**Appendix 1**

**UNDERTAKING**

To: The Securities and Futures Commission

Hong Kong

This UNDERTAKING is made on [date]

BY

[Name of electronic data storage/ technology services provider] (**EDSP**), whose registered office is located at [address]

**WHEREAS:**

1. [Name of Platform Operator/applicant] (**Company**) [is licensed by the Securities and Futures Commission (**SFC**) / applies for a licence from the Securities and Futures Commission (**SFC**)[[1]](#footnote-2)\*] to carry on VA services under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**), Chapter 615 of the Laws of the Hong Kong Special Administrative Region (**Hong Kong**).
2. The Company and the EDSP have entered into an agreement for [electronic data storage/technology[[2]](#footnote-3)\*] services (**Agreement**) under which the EDSP may keep, store, process, record, retrieve or have access to data of the Company. The Company has consented to the EDSP providing its data to the SFC.
3. The Company [has applied / will apply[[3]](#footnote-4)\*] for an approval of premises to be used for keeping records or documents under section 53ZRR of the AMLO. The premises to be approved [are/include[[4]](#footnote-5)\*] data centre(s) used by the EDSP at which the Company’s data may be kept.

**IN CONSIDERATION OF THE SFC APPROVING THE PREMISES, THE EDSP HEREBY CONFIRMS AND UNDERTAKES TO THE SFC THAT:**

1. The EDSP has received the Company’s consent as follows (**Consent**):
   1. the Company irrevocably consents to the EDSP providing, producing, disclosing or transferring any or all of the Company’s Data (defined below) to the SFC at any time as required by the SFC pursuant to the exercise of any statutory power, without giving the Company any notification about such requirement having been received;
   2. the Company authorises the EDSP to maintain the audit trail covering the period during which the Company’s Data is stored or processed by the EDSP;
   3. the Company agrees that the audit trail should be maintained in a manner which prevents it from modifying or deleting any information in the audit trail;
   4. the Company agrees that the terms at sub-paragraphs (i), (ii) and (iii) above:
      1. shall survive any termination or expiry of the Agreement;
      2. shall remain binding upon the Company, its successors and assigns;
      3. shall take precedence in the event of any inconsistency between those terms and other provisions of the Agreement or any agreement between the Company and the EDSP;
      4. shall apply to any renewal or new agreement that may be made between the Company and the EDSP.

The EDSP acknowledges that the Consent is sufficient to enable the EDSP to provide the SFC with access to all of the Company’s Data as referred to in paragraph 2(i) below.

1. The EDSP will provide all necessary assistance to the SFC in the performance of its functions and powers, including:
   1. providing, producing, disclosing or transferring any or all of the data of the Company (**Company’s Data**) to the SFC at any time as required by the SFC pursuant to the exercise of any statutory power. The Company’s Data includes any information, data, record or document:
      1. relating to the Company;
      2. to which the Company has or may have access under or in connection with the Agreement or any service agreement made or to be made between the EDSP and the Company;
      3. showing a detailed audit trail, such as audit logs, which is a complete record maintained by the EDSP with regard to any access (including generation and modification) to the Company’s Data stored or processed by the EDSP. The audit trail shall cover the period during which the Company’s Data is stored or processed by the EDSP. The Company shall not be able to modify or delete any information in the audit trail;
   2. giving evidence in relation to proceedings as referred to in paragraph 3 below; and
   3. complying with notices issued by the SFC to the EDSP pursuant to the exercise of any statutory power in relation to any matter concerning the Company, the Company’s Data or the services provided by the EDSP to the Company.
2. In the event of any proceedings initiated by the SFC or the Department of Justice (**DoJ**) in relation to which the production of the Company’s Data is required:
   1. Staff member(s) of the EDSP having technical knowledge of the operation of the electronic data storage or information system of the EDSP shall provide certificate(s) pursuant to section 22A(5) of the Evidence Ordinance, Chapter 8 of the Laws of Hong Kong or other statutory provision certifying the following information, and/or witness statement(s) and/or affirmation(s) containing the following information:
      1. a brief explanation of the technical operation of the computer server(s), device(s) or system(s) (collectively, the **computer server**) for storing, processing or retrieving data;
      2. that safeguards are in place to ensure preservation of the integrity of the data stored, processed or retrieved on the computer server;
      3. that the computer server was used to store, process or retrieve data for the purposes of the activities carried on by the EDSP;
      4. that the data contained in the document and/or record (to be produced as evidence) reproduces or is derived from data supplied to the computer server in the course of those activities;

(e)   that while the computer server was so used in the course of those activities:

* appropriate measures were in force for preventing unauthorised interference with the computer server; and
* the computer server was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document and/or record or the accuracy of its contents; and

(f) any other matter as may be required by the SFC or the DoJ.

* 1. The staff member(s) of the EDSP providing the above certificate(s), witness statement(s) and/or affirmation(s) shall give evidence in the proceedings.

1. This Undertaking shall be governed by the laws of Hong Kong. The courts of Hong Kong shall have non-exclusive jurisdiction in relation to any dispute howsoever arising out of or in connection with this Undertaking. This Undertaking shall remain binding upon the EDSP, its successors and assigns.

1. Notices or documents from the SFC may be sent to the EDSP whose contact details are set out below. It will inform the SFC immediately should its address or other contact details change.

Address(es): [ ]

Email(s): [ ]

Fax number(s): [ ]

Contact number(s): [ ]

Contact person(s): [name], [title]

It also appoints the following entity as its agent in Hong Kong for receiving any notice or document from the SFC and accept service of any legal process on its behalf. It will inform the SFC immediately should the address or other contact details of the appointed agent change.

Name of appointed agent: [ ]

Address(es) in Hong Kong: [ ]

Email(s): [ ]

Fax number(s): [ ]

Contact number(s): [ ]

Contact person(s): [name], [title]

IN WITNESS of which this document has been executed and delivered as a deed on the date which first appears above

EXECUTED and DELIVERED as a deed )

and the COMMON SEAL of [name of EDSP] )

was affixed in the presence of ) [signatures]

[names and titles of persons authorised to sign] )

)

)

in the presence of [name and title of witness]:

[signature of witness]

1. \* Delete where appropriate [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)
3. [↑](#footnote-ref-4)
4. [↑](#footnote-ref-5)