

Building Management Dispute Resolution Service (BMDRS)
Agreement to Use the BMDRS

This Agreement is made on this ____ day of _____ 20__ between the following parties (in this Agreement referred to as “the Parties”):

(English) _____

(English) _____

(Chinese) _____

(Chinese) _____

(Name of Party – please state the name as specified on the identity document in block letters)

(Name of Party – please state the name as specified on the identity document in block letters)

(Identity document number)

(“Party A”)

(Identity document number)

(“Party B”)

The Convenor¹:

(Name of Convenor in block letters)

Other mediator(s) (the mediator(s)) (if any):

(Name(s) of mediator(s) in block letters)

¹ The Convenor is one of the mediators in the BMDRS.

Appointment of the Convenor and the Mediator(s)

1. The Parties hereby accept the appointment of the Convenor and the mediator(s) by the Home Affairs Department (HAD) to mediate the building management dispute (the dispute) between them in accordance with the terms of this Agreement to Use the BMDRS. The BMDRS is provided in the form of a mediation service. Mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following –
 - (a) identify the issues in dispute;
 - (b) explore and generate options;
 - (c) communicate with one another;
 - (d) reach an agreement regarding the resolution of the whole, or part, of the dispute.

Role of the Convenor and the Mediator(s)

2. The Convenor and the mediator(s) will be independent, neutral and impartial. The Convenor and the mediator(s), without adjudicating the dispute or any aspect of it, will assist the Parties to attempt to resolve the dispute by doing any or all of the following –
 - (a) identify the dispute;
 - (b) (i) provide opinion to any or both of the Parties based on his experience and expertise; and (ii) explore and generate options in respect of the dispute. The opinion and options are non-binding;
 - (c) explore the feasibility of these options to meet the needs and concerns of the Parties;
 - (d) facilitate communication with one another;
 - (e) receive information, records, documents or communications relating to the dispute provided by the Parties; and
 - (f) reach an agreement with the resolution for the whole or part of the dispute.
3. The Convenor and the mediator(s) may meet with the Parties together or separately.
4. The Convenor and the mediator(s) will not –
 - (a) impose an option on any Party; or
 - (b) make decisions for any Party.
5. The opinion provided by the Convenor is based on (a) his experience and expertise; and (b) the information, records, documents or communications previously disclosed, prepared or presented by the Parties before the Convenor provides his opinion and is based on the best of his ability. The Parties are responsible for the completeness and accuracy of the information, records, documents or communications provided. HAD and District Offices (DOs) and relevant staff members, the Convenor, and the mediator(s) have no responsibility to verify the information provided by the Parties.
6. The Parties may obtain independent legal advice separately if considered necessary.

Conflict of Interest

7. The Convenor and the mediator(s) must, prior to the commencement of the BMDRS, disclose to the Parties to the best of their knowledge any prior dealings with any of the Parties as well as any interest in the dispute.
8. If in the course of the BMDRS process the Convenor or a mediator becomes aware

of any circumstances that might reasonably be considered to affect his capacity to act impartially, the Convenor or the mediator(s) must immediately inform the Parties of such circumstances. In such case, the Parties may decide whether to continue with the appointment, or HAD may consider nominating another suitable Convenor or mediator.

Cooperation of the Parties

9. The Parties agree to cooperate in good faith with the Convenor and the mediator(s) and all other parties during the BMDRS process.

Authority to Settle and Representation

10. Each of the Parties and/or their authorised representative(s) attending the BMDRS meetings shall have full authority to enter into settlement or be accompanied by a person with such authority.
11. During the BMDRS process, each Party may be accompanied by one or more persons, including legally qualified persons, to assist and advise them.

Communication among the Convenor and the Mediator(s) and the Parties

12. Any information disclosed to the Convenor and/or a mediator in private is to be treated as confidential by the Convenor and/or the mediator unless the Party making the disclosure states otherwise.

Confidentiality of the Mediation

13. (a) The Parties, the Convenor and the mediator(s) understand and consent to keep confidential all information, records, documents, communications, opinions of the Convenor and the mediator(s), and any settlement agreement and terms arising from the BMDRS process (referred to as “confidential information”), except under the circumstances specified in paragraphs 13(b), (c) and (d) below, or where disclosure is made under the consent of each of the parties or made in accordance with a requirement imposed by laws, rules, bodies of exchanges, or regulatory or governmental bodies. When a Party discloses information to the Convenor or the mediator(s) and states clearly in written form that such information is not to be disclosed to the other Parties, the Convenor and the mediator(s) shall fulfil the confidentiality request unless the Party making the disclosure gives a statement otherwise or the disclosure is required by law.
- (b) The Convenor, the mediator(s) and the Parties understand and consent to the disclosure of confidential information, matters arising from the BMDRS and the terms or potential terms in the Settlement Agreement by the representative(s) of any of the Parties in BMDRS meetings to persons relating to the Party represented, such as the Management Committee (if applicable), legal representatives and other advisers, administrative personnel of their Owners’ Corporation (referred to as “the administrative personnel”), or members of the Owners’ Committee (if applicable). Under these circumstances, the representative(s) of any of the Parties taking part in the BMDRS will only disclose such information to the administrative personnel on a need-to-know basis. The representative(s) of any of the Parties will ensure that the administrative personnel in possession of confidential information will treat it as confidential and are required to abide by the provision in paragraph 13 of this Agreement.

- (c) Confidential information shall be disclosed on a privileged and without prejudice basis and such disclosure shall not be used in subsequent arbitration, adjudication or litigation. Confidentiality also extends to the Settlement Agreement except where its disclosure is necessary for fulfilment or enforcement. The draft Settlement Agreement or any unsigned agreement may not be produced as evidence in subsequent arbitration, adjudication or litigation. The Parties shall not call the Convenor or the mediator(s) or HAD or DOs or relevant staff members as a witness in subsequent arbitration, adjudication or litigation, or produce any document, information or communication relating to the BMDRS process as evidence.
- (d) If any of the Parties or both Parties request the Convenor to provide opinion/assessment or agree to proceed with the mediation upon receipt of the Convenor's opinion, the Convenor may disclose all information, records, documents or communications disclosed, made or produced by the Parties (including the other Party) and his opinion/assessment to both Parties and to the mediator(s).

Termination of the BMDRS Process

- 14. A Party may terminate the BMDRS process after consultation with the Convenor or the mediator(s).
- 15. The Convenor or the mediator(s) may terminate the BMDRS process if he, after consultation with the Parties, feels unable to assist the Parties to achieve resolution of the dispute.

Settlement of the Dispute

- 16. No terms of settlement reached at the BMDRS process will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

Exclusion of Liability and Indemnity

- 17. The Parties jointly and severally release, discharge and indemnify HAD and DOs and relevant staff members, the Convenor and the mediator(s) in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any process conducted under this Agreement, save for the consequences of fraud or dishonesty.

Rules of the BMDRS

- 18. The BMDRS process shall proceed according to the terms of this Agreement and the Rules for the BMDRS (at **Annex A**).

Cost of the BMDRS

- 19. The BMDRS is provided free-of-charge.

Legal Status and Effect of the BMDRS

- 20. This Agreement is governed by the law of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the BMDRS.

Statement of Purpose in respect of Collection of Personal Data

Purpose of Collection

21. The personal data provided by means of this form will be used by the HAD and DOs and relevant staff members for the sole purpose of processing application for, providing and evaluating or compiling statistics on the BMDRS.

Classes of Transferees

22. The personal data you provided by means of this form may be disclosed to other Government bureaux and departments, the parties concerned, the Convenor and mediators appointed for the case, as well as other relevant persons and bodies for the purpose mentioned in paragraph 21 above.

Access to Personal Data

23. You have the right of access and correction with respect to personal data under sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance. Your right of access includes the right to obtain a copy of your personal data provided in this form.

Enquiries

24. Enquiries concerning the personal data collection by means of this form, including access and correction, should be addressed to –

Executive Officer (4)1
Division 4, Home Affairs Department
31/F, Southorn Centre
130 Hennessy Road, Wanchai, Hong Kong
(Tel. No.: 2835 2127)

Signing of the Agreement to Use the BMDRS

Date: _____

	English name*	Chinese name* (if applicable)	Signature
Name of Party or representative	_____	_____	_____
Name of Party or representative	_____	_____	_____
Convenor	_____	_____	_____
Mediator(s)	_____	_____	_____

* Please state the name as specified on the identity document in block letters

Confidentiality Agreement by Attendees of Meeting

(To be signed by third parties attending the meeting, including but not limited to the representatives and legal advisers of the Parties, etc.)

As I am/we are allowed to attend this meeting, I/we agree to abide by the confidentiality provision at paragraph 13 of the Agreement to Use the BMDRS, and to undertake to the Convenor and the mediator(s) and the Parties that I/we will not disclose any information relating to the BMDRS process to any outside party nor act as a witness in any subsequent proceedings unless by the order of the Court and at the joint written request by the Parties. I/We agree to be held liable for breach of the confidentiality provision.

Signature)
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Signature)
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Signature)
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Signature)
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Date:

The Convenor, mediator(s), any of the Parties, or HAD and DOs and relevant staff members may request any person attending the meeting and subsequent meetings to sign the Confidentiality Agreement by Attendees of Meeting.
