRAM may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

### **Repetition of hearings in the event of the replacement of an arbitrator**

### **15 Article 15**

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

### **Exclusion of liability**

### **16 Article 16**

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, any person appointed by the arbitrators, the eBRAM Centre, eBRAM's Board of Directors, employees and advisors and any person or body duly designated in writing by eBRAM to perform any functions under or in relation to these Rules.

### **SECTION III. Arbitral proceedings: General provisions**

#### **17 Article 17**

- 17.1 Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity to present its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
- 17.2 As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall issue the provisional timetable of the arbitration on the eBRAM Platform. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
- 17.3 If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold online hearings on the eBRAM Platform for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such online hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 17.4 All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties through the eBRAM Platform. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
- 17.5 The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of material prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

#### **Place of arbitration**

#### **18 Article 18**

- 18.1 If the parties have not previously agreed on the place of arbitration (being the seat of the arbitration) the place of arbitration shall be Hong Kong unless the arbitral tribunal, having regard to the circumstances of the case, consider that another place of arbitration would be more appropriate. The award shall be deemed to have been made at the place of arbitration.

#### **Language**

#### **19 Article 19**

- 19.1 Communication with eBRAM shall be in English or Chinese, unless otherwise agreed by the eBRAM.
- 19.2 Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral online video hearings take place, to the language or languages to be used in such hearings.

- 19.3 The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

## **Statement of claim**

### **20 Article 20**

- 20.1 The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators via the eBRAM Platform within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in Article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 20.2 to 20.4 of this Article.
- 20.2 The statement of claim shall include the following particulars:
- (a) The names and contact details of the parties;
  - (b) A statement of the facts supporting the claim;
  - (c) The points at issue;
  - (d) The relief or remedy sought;
  - (e) The legal grounds or arguments supporting the claim.
- 20.3 A copy of the key parts of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
- 20.4 The statement of claim shall be accompanied by all documents and other evidence relied upon by the claimant.
- 20.5 The arbitral tribunal may, at its discretion, amend the requirements of Article 20.

## **Statement of defence**

### **21 Article 21**

- 21.1 The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators via the eBRAM Platform within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in Article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 21.2 of this Article.
- 21.2 The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (Article 20.2). The statement of defence shall be accompanied by all documents and other evidence relied upon by the respondent.
- 21.3 In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

- 21.4 The provisions of Article 20.2 to 20.4, shall apply to a counterclaim, a claim under Article 4.2(f), and a claim relied on for the purpose of a set-off.
- 21.5 The arbitral tribunal may, at its discretion, amend the requirements of Article 20.
- 21.6 After the Defence/Counterclaim is communicated to the Claimant, eBRAM shall determine the amount of Administrative Fees to be charged for the arbitration, and shall notify the parties as soon as practicable. The parties shall be jointly and severally liable for eBRAM's Administrative Fee which shall be paid to eBRAM within 21 days after the amount has been determined by eBRAM and communicated to the parties. If the Administrative Fee is not settled in full within the time limit, eBRAM shall not proceed with the arbitration.

### **Amendments to the claim or defence**

#### **22 Article 22**

- 22.1 During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.
- 22.2 eBRAM shall have the right to adjust the amount of Administrative Fee payable by the parties after each amendment or supplement is made to the claim, defence or counterclaim.

### **Pleas as to the jurisdiction of the arbitral tribunal**

#### **23 Article 23**

- 23.1 The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.
- 23.2 A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- 23.3 The arbitral tribunal may rule on a plea referred to in paragraph 23.2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction.

## **Further written statements**

### **24 Article 24**

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements via the eBRAM Platform.

## **Periods of time**

### **25 Article 25**

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

## **Interim measures**

### **26 Article 26**

26.1 The arbitral tribunal may, at the request of a party, grant interim measures.

26.2 An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

- (a) Maintain or restore the status quo pending determination of the dispute;
- (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

26.3 The party requesting an interim measure under paragraphs 26.2(a) to 26.2(c) shall satisfy the arbitral tribunal that:

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

26.4 With regard to a request for an interim measure under paragraph 26.2(d), the requirements in paragraphs 26.3(a) and 26.3(b) shall apply only to the extent the arbitral tribunal considers appropriate.

26.5 The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

- 26.6 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- 26.7 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
- 26.8 The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
- 26.9 A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## **Evidence**

### **27 Article 27**

- 27.1 Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 27.2 Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them before being uploaded to the eBRAM Platform.
- 27.3 At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce and upload documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
- 27.4 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## **Online Hearings on the eBRAM Platform**

### **28 Article 28**

- 28.1 In the event of an online hearing on the eBRAM Platform, the arbitral tribunal shall give the parties adequate advance notice of the date, time and means of attendance thereof. Hearings shall be confidential unless the parties agree otherwise.
- 28.2 Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
- 28.3 The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
- 28.4 Unless there is a verifiable network failure, equipment damage, power outage or a force majeure event, a party who does not attend the online hearing shall be deemed to have refused to attend. Any party who no longer wishes to attend the online video hearing is deemed to have withdrawn.

## **Experts appointed by the arbitral tribunal**

### **29 Article 29**

- 29.1 After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties via the eBRAM Platform.
- 29.2 The expert shall, in principle before accepting appointment, upload to the eBRAM Platform a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
- 29.3 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
- 29.4 Upon receipt of the expert's report, the arbitral tribunal shall upload a copy of the report to the eBRAM Platform. The parties shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
- 29.5 At the request of any party, the expert, after delivery of the report, may be heard at an online hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of Article 28 shall be applicable to such proceedings

## **Default**

### **30 Article 30**

- 30.1 If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
- (a) The claimant has failed to upload or otherwise communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
  - (b) The respondent has failed to upload or otherwise communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this sub-paragraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
- 30.2 If a party, duly notified under these Rules, fails to appear at an online video hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

- 30.3 If a party, duly invited by the arbitral tribunal to produce and upload documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

### **Closure of online video hearings**

#### **31 Article 31**

- 31.1 The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the online hearings closed.
- 31.2 The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the online hearings at any time before the award is made.

### **Waiver of right to object**

#### **32 Article 32**

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

### **Section IV. The award: Decisions**

#### **33 Article 33**

- 33.1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
- 33.2 In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### **Form and effect of the award**

#### **34 Article 34**

- 34.1 The arbitral tribunal may make separate awards on different issues at different times.
- 34.2 All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
- 34.3 The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 34.4 An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

- 34.5 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.
- 34.6 Copies of the award signed by the arbitrators shall be communicated to the parties through the eBRAM Platform by the arbitral tribunal.
- 34.7 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.

### **Applicable law, amiable compositeur**

#### **35 Article 35**

- 35.1 The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
- 35.2 The arbitral tribunal shall decide as amiable compositeur or exaequoet bono only if the parties have expressly authorized the arbitral tribunal to do so.
- 35.3 In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade or industrial practice applicable to the transaction.

### **Settlement or other grounds for termination**

#### **36 Article 36**

- 36.1 If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
- 36.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 36.1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
- 36.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties through the eBRAM Platform. Where an arbitral award on agreed terms is made, the provisions of Article 34.2, 34.4 and 34.5, shall apply.
- 36.4 Should any party require an original signed paper copy of an order for termination of the arbitral proceedings or of the arbitral award on agreed terms, this will be couriered to the party upon receipt by eBRAM of an online request communicated via the eBRAM Platform.

## **Interpretation of the award**

### **37 Article 37**

- 37.1 Within 30 days after the uploading of the award, a party, with notice to the other parties, may, through the eBRAM Platform, request that the arbitral tribunal give an interpretation of the award.
- 37.2 The interpretation shall be given in writing and communicated via the eBRAM Platform within 45 days after the uploading of the request. The interpretation shall form part of the award and the provisions of Article 34.2 to 34.7 shall apply.

## **Correction of the award**

### **38 Article 38**

- 38.1 Within 30 days after the uploading of the award, a party, with notice to the other parties, may, through the eBRAM Platform, request the arbitral tribunal 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 arbitral tribunal considers that the request is justified, it shall make the correction and upload the corrected award within 45 days of the uploading of the request.
- 38.2 The arbitral tribunal may within 30 days after the uploading of the award make such corrections on its own initiative.
- 38.3 Such corrections shall be in writing and shall form part of the award. The provisions of Article 34.2 to 34.7 shall apply.

## **Additional award**

### **39 Article 39**

- 39.1 Within 30 days after the uploading of the termination order or the award, a party, with notice to the other parties, may request through the eBRAM Platform the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
- 39.2 If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the uploading of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
- 39.3 Such an award or additional award shall be in writing and shall form part of the award. The provisions of Article 34.2 to 34.7 shall apply.

## **Definition of costs**

### **40 Article 40**

- 40.1 The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
- 40.2 The term "costs" includes only:
- (a) The fees of the arbitral tribunal to be fixed by eBRAM in accordance with Article 41;

- (b) The reasonable travel and other expenses incurred by the arbitrators, if any;
- (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The reasonable travel and other expenses of witnesses, if any, to the extent such expenses are approved by the arbitral tribunal;
- (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of eBRAM.

## **Fees and expenses of arbitrators**

### **41 Article 41**

- 41.1 The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
- 41.2 eBRAM shall determine the fees payable to an arbitrator in accordance with the eBRAM Schedule of Fees in Annex E and the following rules:
- (a) In determining the fees payable to an arbitrator, eBRAM shall take into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrator, 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;
  - (b) Where the arbitral tribunal comprises three arbitrators, eBRAM, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of a sole arbitrator;
  - (c) The arbitral tribunal's fees may exceed the amounts calculated in accordance with eBRAM Schedule 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 arbitral tribunal was constituted.
- 41.3 eBRAM shall determine the expenses payable to an arbitrator with reference to the eBRAM Guidelines on Arbitrator Expenses.

## **Allocation of costs**

### **42 Article 42**

- 42.1 The reasonable costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 42.2 The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

## **Deposit of costs**

### **43 Article 43**

- 43.1 eBRAM shall, before the case is referred to the arbitral tribunal, require the parties, through the eBRAM Platform, to deposit an equal amount as an advance for the costs referred to in Article 40.2(a) to 40.2(c).
- 43.2 During the course of the arbitral proceedings eBRAM may request supplementary deposits from the parties.
- 43.3 If the required deposits are not paid in full within 30 days after the receipt of the request, 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 arbitral proceedings.
- 43.4 After a termination order or final award has been made, eBRAM shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

## **Annex A**

### **Model arbitration clause for contracts**

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the eBRAM Arbitration Rules.

Note: Parties should consider adding:

- (a) The number of arbitrators shall be [one/three];
- (b) The place of arbitration shall be Hong Kong.
- (c) The applicable law of the arbitration agreement and of the procedure for the arbitration the eBRAM Arbitration Rules shall be the laws of the Hong Kong SAR.
- (d) The language used in the arbitration under the eBRAM Arbitration Rules shall be [English/Chinese/such language as the Parties agree].

## **Annex B**

### **Possible waiver statement**

*Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.*

### **Waiver**

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

## **Annex C**

### ***Statements of independence impartiality and availability pursuant to Article 11 of the Rules***

*Before appointing any arbitrator eBRAM will require the potential arbitrator to make a statement of independence and impartiality through the eBRAM Platform in one of the two following forms:*

*No circumstances to disclose*

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, eBRAM and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration. I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

*Circumstances to disclose*

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to Article 11 of the eBRAM Arbitration Rules of:

- (a) my past and present professional, business and other relationships with the parties; and

*last updated on 18 May 2021 (11:30am)*

- (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties, eBRAM and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.
- (c) I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

## **Annex D**

### ***Registration & Administration Fees***

#### **Registration Fee**

The Registration Fee payable by the Claimant pursuant to Article 3.7 when a Notice of Arbitration is submitted shall be HK\$5,000. If there is more than one Claimant, the amount shall be shared equally amongst the Claimant, unless the parties agree otherwise. If the Claimant fails to pay the Registration Fee, eBRAM shall not proceed with the arbitration. The Registration Fee shall not be refundable save in exceptional circumstances to be determined by eBRAM in its sole discretion.

#### **Administrative Fee**

eBRAM's Administrative Fee shall be determined according to the following table:

<b>Amount in dispute (HKD)</b>	<b>Administrative Fee (HKD)</b>
Up to 500,000	13,000
From 500,001 to 1,000,000	13,000 + 1% of & over 500,000
From 1,000,000 to 5,000,000	18,000 + 0.75% of & over 1,000,000
From 5,000,001 to 15,000,000	48,000 + 0.3% of & over 5,000,000
From 15,000,001 to 50,000,000	78,000 + 0.12% of & over 15,000,000
From 50,000,001 to 100,000,000	120,000 + 0.1% of & over 50,000,000
From 100,000,001 to 250,000,000	170,000 + 0.075% of & over 100,000,000
From 250,000,001 to 500,000,000	282,500 + 0.047% of & over 250,000,000
Over 500,000,000	400,000

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

## **Annex E**

### Arbitrators Fees and Expenses

#### **Schedule of Fees**

The fees of the Arbitral Tribunal shall be fixed in accordance with the below table:

<b>Sum In Dispute (in HKD)</b>	<b>Arbitrator's Fees (in HKD)</b>
Up to 500,000	25,000
From 500,001	Based on an hourly rate commensurate with the experience of the appointed arbitrator which shall not exceed HK\$6,500 per hour save in exceptional circumstances

#### **Fee for filing a Challenge to an Arbitrator**

A party submitting a Notice of Challenge pursuant to Article 13.1 of the Rules shall pay a non-refundable fee of HKD 25,000. Where the Notice is submitted by more than one party, the fee shall be paid by all the submitting parties in equal shares, unless the parties agree otherwise.

#### **Method of Payment**

Payments of the filing and administrative fees and expenses, may be made by Hong Kong Dollar cheque payable to "eBRAM International Online Dispute Resolution Centre Limited" or by bank transfer to the following account:

**Account No:** 004-741-287445-838

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

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

**Swift Code:** HSBC HK HHH KH

Payments of funds for holding by eBRAM may be made by Hong Kong Dollar cheque payable to "eBRAM International Online Dispute Resolution Centre Limited" or by bank transfer to the following account:

**Account No:** 004-741-176978-001

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

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

**Swift Code:** HSBC HK HHH KH