



Appendix 1

UNDERTAKING

To: The Securities and Futures Commission
Hong Kong

This UNDERTAKING is made on [date]

BY

[Name of the undersigned], [title of the undersigned] of [name of licensed corporation/applicant], whose office address is located at [address]

WHEREAS:

- (A) [Name of licensed corporation/applicant] (**Company**) [is licensed by the Securities and Futures Commission (**SFC**) / applies for a licence from the Securities and Futures Commission (**SFC**)*] to carry on regulated [activity/activities*] under the Securities and Futures Ordinance (Cap. 571) (**SFO**).
- (B) [Name of the undersigned] is a [Manager-In-Charge of Core Function appointed by the Company to be principally responsible for managing the core function of [] / a Responsible Officer of the Company*], ordinarily resident in Hong Kong, and is designated by the Company for the purposes of the circular issued by the SFC to licensed corporations dated 31 October 2019 concerning use of external electronic data storage (**Circular**).
- (C) The Company [has applied / will apply*] for an approval of premises to be used for keeping electronic records or documents required under the SFO or the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (**Electronic Regulatory Records**) pursuant to section 130 of the SFO. The premises to be approved [are/include*] premises of one or more external electronic data storage/technology services providers (each, an **EDSP**) and/or one or more affiliates which are corporations in the same group of companies¹ as the Company (each, an **Affiliate**).
- (D) Unless the context otherwise requires, words importing the singular in this Undertaking shall include the plural and vice versa.

* Delete where appropriate

¹ "Group of companies" shall have the same meaning as defined in Part 1 of Schedule 1 to the SFO.



IN CONSIDERATION OF THE SFC APPROVING THESE PREMISES UNDER SECTION 130 OF THE SFO AND ACCEPTING THEY ARE SUITABLE FOR RECORD KEEPING PURPOSES, THE UNDERSIGNED HEREBY CONFIRMS AND UNDERTAKES TO THE SFC THAT:

- (1) For all Electronic Regulatory Records stored exclusively with the EDSPs and/or Affiliates:
 - (i) They are fully accessible upon demand by the SFC without undue delay, and can be reproduced in a legible form, from the principal place of business of the Company in Hong Kong where such premises are approved by the SFC under section 130 of the SFO;
 - (ii) They are kept in a manner that does not impair or unduly delay the SFC's effective access to the Electronic Regulatory Records when the SFC discharges its functions or exercises its powers;
 - (iii) Information security measures are in place to prevent any unauthorised access, tampering or destruction of such Electronic Regulatory Records;
 - (iv) An audit trail of access to such Electronic Regulatory Records is maintained. Such audit trail shall
 - (a) cover the period during which the Electronic Regulatory Records are stored;
 - (b) be maintained in a manner which prevents modification or deletion of any information in the audit trail; and
 - (c) be kept for the period for which the Company is required to keep the Electronic Regulatory Records.

- (2) The undersigned has the authority to give effect to, secure the full compliance of and discharge of responsibilities under this Undertaking and the Circular at all times, and shall:
 - (i) Ensure that all Electronic Regulatory Records are securely kept and stored by each EDSP and/or each Affiliate in the manner specified in paragraph 1(i) to (iii) at all times;
 - (ii) Ensure that the Electronic Regulatory Records are not kept or stored in any jurisdiction with restriction on cross-border data flow that would hinder any prompt transfer, disclosure or provision of the Electronic Regulatory Records to the SFC;
 - (iii) Ensure that the Company is able to readily access, obtain and/or retrieve all of the Electronic Regulatory Records, from the premises of the Company approved by the SFC for the purposes of section 130 of the SFO, at all times;
 - (iv) Ensure that each Affiliate and each EDSP shall maintain the audit trail in the manner specified in paragraph 1(iv) above;
 - (v) Put in place all necessary policies, procedures and internal controls to ensure that the SFC has full access to all Electronic Regulatory Records upon demand and without undue delay;

- (vi) Ensure that the Company maintains a document which provides an overview of how Electronic Regulatory Records are stored exclusively with Affiliates and/or EDSPs (**Access Map**). The Access Map should broadly identify the types of Electronic Regulatory Records which are stored exclusively with each Affiliate or EDSP, and the physical locations (i.e. the jurisdictions or, if such information is available to the Company, the addresses) of the data centres or other premises where the Electronic Regulatory Records are stored;
- (vii) Ensure that the Access Map is accurate, up-to-date and available for the SFC's review within two business days upon request;
- (viii) Ensure the operational resilience of the Company's arrangements for electronic data storage, access and processing necessary for business continuity, and that the Company performs a daily backup of Electronic Regulatory Records to ensure that a set of complete and up-to-date records are maintained which are sufficient to account for the following:
 - (a) client transactions;
 - (b) outstanding client positions; and
 - (c) client assets held by the Company or its associated entity;

The undersigned shall ensure the daily backup is maintained in a secure and reliable manner, with the use of encryption and offsite storage where practicable; and that periodic testing is conducted to validate the effectiveness of the Company's backup restoration procedures to ensure the prompt availability of the backup data for business continuity where necessary;

- (ix) Ensure that up-to-date Regulatory Records which are sufficient to account for outstanding client positions and client assets held by the Company or its associated entity are readily accessible by the Company, including in the event of any operational or financial failure of any EDSP or Affiliate keeping such Regulatory Records. The undersigned shall also ensure that details of such access are set out in the Access Map;
- (x) Where the Company is an exchange participant, a clearing participant or a client of an exchange participant or clearing participant, and the Company has at least one client which is not its Affiliate, ensure that the Company, where practicable, keeps in Hong Kong records of all outstanding positions of such clients arising from transactions executed on a recognized stock market or recognized futures market or held at a recognized clearing house, together with records of client assets of such clients held by the Company or its associated entity, to ensure the timely settlement of client transactions as well as the prompt execution of client instructions, in the event of any operational or financial failure of the entity keeping such Regulatory Records;
- (xi) Provide all assistance the undersigned is reasonably able to give to the SFC in the performance by the SFC of its functions and powers, including (without limitation) by:

- (a) preserving or procuring a preservation of any or all of the Electronic Regulatory Records at any time as required by the SFC;
 - (b) transferring, disclosing or otherwise providing (or procuring a transfer, disclosure or provision) to the SFC any or all of the Electronic Regulatory Records at any time as required by the SFC; and
 - (c) giving evidence (or procuring a relevant person to give evidence) in relation to proceedings referred to in paragraph 3 below;
 - (xii) Ensure that the Company shall seek separate approval under section 130 of the SFO or notify the SFC as appropriate when different or additional Affiliates, EDSPs, data centres or other premises are intended to be used or directly engaged by the Company for the keeping of Electronic Regulatory Records, and that the undersigned is able to comply with this Undertaking at all times; and
 - (xiii) Notify the SFC immediately if the undersigned is no longer able to comply with any term of the Undertaking, and provide the SFC with the relevant details.
- (3) In the event of any proceedings initiated by the SFC or the Department of Justice (**DoJ**) in relation to which the production of the Electronic Regulatory Records is required:
- (i) The undersigned or any other person having technical knowledge of the operation of the electronic data storage or information system of the Company, Affiliate or EDSP (as the case may be) 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:
 - (a) 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;
 - (b) that safeguards are in place to ensure preservation of the integrity of the data stored, processed or retrieved on the computer server;
 - (c) that the computer server was used to store, process or retrieve data for the purposes of the activities carried on by the Company, Affiliate or EDSP (as the case may be);
 - (d) 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.

(ii) The person providing the above certificate(s), witness statement(s) and/or affirmation(s) shall give evidence in the proceedings.

(4) 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.

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

SIGNED, SEALED and DELIVERED by)
 [name of the undersigned])
) [signature]
)
)
 in the presence of [name and title of witness]
 [signature of witness]