

TERMS AND CONDITIONS OF BRIO ELECTRONIC COMMERCE LIMITED (BRIO) SERVICES

By signing any Registration Forms of Brio (Brio Registration Form) for use of one or more of the services from time to time provided by Brio (Brio Services), the person registered with Brio (Subscriber) confirms that he/she has read, understood and accepted the following Terms and Conditions under which the Subscriber will use the Brio Services.

- These Terms & Conditions shall come into effect and bind the Subscriber and payment of relevant registration fees, annual fees, charges by the Government of the Hong Kong Special Administrative Region (the HKSAR) (Government Charges), and deposits shall become due from the Subscriber to Brio upon the date of the relevant Brio Registration Form or the relevant service commencement date, whichever is later, and termination shall be subject to the provisions of the terms and conditions herein.
- These Terms & Conditions together with the other supplemental documents duly signed or accepted by the Subscriber in writing constitute the entire agreement between the Subscriber and Brio and supersede all other prior agreements and other prior communications between them. In the event that any one of the provisions contained in these terms and conditions should be found to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality of enforceability of the remaining provisions contained in these terms and conditions shall not in any way be affected or impaired by such a finding.
- Brio reserves the right in its absolute discretion to make changes to these Terms & Conditions provided Brio notifies the Subscriber at least 30 (thirty) days in advance of any such change taking effect. Thereafter the Subscriber shall be bound by the revised Terms & Conditions unless the Subscriber has elected to terminate the Brio Services under the provisions within the Terms & Conditions.
- Brio will validate all data transmitted by electronic means through Brio Services (Message) in terms of completeness, correctness and consistency, and may notify the Subscriber by sending an acknowledgment Message upon successful delivery of the Messages to the Intended Recipient in accordance with the relevant Implementation Instructions (if any) and other relevant specifications as Brio shall from time to time adopt.
- Brio will not pass to the Intended Recipient any Message which cannot be validated and Brio will notify the sending Subscriber of any errors identified in his Message. The sending Subscriber has a duty to check any error notice received from Brio and resent the valid Message accordingly. Brio shall in no event be responsible for any loss or damage caused or occasioned by the sending Subscriber's failure to check the error notice.
- Where Brio Services are being used for the purposes of performing a business function involving a combination of Messages, Brio will match the information contained in such Messages in accordance with the relevant Implementation Instructions (if any) and other relevant specifications as from time to time adopted by Brio. Brio will not pass such Messages to the Intended Recipients if a matching error occurs and, where appropriate, Brio will notify the sending Subscriber of the matching errors identified in the Messages concerned.
- If any Message sent using Brio Services is incorrectly transmitted by Brio, Brio will re-send such Message without charge.
- Unless otherwise specified by Brio for any particular Brio Services, Brio will retain all Messages, sent through Brio by and to the Subscriber in an electronic archive for 7 (seven) years from the time of receipt of the Messages by Brio.
- Subject to any agreement between Brio and the Subscriber to the contrary, Brio will provide Help Desk facilities during the service hours of the Brio Services to assist the Subscriber in resolving operational problems and general enquiries, or for the Subscriber to obtain general information relating to Brio Services.
- Brio will make reasonable efforts to provide Brio Services, but Brio will have no liability for any delay or failure resulting from circumstances beyond its control.
- Brio will have no liability whatsoever for any indirect or consequential loss or for loss of business or profits however arising incurred by the Subscriber or by the Subscriber's business partners or by any third parties.
- Brio will have no liability whatsoever for any loss incurred by the Subscriber or by the Subscriber's business partners or any third parties arising out of any failure by the Subscriber to keep copies of data sent using Brio Services.
- Brio shall have no liability for loss or damage suffered by the Subscriber, by the Subscriber's business partners or by any third parties arising from any negligence or default by the Subscriber or members of his staff or his agents or third parties or arising from his failure or the failure of members of his staff or agents to follow the instructions and/or recommendations of Brio.
- Brio's liability, if any, under these Terms & Conditions is limited in respect of each event or series of connected events to a total sum of HKD500 (Hong Kong Dollars Five Hundred Only), or the total Brio charges paid by the Subscriber to Brio under the relevant terms and conditions herein during the last twelve-month period.
- By duly completing, signing and submitting a Brio Registration Form, the Subscriber has requested Brio to provide the specific Brio Service particularised therein to the Subscriber and (if applicable) to verify, authenticate and transmit the Messages or other information submitted by the Subscriber to their Intended Recipient through the specific Brio Service according to the Implementation Instructions.
- The Subscriber hereby authorise the Message Signatories specified in the relevant Brio Registration Forms to severally use the specific Brio Service on behalf of the Subscriber.
- The Subscriber agree to be bound by all actions of the Message Signatories and assume all liabilities (civil or criminal) of and incidental to the use of the specific Brio Services by the Message Signatories specified in the relevant Brio Registration Forms or as subsequently duly authorised.
- For access to Brio Services, the Subscriber shall provide the facilities at the Subscriber's own cost to meet the minimum configuration environment suggested by Brio from time to time. The configuration environment includes but is not limited to computer hardware, system software, communication device, facilities to access the internet and/or a telecommunications line from a public telecommunications provider.
- The Subscriber is required to use a log-on code and/or associated password to access Brio Services and is advised to change the password associated with his log-on code on a regular basis. The Subscriber is responsible for the confidentiality of the password and shall ensure that only duly authorised persons shall use such password.
- The Subscriber will comply with the instructions, guidelines, notices and operational procedures etc. issued by Brio from time to time relating to the preparation, authentication and submission of Messages to the Intended Recipient in respect of specific Brio Services or relating to other activities connected with the use of the Brio Services. Such instructions, guidelines, notices and procedures etc. may include the following:
 - instructions on the use of specific sets of Messages, information flows and procedures that together perform business functions which meet specific requirements of the Government of the HKSAR (Government);
 - the Message standards which Brio may agree with the Intended Recipient, if applicable, the Government or relevant third parties from time to time for the structuring of Messages;
 - instructions on the use of electronic signatures on specific Messages where applicable; and/or other security services which Brio may agree with the Intended Recipient, (if applicable) the Government or relevant third parties from time to time for specific Messages;
 - the minimum configuration environment detailed in the terms and conditions herein; and
 - any other relevant reference documents published by Brio, the Intended Recipient, (if applicable) the Government or relevant third parties or other concerned party.
- The Subscriber shall pay the fees of Brio Service and any applicable Government Charges and any applicable third party fees in accordance with this terms and conditions. If a direct debit payment method is chosen by the Subscriber, the Subscriber shall maintain sufficient funds in the bank account nominated by the Subscriber on the direct debit application form for payment, in accordance with the terms and conditions herein, of the amounts due to Brio; or alternatively, the Subscriber shall pay to the bank account nominated by Brio for other payment methods as specified in the terms and conditions herein.
- The Subscriber undertakes to pay the applicable Government fees and charges in the amount calculated on the basis set out in the relevant legislation of Hong Kong and any applicable third parties' fees and charges for and incidental to the particular Brio Services used by the Subscriber. Such amount payable to the Government shall, unless otherwise specified by Brio in respect of any particular Brio Services, be paid to Brio by the Subscriber, and then will be paid to Government by Brio on behalf of the Subscriber. Unless otherwise specified in the Brio Registration Form, the Subscriber undertakes to pay the applicable fees and charges to the third parties punctually pursuant to the agreements between the Subscriber and the third parties incidental to the particular Brio Services.
- The Subscriber will indemnify Brio and keep Brio fully indemnified from and against all costs claims demands actions and liabilities arising directly or indirectly from a breach of these Terms & Conditions or any other default, negligence, acts or omissions on his part.
- The Subscriber's statutory responsibilities and liabilities under the relevant legislation of the HKSAR will continue to apply if he uses Brio Services to submit information to Government or any designated authorities as required under such legislation.
- If information is submitted to Government or any designated authorities using Brio Services, processing thereof will be subject to the rules and conditions of the relevant administrative system of Government or the designated authority receiving the information, and the Subscriber's liabilities for any administrative sanctions for malpractice will continue to apply if the Subscriber fails to comply with the relevant rules and conditions.
- The Subscriber acknowledges that:
 - save and except otherwise specified by Brio, for the purpose of discharging any relevant legal obligations, the Timestamp attached to an Message sent to Government through any Brio Services will be considered as the official date and time when such Message is received by Government. For the avoidance of doubt, the date and time of receipt of the Message by the Intended Recipient (Timestamp) in any other situations shall be the date and time when the Message is actually received by (the system or mailbox of) the Intended Recipient through the Brio Services. The Subscriber shall reserve sufficient time for Brio to process the Messages and Brio shall in no event be liable for any late submission of Messages to the Intended Recipient.
 - the Timestamp and the receipt by the Intended Recipient specified above will be used as the reference point to determine the boundary of the ownership of data as specified in these terms and conditions.
- The Subscriber undertakes to discharge any legal obligations which Government (if applicable) may require the Subscriber to discharge from time to time in relation to his use of Brio Services.
- The Subscriber undertakes to settle all charges and fees owed to Brio immediately upon termination of these Terms and Conditions for whatever reasons regardless of the normal billing cycle of such debt.
- The Subscriber shall advise Brio immediately of any changes to the information provided on the Brio Registration Form and of any changes of personal data and other information which the Subscriber has provided to Brio related to his use of the Brio Services. In respect of any personal data or other information that the Subscriber has provided or is required to provide to the Government or any relevant third parties incidental to the use of the Brio Services, the Subscriber hereby agrees to the release of such information by the Government or the relevant third parties to Brio, provided that such information will be used by Brio for the same purpose that Government or the relevant third parties use the information.
- The Subscriber hereby acknowledges that Brio may convert the Message submitted by Subscribers through any Brio Service into data format required by or accessible to the Intended Recipients and/or other relevant third parties during data transmission. The Subscriber also authorises Brio to perform such conversion for Subscriber's Message on his behalf.
- The Subscriber shall pay Brio service fees including service fees, other appropriate Government Charges by cheque, direct bank-in to the bank account nominated by Brio, or direct debit on the Subscriber's nominated bank account on or before the due date. The amounts are to be calculated on the basis set out in the Schedule of Charges for the time being in force.
- At the time of registration for use of Brio Services, the Subscriber may, where applies:
 - Lodge a non-interest bearing, refundable deposit with Brio; or
 - Pay the appropriate charges for the first applicable period.
- For Subscribers who choose direct debit as a payment method, the Subscriber shall ensure that there is adequate fund in the Subscriber's nominated bank account before using Brio services to submit Messages.
- The total sum of the net balance amount of the payment due from the Subscriber to Brio and the payment which Brio has received from the Subscriber for the settlement of the payment due from the Subscriber to Brio (Current Account Balance) of the Subscriber, plus an amount assigned by Brio to the Subscriber which Brio has absolute discretion and may revise from time to time without prior notice to the Subscriber (Credit Limit) shall be greater than the aggregate sum of fees of Brio Services and other applicable Government Charges (Adequate Available Balance) before the Subscriber send a Message.
- If the Subscriber's Service Limit is reached, access to Brio Services by the Subscriber will be suspended until Brio receives payment from the Subscriber.
- In the event that Brio does not receive payment from the Subscriber on or before the due date, Brio may debit the Subscriber's deposit and credit the Subscriber's operating account with Brio with the amount due to Brio. Brio reserves the right to bank-in the cheque, or debit the Subscriber's bank account again after any unsuccessful attempt, and pass on any additional bank charges incurred plus costs incurred by Brio in processing such events.
- Notwithstanding anything herein to the contrary, upon termination of Brio Services, Brio will refund within 30 (thirty) days the deposit and any other money refundable (after deduction or debit pursuant to this clause) directly to the Subscriber by inter alia, drawing a cheque in the name of the Subscriber. Brio WILL NOT pay those sums to any third parties at the direction of the Subscriber and the Subscriber shall make its own arrangement to divert those sums if it so wishes. For the avoidance of doubt, no annual fees or other periodic fees received by Brio shall be refundable.
- The Brio Services, except those otherwise specified by Brio, will be accessible between the hours of 7 AM and 11 PM daily every day of the year or at such revised times as shall be advised by Brio from time to time for all or each of the Brio Services. Owing to the different nature of the different Brio Services, Brio may from time to time by notice specify different available time for each of the Brio Services.
- Without prejudice to any remedies available to the parties, the Subscriber and Brio shall attempt in good faith to resolve through negotiation any dispute in relation to the Brio Services and/or these Terms & Conditions.
- In the event of a dispute between the Subscriber and any Intended Recipient or other third parties on the Messages sent and received using Brio Services, the archive copy of the Message kept by Brio may be used in support of proof of the information sent or received by the Subscriber and/or the said Intended Recipient third parties. The Subscriber hereby expressly authorise Brio to disclose the archive copy to the Government, the Courts of the HKSAR or other competent courts, the Intended Recipient or relevant third parties or their legal advisers or relevant consultants.
- All or any of the Brio Services provided by Brio to the Subscriber may be terminated by Brio immediately without notice in the event that:
 - after 1 (one) month from the issue of statement by Brio for the payment of the amounts the Subscriber owes to Brio, Brio still has not received payment from the Subscriber in settlement of the amount due; or
 - the Subscriber is found to have made use of any of the Brio Services for any unlawful activities that may result in a legal offence or may be violating Brio's security system, including gaining unauthorised access to data transmitted which may constitute an offence under the Telecommunication Ordinance.
- The Subscriber is in breach of the Terms and Conditions herein or in the relevant Brio Registration Forms or any other agreements between Brio and the Subscriber.
- The services described herein to be provided by Brio to the Subscriber may be terminated by the Subscriber giving notice in writing to Brio no less than 30 (thirty) days before such termination.
- Brio shall have the absolute rights to terminate the services described herein at any time by giving not less than 60 (sixty) days advance notice to the Subscriber.
- Termination of the services described herein to be provided by Brio to the Subscriber for whatever reason will not affect any rights or obligations of the Subscriber and Brio arising prior to termination and the provisions of these Terms & Conditions shall continue to bind the Subscriber and Brio so long as may be necessary to give effect to such rights and obligations.
- Upon termination of these Terms and Conditions for whatever reasons, Brio shall have the rights to permanently delete all data within the electronic mail box of the Subscriber except those to be archived in accordance with these Terms and Conditions.
- The Subscriber acknowledges that the copyright and other intellectual property rights in the documentation including all operating manuals and all other specifications, manuals or other material provided by Brio relating directly or indirectly to Brio Services belongs to Brio and/or to Brio's licensors. The Subscriber will also not publish or use Brio's name, logos, trademark and other intellectual property publicity material without the prior written consent of Brio.
- All data sent by the Subscriber using Brio Services shall belong to the Subscriber until such time as it is placed in the electronic mail box of the Intended Recipient or is otherwise delivered to the Intended Recipient at which time it shall belong to such recipient.
- The archive data shall be the property of both the originator and the recipient of the data except that if the data is not forwarded by Brio to the Intended Recipient, for whatever reason, the archive copy will remain the sole property of the originator.
- All information held by Brio concerning any Subscriber or otherwise relating to the business of Brio shall be the property of Brio. Any necessary provisions of data privacy or other similar legislation that may be introduced from time to time will be adhered to by Brio.
- Notwithstanding the ownership provided above or anything herein to the contrary, Brio shall have the absolute right to delete or otherwise dispose any data store for more than 60 (sixty) days in the system or other resources owned or provided by Brio, including but not limited to any electronic mailbox provided by Brio to the Subscriber incidental to the Brio Services. The Subscriber has a duty to check his own data regularly, back up and otherwise protect his own data and Brio shall not be liable for any loss of data by the Subscriber.
- Notwithstanding anything herein to the contrary, the Subscribers hereby expressly authorise Brio to extract and use any part of the Messages submitted by a Subscriber in any one of the Brio Services for the purpose of matching and verification against Messages submitted by the same Subscriber in another Brio Services in such manner as Brio considers fit for the provision of the Brio Services.
- Brio will take all reasonable steps to ensure the confidentiality of Messages sent by a Subscriber using Brio Services and save and except otherwise authorised herein or in the applicable Brio Registration Form, Brio will not disclose the content of such Messages to any party other than the Subscriber, the Intended Recipient or the owner of the data or as required by the laws of or orders of the courts of the HKSAR.
- The Subscriber authorizes Brio to capture and use all data information submitted by the Subscriber in relation to the provision of Brio Service. Brio will not interpret or manipulate the content of any Message sent by Subscribers, save for validating and matching.
- Brio will take all appropriate steps to establish and maintain such procedural safeguards to protect the Messages received by Brio from accidental or intentional disclosure to unauthorised persons and from unauthorised modification.
- Brio shall observe the Personal Data (Privacy) Ordinance and procure all staff of Brio to comply with the reasonable standards of confidentiality.
- The Subscriber hereby authorise Brio to disclose such personal data to any of the following parties within the same jurisdiction or from one jurisdiction to another:
 - any agent, contractor or third party service provider who provides administrative, telecommunications, computer, payment or securities clearing or other services to Brio in connection with any Brio Services;
 - the Government agency, authority, or other persons where such disclosure is required by law;
 - any person owing a duty of confidentiality to Brio, including any subsidiaries or associated companies which have undertaken to keep such information confidential;
 - third reference agencies and, in the event of default, debt collection agencies; or
 - any actual or proposed assignee of Brio or transferee of Brio's rights or obligations.
- Save and except for the above purposes, Brio shall not disclose the personal data to any third party (other than the Intended Recipient) without consent of the Subscriber.
- Brio shall restrict access to personal data to officers, employees, consultants and agents of Brio who have a need to know or use the data and who have been trained to handle such data and observe confidentiality properly.
- Brio will undertake to have in place at all times such security measures that are necessary for the protection of the information, documentation and materials to keep secret and treat as confidential.
- Brio undertakes, if so requested by the Government, to execute the Government's separate confidentiality undertaking in forms as the Government may prescribe with Brio's consent in writing and to procure each of its employees, agents, Associates, Associated Persons, sub-contractors and consultants to whom any confidential information requires to be disclosed to do so. Brio shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government.
- Brio shall promptly notify the Government and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons.
- Except in the manner and for such purposes as expressly provided in the Contract, Brio shall not use, interpret or manipulate any of the data and information contained, held by and/or sent through the System. Brio shall ensure that its employees, sub-contractors, and agents are aware of and fully complied with the terms and conditions.
- The personal data privacy policy shall survive the completion, expiry or termination of these terms and conditions (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion, expiry or termination.
- The Subscriber shall have the right to request for access and correction of personal data held by Brio. Such requests should be in writing and addressed to the Privacy Compliance Officer of Brio, Brio may charge a reasonable amount of fee for handling such request for access or collection.
- Brio reserves the right in its absolute discretion to make changes to these Terms & Conditions provided Brio notifies the Subscriber at least 30 (thirty) days in advance of any such change taking effect. Thereafter the Subscriber shall be bound by the revised Terms & Conditions unless the Subscriber has elected to terminate the Brio Services.
- The Subscriber shall not assign, transfer or sub-license all or any part of its right or obligations under these terms and conditions.
- These Terms & Conditions together with the other supplemental documents duly signed or accepted by the Subscriber in writing constitute the entire agreement between the Subscriber and Brio and supersede all other prior agreements and other prior communications between them. Each section herein shall be construed separately and notwithstanding that the whole or any part of any such section shall prove to be illegal or unenforceable the other sections of these Terms & Conditions shall continue in full force and effect.
- The failure or delay of either Brio or the Subscriber to assert their rights under these Terms & Conditions shall not be construed as a waiver of any such rights. Any waiver or consent given by Brio must be in writing and shall be effective only as to that instance and will not be construed as a bar to waiver of any right on any other occasion.
- All notices hereunder shall be written and shall be sent by:
 - Prepaid post to the address; or
 - Sent by facsimile to the latest known facsimile number; or
 - Sent by electronic mail to the latest known electronic mail address of the receiving party. Such notices will be deemed to have been given as of the date it is delivered.
- These Terms & Conditions shall be subject to the law of the HKSAR and to the jurisdiction of courts.