

AGREEMENT BETWEEN THE CERTIFICATION BODY AND APPLICANT ORGANISATION IN RELATION TO THE DATA PROTECTION TRUSTMARK SCHEME

This Agreement governs the terms and conditions upon which the Applicant Organisation may participate in the Data Protection Trustmark Scheme, and is made and entered into by and between:

(1) **INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY (DESIGNATED AS THE PERSONAL DATA PROTECTION COMMISSION)**, a statutory authority established to administer and enforce the Personal Data Protection Act 2012 (No. 26 of 2012), and which office is at 10 Pasir Panjang Road, #03-01, Mapletree Business City, Singapore 117438 (**Certification Body**); and

(2) the Applicant Organisation, whose details are set out in the Application Form submitted together with this Agreement.

(where each is a **Party**, and together **Parties**).

BACKGROUND

- (A) The Certification Body owns the Data Protection Trustmark Scheme (as defined below) and is the owner of the Mark.
- (B) The Applicant Organisation is applying to be certified under the Data Protection Trustmark Scheme.
- (C) The Applicant Organisation acknowledges that the Certification is without prejudice to any of the Personal Data Protection Commission's (as defined below) rights and/or ability to perform its functions under section 6 of the PDPA, including but not limited to the administration and enforcement of the PDPA, its subsidiary legislation, advisory guidelines and any other data protection-related rules and regulations.
- (D) To the extent that the Applicant Organisation is assessed to have fulfilled the Certification Criteria, the Certification Body is willing to grant to the Applicant Organisation a licence to apply the Mark on the terms and conditions set out in this Agreement and the Applicant Organisation agrees to undertake the obligations set out herein.

IT IS HEREBY AGREED AS FOLLOWS:

1. Interpretation

- 1.1 In this Agreement, the following words and phrases shall, unless the context **otherwise** requires, have the following meanings:

Agreement means this agreement entered into between the Certification Body and the Applicant Organisation.

Applicant means any organisation (which is not an individual acting in a personal or domestic capacity) applying for certification under the Data Protection Trustmark Scheme, where such organisation is:

- (a) formed or recognised under the laws of Singapore; or
- (b) resident, or having an office or a place of business, in Singapore,

and in any case, is not a Public Agency. **Applicants** shall be construed accordingly.

Applicant Organisation shall be as defined above, regardless of whether a Certification has been granted under the Data Protection Trustmark Scheme to it.

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Application means the Applicant Organisation's application for certification under the Data Protection Trustmark Scheme.

Application Fee has the same meaning as that set out in the Certification Mark Regulations.

Application Form means the application form submitted by the Applicant Organisation as part of its Application.

Assessment means the assessment conducted by the Assessment Body to determine whether the Applicant Organisation fulfils the Certification Criteria.

Assessment Body means a person authorised by the Certification Body to assess whether an Applicant fulfils the Certification Criteria.

Assessment Fee has the same meaning as that set out in the Certification Mark Regulations.

Certificate means the certificate issued by the Certification Body (or its authorised licensee, if any) under the Data Protection Trustmark Scheme authorising the Applicant Organisation's use of the Mark in accordance with the terms specified by the Certification Body.

Certification means the due certification by the Certification Body that the Applicant Organisation has satisfied all the Certification Criteria under the Data Protection Trustmark Scheme and is duly authorised to use the Mark.

Certification Appeal Committee has the same meaning as that set out in the Certification Mark Regulations.

Certification Body shall be as defined above.

Certification Criteria has the same meaning as that set out in the Certification Mark Regulations.

Certification Mark Regulations refers to the regulations governing the use of the Mark, as amended from time to time.

Commencement Date shall be the date set out in the Certificate.

Confidential Information means all confidential or proprietary information which is disclosed directly or indirectly by a disclosing party to the receiving party pursuant to, or in connection with, this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential), or which otherwise comes into the hands of the receiving party in relation to this Agreement, including (but not limited to) any information issued or furnished by or on behalf of the Certification Body in connection with this Agreement to any person. Provided always that all information intended to be kept confidential by the Applicant Organisation are clearly marked as such prior to disclosure to the Certification Body and/or Assessment Body.

Control means the existence of the ability to exercise decisive influence with regard to the activities of the organisation, in particular, by:

- (a) ownership of, or the right to use all or part of, the assets of the organisation; or
- (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of the organisation.

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In the case of a company, Control shall be presumed to exist where a party has beneficial ownership of more than fifty percent (50%) of the issued share capital of the company or the legal power to direct or cause the direction of the general management of the company. **Controls, controlled** and the expression **change of Control** shall be construed accordingly.

Data Protection Trustmark Scheme means the scheme in which organisations are certified in accordance with and subject to the terms of the Certification Mark Regulations, and as set out in **Annex A**.

Dispute has the meaning set out in Clause 25.2.

Information Kit has the same meaning as that set out in the Certification Mark Regulations.

Mark refers to any certification mark set out in **Annex B**, and **Marks** shall be construed accordingly.

Materials means all materials relating to the Data Protection Trustmark Scheme, including but not limited to any assessment methodology and requirements communicated by the Certification Body or Assessment Body to the Applicant Organisation in connection with the Data Protection Trustmark Scheme.

PDPA refers to the Personal Data Protection Act 2012 (No. 26 of 2012, Statutes of the Republic of Singapore) as amended from time to time.

Personal Data has the same meaning as set out under the PDPA.

Personal Data Protection Commission means the person designated as the Personal Data Protection Commission under section 5 of the PDPA to be responsible for the administration of the PDPA.

Public Agency has the same meaning as that defined under Section 2 of the PDPA.

“Related Corporation” has the same meaning given to that term in Section 6 of the Companies Act of Singapore (Chapter 50) **Self-Assessment Form** means the self-assessment form prescribed by the Certification Body, as amended from time to time.

SIAC Rules has the meaning set out in Clause 25.1.

Significant Change has the same meaning as that set out in the Certification Mark Regulations.

Significant Change Assessment Fee has the same meaning as that set out in the Certification Mark Regulations.

Term has the meaning set out in Clause 13.1.

1.2 In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;

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- (d) the words “including”, “such as” and similar expressions are not used as, nor are intended to be interpreted as, words of limitation;
 - (e) a reference to a “person” includes a natural person, corporation, partnership, joint venture, association, trust or other body corporate;
 - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be modified, consolidated or re-enacted;
 - (g) any reference to an agreement includes its schedules, exhibits and/or annexes and is a reference to it as it may have been, or may from time to time be amended; and
 - (h) this Agreement includes all Annexes hereto.
- 1.3 In the event of any inconsistency between the terms of any two or more of the following documents, unless the context otherwise requires, such inconsistency shall be resolved by giving precedence in accordance with the following descending order:
- (a) the Certification Mark Regulations (including the Information Kit, to the extent that the Certification Mark Regulations expressly refer to a particular section or information therein);
 - (b) the terms of this Agreement; and
 - (c) the terms of any agreement entered into between the Assessment Body and the Applicant Organisation.

2. Fees

- 2.1 The Applicant Organisation shall pay the specified Application Fee to the Certification Body at the point of submitting its Application.
- 2.2 The Assessment Fee shall be determined by the Assessment Body, in accordance with any directions and guidelines stipulated by the Certification Body. The Applicant Organisation shall pay the specified Assessment Fee to the Assessment Body.
- 2.3 In the event of a Significant Change, the Significant Change Assessment Fee shall be determined in accordance with any directions and guidelines stipulated by the Certification Body. The Applicant Organisation shall pay the specified Significant Change Assessment Fee to the Assessment Body prior to the commencement of the subsequent review pursuant to such Significant Change.
- 2.4 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

3. Obligations of the Applicant Organisation for the Assessment

For the purposes of the Assessment, the Applicant Organisation shall:

- (a) participate in any briefings by the Assessment Body and/or Certification Body on the assessment process for the Data Protection Trustmark Scheme;
- (b) provide all information and documentation required by the Assessment Body and/or Certification Body for the purposes of determining the scope of Assessment;

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- (c) confirm the scope of the Assessment and acknowledge the amount of Assessment Fee payable for the conduct of the Assessment upon being notified by the Assessment Body and/or Certification Body;
- (d) pay the prescribed Assessment Fee;
- (e) provide all information and documentation required by the Assessment Body and/or Certification Body for the purposes of the Assessment, including the information requested within the Self-Assessment Form;
- (f) respond adequately to all queries raised by the Assessment Body arising from the latter's review of (i) the Applicant Organisation's responses to the Self-Assessment Form and/or requests for clarification, and (ii) any supplementary documentation the Assessment Body requires from the Applicant Organisation;
- (g) grant the Assessment Body access to any personnel requested by the Assessment Body; and
- (h) facilitate and assist in any on-site visits by the Certification Body, Assessment Body and/or any of their respective authorised persons, including making all necessary arrangements for the purposes of the Assessment.

4. General Obligations of Applicant Organisation

4.1 The Applicant Organisation shall, at all times during the Term:

- (a) maintain compliance with the PDPA, Certification Mark Regulations, Certification Criteria, and any and all policies and procedures provided by the Certification Body;
- (b) respond promptly to any queries posed by the Certification Body and/or Assessment Body in connection with the Data Protection Trustmark Scheme;
- (c) ensure that all information provided to the Certification Body and/or Assessment Body is complete, true and accurate in all material respects;
- (d) maintain complete, accurate and up-to-date records in respect of its data protection practices; and
- (e) take such actions as the Certification Body and/or Assessment Body may direct from time to time in connection with the Data Protection Trustmark Scheme.

4.2 The Applicant Organisation shall promptly notify the Certification Body of any of the following Significant Changes:

- (a) any changes to the information submitted by the Applicant Organisation in its Application, including the information set out in its Application Form, and for the purposes of the Assessment;
- (b) any changes to the name, registered office, business premises and/or contact details of the Applicant Organisation;
- (c) any change of Control in the Applicant Organisation;

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- (d) any changes which may affect the ability of the Applicant Organisation to comply with any condition or requirement of the Certification Body and/or Assessment Body under this Agreement;
- (e) any changes which may affect the ability of the Applicant Organisation to comply with the Certification Criteria, or the manner in which it does so;
- (f) any change to the Applicant Organisation's organisational structure or operations, where such change may affect its continued compliance with the terms upon which it has been certified and authorised to use the Mark; and
- (g) any change in the product(s) and/or service(s) provided by the Applicant Organisation, where such change may affect its continued compliance with the terms upon which it has been certified and authorised to use the Mark.

5. Representations and Warranties

5.1 The Applicant Organisation warrants, represents and undertakes to the Certification Body that:

- (a) the Applicant Organisation is an organisation (which is not an individual acting in a personal or domestic capacity) either (i) formed or recognised under the laws of Singapore, or (ii) resident, or having an office or a place of business, in Singapore;
- (b) the Applicant Organisation has full legal right, corporate power and capacity to execute, deliver and perform all its obligations under this Agreement, and as an Applicant under the Certification Mark Regulations in respect of the Data Protection Trustmark Scheme;
- (c) the Applicant Organisation has obtained all corporate authorisations and all other applicable consents, licences, permits, approvals, waivers or exemptions required to enter into and to perform its obligations under this Agreement;
- (d) all information provided by the Applicant Organisation to the Assessment Body and/or the Certification Body in connection with its Application, the Assessment and the matters contemplated in this Agreement are true, accurate and not misleading in all material aspects;
- (e) the Applicant Organisation is at the effective date of this Agreement in compliance with all applicable laws (including data protection laws) and is not in default of any of its data protection obligation(s) under any agreement; and
- (f) all material facts and circumstances that may lead to Clauses 5.1(a) to 5.1(f) becoming false or misleading have been disclosed by the Applicant Organisation in sufficient detail to the Certification Body.

5.2 The representations and warranties set out in Clause 5.1 above shall be deemed to apply throughout the Term of this Agreement with reference to the facts and circumstances then existing.

5.3 The Applicant Organisation undertakes to notify the Certification Body in writing promptly if it becomes aware of any circumstance arising during the Term which would cause any representations and warranties set out in Clause 5.1 above (if the representations and warranties were repeated with reference to the facts and circumstances then existing) to become false or misleading in any respect.

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6. Supervision

6.1 The Certification Body may issue a notice in writing to the Applicant Organisation pursuant to this Clause 6 upon the occurrence of any of the following events:

- (a) the Certification Body has reasonable grounds to suspect that the Applicant Organisation has not complied with the terms of this Agreement or is not in compliance with the Certification Mark Regulations, Certification Criteria, or Clauses 4, 5, 7, 8 or 9 of this Agreement;
- (b) the Certification Body receives a notification from the Applicant Organisation in relation to any of the Significant Changes as set out in Clause 4.2; or
- (c) the Personal Data Protection Commission has made a determination/issued a decision that the Applicant Organisation has failed to comply with the PDPA.

6.2 Upon receipt of such a notice in writing from the Certification Body, the Applicant Organisation shall at all times render full assistance to the Certification Body, including but not limited to the following:

- (a) the Applicant Organisation shall produce to the Certification Body, its employees, agents and/or authorised representatives all documents or information as may be specified in the notice, which the Certification Body considers to relate to the Applicant Organisation's state of compliance with the Certification Mark Regulations, Certification Criteria, or Clauses 4, 5, 7, 8 or 9 of this Agreement;
- (b) Applicant Organisation shall facilitate interviews with the Applicant Organisation's employees and any other persons who may be relevant to or involved in the matter;
- (c) if required in such notice, the Applicant Organisation shall allow the Certification Body, its employees, agents and/or authorised representatives, to have access to the Applicant Organisation's premises at all reasonable times for the purpose of inspecting and taking copies of such records, logs, files, data reports and other materials of the Applicant Organisation as may be required by the Certification Body, for the sole purpose of conducting audits to:
 - (i) verify the Applicant Organisation's compliance with the Certification Mark Regulations, Certification Criteria, or Clauses 4, 5, 7, 8 or 9 of this Agreement; and/or
 - (ii) determine the appropriate status of the Applicant Organisation's Certification, in particular whether the Certification shall remain valid, be suspended or be terminated,

and shall make such arrangements as may be necessary to facilitate such audits. Subject to the provisions of Clause 17, Certification Body shall treat all information obtained pursuant to this Clause 6.2 as Confidential Information of the Applicant Organisation.

6.3 In the event that an inspection or audit reveals any non-compliance by the Applicant Organisation with the terms of this Agreement, the Applicant Organisation shall, if so directed by the Certification Body, take such corrective action as necessary and reimburse the Certification Body the reasonable costs incurred by the Certification Body in connection [with such inspection or audit / with any third parties engaged by the Certification Body to carry out

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such inspection or audit, including but not limited to third party agents or authorised representatives of the Certification Body such as an Assessment Body].

7. Intellectual Property

7.1 Subject to Clause 8 of this Agreement, the Applicant Organisation acknowledges and agrees that:

- (a) no rights or licences in the Mark and/or Materials are conferred on the Applicant Organisation pursuant to this Agreement;
- (b) the Assessment Body does not grant to the Applicant Organisation any licences in the Mark and Materials;
- (c) the Certification Body shall have full legal right, title and interest in the Mark and Materials, and the Certification Body may accordingly use such Mark and Materials as it considers appropriate; and
- (d) the Applicant Organisation does not have any legal right, title or interest in the Mark or any updates or improvements thereto.

7.2 The Applicant Organisation shall not do anything that may adversely affect the Mark and/or the intellectual property in the Materials, or the Certification Body's legal right or title to either or both of them.

7.3 The Applicant Organisation shall not do anything that is or may be inconsistent with the Certification Body's legal right, title and interest in the Mark and/or the intellectual property in the Materials.

7.4 If the Applicant Organisation learns of any threatened or actual infringement of any Mark or the intellectual property in the Materials, or of any circumstance which suggests that the use of any Mark or Materials may infringe the intellectual property of a third party, it shall immediately inform the Certification Body, giving all such details as the Certification Body may request.

7.5 The Certification Body shall have conduct of any proceedings relating to any Mark and/or Materials and may take whatever action it, in its sole and absolute discretion, decides in respect of any infringement or alleged infringement of it, or arising from its use. The Applicant Organisation shall co-operate fully with, and shall take all such actions as may be required by, the Certification Body in respect of such proceedings.

8. Right to use the Mark

8.1 This Clause 8 shall apply where the Applicant Organisation has demonstrated to the satisfaction of the Certification Body that its personal data collection, use and disclosure activities in Singapore satisfy the Certification Criteria.

8.2 The Certification Body warrants that it has obtained the full legal right, title and interest to license the Mark in accordance with the terms of this Agreement. Subject to the terms of this Agreement, the Certification Body hereby grants to the Applicant Organisation a non-exclusive licence to use the Mark for the sole purpose of indicating that such Applicant Organisation has a Certification. For the avoidance of doubt an Applicant Organisation may allow its Related Corporations to indicate that such Applicant Organisation has a certification.

8.3 The Applicant Organisation acknowledges and agrees that:

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- (a) no rights or licences are conferred on the Applicant Organisation pursuant to this Agreement except those expressly set out in this Agreement;
 - (b) the Certification Body shall have full legal right, title and interest in the Mark and Materials, and the Certification Body may accordingly use such Mark and Materials as it considers appropriate;
 - (c) the Applicant Organisation does not have any legal right, title or interest in the Mark or any updates or improvements thereto, save as specifically set out in this Agreement; and
 - (d) any goodwill (and any other rights) in the Mark which result from the use by the Applicant Organisation of the Mark shall vest in the Certification Body.
- 8.4 The Applicant Organisation's licence to use the Mark is subject to the following conditions:
- (a) the Applicant Organisation shall comply with the specifications, standards and directions relating to the display of the Mark as set out in the Certification Body's website;
 - (b) the Applicant Organisation shall ensure that the goods and/or services sold or otherwise supplied by the Applicant Organisation is compliant with all applicable laws, regulations, industry standards and codes of practice;
 - (c) the Applicant Organisation shall ensure that its advertising, marketing and promotion activities shall in no way reduce or diminish the reputation, image and prestige of the Mark;
 - (d) the Applicant Organisation shall comply with all reasonable instructions and requests from the Certification Body in relation to any matters contemplated under this Agreement;
 - (e) the Applicant Organisation shall not, and shall not permit any person to, save with the Certification Body's prior written approval, apply for the registration of any intellectual property which may be confusingly similar to any Mark and/or Materials, or which indicates a connection with any Mark and/or the Certification Body;
 - (f) the Applicant Organisation shall not license or sub-license (or purport to license or sub-license) any person to use any Mark and/or Materials, other than as expressly permitted and specified under this Agreement;
 - (g) the Applicant Organisation shall not use the Mark and/or Materials in any way, other than as expressly permitted and specified under this Agreement;
 - (h) the Applicant Organisation shall use all reasonable efforts not to do anything that may adversely affect the Mark and/or the intellectual property in the Materials, or the Certification Body's legal right or title to either or both of them; and
 - (i) the Applicant Organisation shall use all reasonable efforts not to do anything that is or may be inconsistent with the Certification Body's legal right, title and interest in the Mark and/or the intellectual property in the Materials.
- 8.5 If the Applicant Organisation learns of any threatened or actual infringement of any Mark or the intellectual property in the Materials, or of any circumstance which suggests that the use of any Mark or Materials may infringe the intellectual property of a third party, it shall

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immediately inform the Certification Body, giving all such details as the Certification Body may request.

- 8.6 The Certification Body shall have conduct of any proceedings relating to any Mark and/or Materials and may take whatever action it, in its sole and absolute discretion, decides in respect of any infringement or alleged infringement of it, or arising from its use. The Applicant Organisation shall co-operate fully with, and shall take all such actions as may be required by, the Certification Body in respect of such proceedings.

9. No Assignment or Subcontracting

- 9.1 The Applicant Organisation shall not, without the prior written consent of the Certification Body, assign, transfer, sub-contract, delegate or deal in any other manner with this Agreement or any of its rights and obligations hereunder or any document referred to in it.

- 9.2 The Certification Body may, at any time, assign (in whole or in part), transfer, novate or deal in any other manner with the benefit of any or all of the Applicant Organisation's or any other party's obligations or any benefit arising under this Agreement, including without limitation novating this Agreement to its subsidiary. The Applicant Organisation agrees to promptly execute and deliver any document and perform any acts that may reasonably be required for the purpose of the Certification Body effecting such assignment, transfer, novation or dealing.

10. Indemnity

- 10.1 The Applicant Organisation shall indemnify the Certification Body against all actions, liabilities, costs, expenses, damages and losses (including all legal costs calculated on a full indemnity basis), suffered or incurred by the Certification Body, arising out of or in connection with:

- (a) any breach, negligent performance, or non-performance by the Applicant Organisation of any terms in this Agreement; and
- (b) the Certification Body's enforcement of this Agreement.

- 10.2 If a payment due from the Applicant Organisation under this Clause is subject to tax (whether by way of direct assessment or withholding at its source), the Certification Body shall be entitled to receive from the Applicant Organisation such amounts as are necessary to ensure that the net receipt, after tax, by the Certification Body from the Applicant Organisation in respect of the payment is the same as it would have been had the payment not been subject to tax.

11. Enforcement by Personal Data Protection Commission

- 11.1 The Applicant Organisation acknowledges and agrees that under no circumstances shall the Personal Data Protection Commission's powers under section 6 of the PDPA, including its powers to administer and enforce the PDPA, its subsidiary legislation, advisory guidelines and any other data protection-related rules and regulations, be hampered, limited or prejudiced in any way whatsoever.

- 11.2 For the avoidance of doubt, the Personal Data Protection Commission shall continue to have such powers under section 6 of the PDPA notwithstanding that the Applicant Organisation may (a) be assessed to fulfil the Certification Criteria, (b) be granted Certification, and/or (c) continue to comply with this Agreement and any other requirements of the Data Protection Trustmark Scheme.

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12. Disclaimers

- 12.1 The Certification Body may at any time change, suspend, or discontinue the Data Protection Trustmark Scheme, any of its content, its framework, and/or its applicability to the Applicant Organisation, for any reason without liability. In such event, this Agreement may be terminated in accordance with clause 13 below. in accordance
- 12.2 The Certification Body may also impose limits on the applicability of the Data Protection Trustmark Scheme and the extent to which the Mark can be displayed by the Applicant Organisation without notice or liability.
- 12.3 The Certification Body, its directors, employees, officers, agents and representatives, shall not be liable for any actions, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, interest, penalties, legal costs, and all other professional costs and expenses) suffered or incurred by the Applicant Organisation and/or its directors, employees, officers, agents and representatives arising from any suspension or termination of this Agreement and/or the Data Protection Trustmark Scheme.
- 12.4 To the fullest extent permitted by law, the Applicant Organisation hereby acknowledges and agrees that the Certification Body makes no and expressly disclaims all conditions, warranties, representations or other terms which may apply to the Data Protection Trustmark Scheme and/or the Certification, whether express, implied or statutory, including without limitation, warranties of accuracy, adequacy, completeness, timeliness, merchantability, currency, reliability, satisfactory quality, fitness for a general or particular purpose, non-infringement of third party rights and authenticity of any material or claim, continued availability or compatibility with any data protection regimes or frameworks, and to any implied warranty arising from the course of dealing, usage or trade.
- 12.5 The Certification Body does not give any representations, warranties, guarantees, or any other commitments, or accept any liability, to the Applicant Organisation in respect of the Data Protection Trustmark Scheme, its Materials and/or the Mark. Any information provided in connection with the Data Protection Trustmark Scheme is only for general information or use. They do not constitute advice and should not be relied upon in making (or refraining from making) any decision. No oral advice or written information given throughout the Data Protection Trustmark Scheme, whether by the Certification Body or its employees, agents and authorised representatives shall create a warranty nor shall the Applicant Organisation rely on any such information or advice.

13. Term, Suspension and Termination

- 13.1 The term of this Agreement shall commence on the date that the Application is submitted to the Certification Body and terminate either:
- (a) at such time that the Application is rejected by the Certification Body; or
 - (b) if applicable, a three (3)-year period commencing from the Commencement Date, such period being the term of the Certification,
- unless earlier terminated in accordance with Clauses 13.3 to 13.6 (**Term**).
- 13.2 In accordance with the procedures stipulated in the Certification Mark Regulations, the Applicant Organisation may apply for re-certification in writing to the Certification Body at least six (6) months before the expiry of this Agreement and the Certification, if it wishes to remain certified beyond the original period of certification.

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- 13.3 The Certification Body shall be entitled to suspend or terminate this Agreement in accordance with Clause 13 of this Agreement and the Certification Mark Regulations. For the avoidance of doubt, in the event that this Agreement is suspended or terminated by the Certification Body, the Certification of the Applicant Organisation is accordingly suspended or terminated (as the case may be).
- 13.4 Notwithstanding anything in this Agreement, the Certification Body shall be entitled to suspend this Agreement for a period prescribed within the suspension notice or terminate this Agreement with immediate effect by notice in writing to the Applicant Organisation if:
- (a) the Applicant Organisation commits a breach of its obligations under this Agreement and does not remedy the breach within fourteen (14) days of receiving a written notice from the Certification Body;
 - (b) the Applicant Organisation commits an irremediable breach of this Agreement; or
 - (c) the Applicant Organisation provides the Certification Body with any false or misleading information, or makes any misrepresentation in connection with entering into this Agreement or during the Term, in connection with the Certification, Assessment and/or any subsequent review necessitated by a Significant Change.
- 13.5 Notwithstanding anything in this Agreement, the Certification Body shall be entitled to terminate this Agreement by notice in writing with immediate effect:
- (a) the Applicant Organisation, in the reasonable opinion of the Certification Body, does, or permits to be done, any act which might jeopardise or invalidate the registration of any Mark or does any act which might assist, or give rise to, an application to remove any Mark, or which might prejudice the legal right or title of the Certification Body to any Mark;
 - (b) the Applicant Organisation purports to assign any of the rights or licences granted under this Agreement other than in accordance with the terms of this Agreement;
 - (c) the Applicant Organisation repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - (d) the Applicant Organisation suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - (e) the Applicant Organisation suspends, or threatens to suspend, payment of its debts or is, or deemed to be, insolvent, unable to pay its debts as they fall due for payment, or admits inability to pay its debts, or deemed unable to pay its debts within the meaning of section 254(2) of the Companies Act (Cap. 50, Statutes of the Republic of Singapore);
 - (f) the Applicant Organisation commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or enters into any composition or arrangement with its creditors generally;
 - (g) an order is made, a resolution is passed, or a notice is issued convening a meeting for the purpose of passing a resolution, or any analogous proceedings are taken, for the winding-up, administration or dissolution of the Applicant Organisation (other than a members' voluntary liquidation solely for the purpose of solvent amalgamation, reconstruction, reorganisation, dissolution, merger or consolidation);

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- (h) the Applicant Organisation is the subject of an insolvency application or order;
- (i) any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, or in respect of, the Applicant Organisation or any part of its business or assets;
- (j) a creditor or encumbrancer of the Applicant Organisation attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or
- (k) an event occurs, or proceeding is taken, with respect to the Applicant Organisation in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 13.5(e) to 13.5(j) (inclusive).

13.6 Notwithstanding anything in this Agreement:

- (a) the Certification Body shall be entitled to terminate the Agreement at any time in accordance with the procedure set out in the Certification Mark Regulations; and
- (b) the Applicant Organisation shall be entitled to terminate this Agreement in accordance with the self-revocation procedure set out in the Certification Mark Regulations.

14. Consequences of Suspension

On suspension of this Agreement for any reason whatsoever, the Applicant Organisation shall, for the period of such suspension:

- (a) not display the Mark; and
- (b) not represent that it has been duly certified as being compliant with the Data Protection Trustmark Scheme.

15. Consequences of Termination

15.1 On termination or expiry of this Agreement for any reason whatsoever, any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement, including (but not limited to) Clauses 5 (Representations and Warranties), 9 (No Assignment or Subcontracting), 10 (Indemnity), 12 (Disclaimers), 14 (Term, Suspension and Termination), 15 (Consequences of Termination), 17 (Confidentiality) and 23 (No Agency Relationship), shall remain in full force and effect.

15.2 Any termination or expiry of this Agreement shall not affect any rights or liabilities that have accrued prior to such termination or expiry.

15.3 Notwithstanding Clause 15.2 of this Agreement, all fees paid by the Applicant Organisation to the Certification Body shall be non-refundable.

15.4 On termination or expiry of this Agreement for any reason whatsoever:

- (a) all rights and licences granted pursuant to this Agreement shall cease;
- (b) the Applicant Organisation shall:

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- (i) cease to use any Mark or any other proprietary names and marks associated with any Mark, the Certification Body, the Info-communications Media Development Authority and/or the Personal Data Protection Commission in any way, and not hold itself out as an organisation duly certified under the Data Protection Trustmark Scheme or do anything that may indicate any relationship between it and the Data Protection Trustmark Scheme;
 - (ii) at its sole cost and expense, return or at the option of the Certification Body, destroy, all copies of Confidential Information disclosed by the Certification Body to the Applicant Organisation, which are in its possession, custody and power at the point of termination;
 - (iii) promptly destroy, at its sole cost and expense, all stationery, packaging, and/or advertising, marketing or promotional material bearing the Mark; and
- (c) take all other steps and in particular execute and deliver to the Certification Body all documents necessary to comply with its obligations under this Clause 15.
- 15.5 If the Applicant Organisation fails to fulfil its obligations under this Clause 15 within a reasonable time, without prejudice to any other rights or remedies that the Certification Body may have, the Applicant Organisation hereby undertakes not to object to any claim, action or demand which is made by the Certification Body against the Applicant Organisation with the aim of fulfilling any outstanding obligations.

16. Further Assurance

- 16.1 At its sole cost and expense, the Applicant Organisation shall, and shall use all reasonable endeavours to, procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

17. Confidentiality

- 17.1 Each receiving Party warrants and undertakes that it shall not at any time disclose to any person any Confidential Information, unless with the prior written consent of the disclosing Party, and shall take all proper steps to keep confidential such Confidential Information.
- 17.2 Each receiving Party shall not use the Confidential Information in any way or for any purpose whatsoever, other than to perform its obligations under this Agreement.
- 17.3 Each receiving Party may disclose the disclosing Party's Confidential Information:
- (a) to its employees, officers, agents, representatives, subcontractors, advisers or partners who need to know such information for the purposes of exercising the receiving Party's rights or carrying out its obligations under this Agreement. Each receiving Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the disclosing Party's Confidential Information comply with this Clause 17; and
 - (b) to the minimum extent required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided always that the disclosing Party notifies the receiving Party in writing forthwith of the Confidential Information to be disclosed.

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- 17.4 The Applicant Organisation acknowledges and agrees that the Certification Body may disclose all information (including but not limited to Confidential Information) provided by the Applicant Organisation to the Assessment Body for the purposes of conducting the Assessment and other related activities under the Data Protection Trustmark Scheme.
- 17.5 No party shall use the disclosing Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 17.6 The obligations set out in this Clause 17 shall not apply, or shall cease to apply, to Confidential Information which the receiving Party can show to the disclosing Party's reasonable satisfaction that the Confidential Information is, or has become, generally available to the public other than as a direct or indirect result of the information being disclosed by the receiving Party in breach of this Clause 17.
- 17.7 Without prejudice to any other rights or remedies that the disclosing Party may have, the receiving Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Clause 17 by the receiving Party (including its employees, officers, agents, representatives, subcontractors, advisers and partners). Accordingly, the disclosing Party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this Clause 17.
- 17.8 This Clause shall remain in force notwithstanding the termination or expiry of the Agreement for any cause whatsoever (whether pursuant to the terms of this Agreement or by operation of law) for the period of two (2) years from the date of such termination or expiration of the Agreement.

18. Notices

- 18.1 Any notice, request, waiver, consent, approval or other communication under this Agreement shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand, or by prepaid registered post, or by email, to the Party to which it is required or permitted to be given and made at such Party's contact particulars specified in Clause 18.2 or (as the case may be) Clause 18.3 below, or such other particulars as any Party may from time to time notify the other Party, whichever is the latest. Such notice, request, waiver, consent, approval or communication shall be deemed to have been received:
 - (a) if delivered by hand, immediately on the day of delivery;
 - (b) if sent by prepaid registered post, twenty-four (24) hours after posting; or
 - (c) if delivered by email, immediately on the day of transmission, and in proving the same it shall be sufficient to show the receipt of the email, including by way of automatic delivery receipt or read receipt.

This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other methods of dispute resolution.

- 18.2 The contact particulars of the Certification Body as referred to in Clause 18.1 above are as follows:

Attention:	IMDA Trustmark Office
Address:	10 Pasir Panjang Road, #03-01, Mapletree Business City, Singapore 117438

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18.3 The Applicant Organisation's contact particulars as last submitted to the Certification Body shall be deemed to be the contact particulars of the Applicant Organisation for the purposes of this Agreement.

19. Counterparts

19.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format), shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each Party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

19.3 No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

20. Entire Agreement

20.1 This Agreement contains the entire and whole agreement between the Parties and supersedes all prior written or oral commitments, representations, arrangements, understandings or agreements between the Parties.

20.2 Each Party warrants to the other that it has not entered into this Agreement on the basis of any prior written or oral commitments, representations, arrangements, understandings or agreements between them.

21. Waiver and Variation of Agreement

21.1 Subject to any express terms to the contrary (including Clause 21.2 of this Agreement), no waiver or variation (whether oral or otherwise) of this Agreement shall be of any force unless such waiver or variation is expressly agreed upon in writing and signed by an authorised officer or representative of each of the Parties to this Agreement.

21.2 Notwithstanding Clause 21.1 of this Agreement, the Certification Body may from time to time in its sole and absolute discretion vary the terms of this Agreement or any part thereof by notice in writing to the Applicant Organisation and such variation shall take effect from the date stipulated by the Certification Body in its notice. The continued use of the Mark by the Applicant Organisation after the effective date of such variation shows that the Applicant Organisation agrees to the Agreement continuing as varied by such notification.

21.3 Any waiver granted under this Agreement may be subject to conditions. Such waiver shall be effective only in the instance and for the strict purpose for which it is given.

21.4 No waiver of any breach of this Agreement shall be deemed to be a waiver of any other or of any subsequent breach.

21.5 In no event shall any delay, failure or omission on the part of either of the Parties in enforcing or exercising any right, power, privilege, claim or remedy, which is conferred by this Agreement, at law or in equity, or arises from any breach by the other Party, be deemed to be or be construed as:

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- (a) a waiver or variation thereof, or of any other such right, power, privilege, claim or remedy, in respect of the particular circumstances in question; or
- (b) operate so as to bar the enforcement or exercise thereof, or of any other such right, power, privilege, claim or remedy, in any other instance at any time or times thereafter.

22. Third Party Rights

- 22.1 Unless otherwise expressly stated in this Agreement, a person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B, Statutes of the Republic of Singapore) to enforce any of the terms set out in this Agreement.

23. No Agency Relationship

- 23.1 Nothing in this Agreement shall render the Applicant Organisation and/or the Assessment Body (and each of their respective members, directors, employees, officers, agents, representatives and subcontractors) an employee, worker, agent, subcontractor or partner of the Certification Body, and the Applicant Organisation and/or the Assessment Body and each of their respective employees, workers, agents, subcontractors and partners, shall not hold itself out as such.
- 23.2 The Applicant Organisation acknowledges and agrees that the Assessment Body acts as a n independent contractor vis-à-vis the Certification Body, and the Certification Body shall assume no liability whatsoever in respect of the acts and/or omissions of the Assessment Body.

24. Applicable Law

This Agreement and all its subsequent variations are subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose.

25. Dispute Resolution

- 25.1 Subject to the Certification Mark Regulations and Clause 25.2, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (**SIAC Rules**) for the time being in force, which rules are deemed to be incorporated by reference in this Clause. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one (1) arbitrator to be appointed by the Chairman of the SIAC. The language of the arbitration shall be English.
- 25.2 Notwithstanding Clause 25.1, but subject to the Certification Mark Regulations:
 - (a) any dispute, controversy of claim arising out of or relating to the grant of the certification and/or use of the Mark (the **Dispute**) shall be decided by the Certification Body in accordance with the guidelines in force at the time;
 - (b) an Applicant Organisation may appeal to the Certification Appeal Committee against any decision of the Certification Body in relation to a Dispute; and
 - (c) the decision of the Certification Appeal Committee shall be final.

ANNEX A


DETAILS OF CERTIFICATION REGIME AND RELEVANT DATES

(a)	Commencement Date:	The date stated on the Certificate.
(b)	Data Protection Trustmark Scheme:	This is a data protection certification mark scheme pursuant to which interested Applicants may be certified in accordance with the Certification Mark Regulations.

ANNEX B

DETAILS OF MARK

Subject to any amendments necessary to ensure consistency between this Annex B and the certification mark application for the Mark by the Certification Body with the Intellectual Property Office of Singapore, the following set out the details related to the Mark:

Representation of Mark	Proprietor	Class	Services
	Info-communications Media Development Authority (designated as the Personal Data Protection Commission)	35	Data handling; data management; data collection.
		42	Computer security threat analysis for protecting data; computer programming services for electronic data security; preparation of quality standards for reviewing systems, policies and practices to assure compliance with standards.
		45	Reviewing systems, policies and practices to assure compliance with laws or regulations.