

**Pre-Approved Solutions  
Of  
“SMEs Go Digital”  
Programme  
(Pre-Approved@SMEsGoDigital)**

**Terms and Conditions**

## 1. General

- 1.1. The Info-communications Media Development Authority (“**IMDA**”) is a statutory board constituted under the Info-communications Media Development Authority Act, with its place of business at 10 Pasir Panjang Road, #03-01 Mapletree Business City, Singapore 117438, Republic of Singapore.
- 1.2. The Pre-Approved Solutions of “SMEs Go Digital” Programme (“**Pre-Approved@SMEsGoDigital**”) is administered by IMDA with the aim to
  - i. Nurture the ICM vendors to build or upgrade their digital solutions to achieve a certain standard in functionality, cybersecurity, compliance to Personal Data Protection Act, etc. so as to enhance their solutions’ scalability and marketability; and
  - ii. Assist SMEs to use digital technologies to build strong capabilities in tech and participate in the Digital Economy.

## 2. Scope

- 2.1. This document is applicable to all ICM vendors applying (“**Applicants**”) to have their digital solutions pre-approved by IMDA under the Pre-Approved@SMEsGoDigital programme and all successful Applicants who have been appointed as Pre-Approved@SMEsGoDigital Vendors. All Pre-Approved@SMEsGoDigital Vendors and Applicants must comply strictly with the Terms and Conditions governing Pre-Approved@SMEsGoDigital at all times.
- 2.2. These Terms and Conditions should be read in conjunction with the Pre-Approved@SMEsGoDigital programme documents including but not limited to:
  - a. The Pre-Approved@SMEsGoDigital Application Form;
  - b. The Pre-Approved@SMEsGoDigital Appointment Letter;
  - c. the Pre-Approved@SMEsGoDigital Guide; and
  - d. such other documents as the IMDA may issue from time to time

(Collectively referred hereinafter as the “**Programme Documents**”)

The guidelines, procedures, instructions and requirements contained therein the Programme Documents shall be deemed to be part of these Terms and Conditions.

- 2.3. These Terms and Conditions and the Programme Documents may be further amended, varied, modified, supplemented and/or replaced by IMDA at its sole and absolute discretion from time to time, and the updated versions will be made available on IMDA website: <https://www.imda.gov.sg/SMEsGoDigital>.

2.4. In the event of any conflict or inconsistency between any terms of the Programme Documents, unless the document expressly provides, the following documents shall prevail in the following priority:

- a. The Pre-Approved@SMEsGoDigital Terms and Conditions;
- b. The Pre-Approved@SMEsGoDigital Appointment Letter;
- c. The Pre-Approved@SMEsGoDigital Guide;
- d. The Pre-Approved@SMEsGoDigital Application Form;
- e. All other documents forming part of the Programme Documents.

### 3. **Application to be a Pre-Approved@SMEsGoDigital Vendor**

3.1. Applicant shall submit the necessary application forms and supporting documents in softcopy by email to SMEs\_Go\_Digital@imda.gov.sg.

3.2. An application shall be made to IMDA using the prescribed Pre-Approved@SMEsGoDigital Application Form (which may be amended by IMDA from time to time).

3.3. By submitting the application, the Applicant undertakes to comply with these Terms and Conditions, and represents and warrants that all information contained in the application form, all supporting documents and materials are true, accurate, up-to-date and complete.

3.4. IMDA reserves the right to and may at its sole and absolute discretion choose not to process any application if any information provided by the Applicant is deemed by IMDA to be misrepresented, false, misleading, inaccurate, insufficient or on such other grounds whatsoever as IMDA in its sole and absolute discretion deems fit.

3.5. IMDA reserves the right to and may at its sole and absolute discretion reject any application without providing the Applicant with any reasons whatsoever for the rejection.

3.6. The Applicant/Pre-Approved@SMEsGoDigital Vendor shall nominate an Appointed Representative (“AR”) to liaise with IMDA on all matters relating to Pre-Approved@SMEsGoDigital, and to ensure that all the obligations as set out in these Terms and Conditions and the Programme Documents are fulfilled. The Applicant/Pre-Approved@SMEsGoDigital Vendor shall also keep IMDA informed in writing of any changes in relation to the AR.

#### 4. Fees

- 4.1. IMDA may charge the Applicant such administrative fees as it may from time to time determine in relation IMDA's assessment of the application for pre-approval of the digital solution, and the appointment as a Pre-Approved@SMEsGoDigital Vendor. All appointments as a Pre-Approved@SMEsGoDigital Vendor are subject to full and timely payment of such fees (if any) as specified in the Guide (the "**Fees**").
- 4.2. The fee payable (if any) for each year of appointment as a Pre-Approved@SMEsGoDigital Vendor shall be as specified in the Guide, and Applicant and/or Pre-Approved@SMEsGoDigital Vendor shall pay the fee in full within thirty days from the due date.
- 4.3. No appointment as a Pre-Approved@SMEsGoDigital Vendor shall be deemed to have been awarded until the fee in respect thereof has been fully paid.
- 4.4. All expenses of and incidental to the compliance with any of the requirements in connection with Pre-Approved@SMEsGoDigital shall be borne by the Applicant/Pre-Approved@SMEsGoDigital Vendor.
- 4.5. All fees paid are not refundable regardless of the outcome of the application.
- 4.6. Subject to clause 2.3 above, IMDA reserves the right to change the Fees at any time without any notice to the Applicant/Pre-Approved@SMEsGoDigital Vendor.

#### 5. Evaluation

- 5.1. Evaluation may be conducted by IMDA ("**Evaluation**"), in respect of:
  - a. application for appointment as a Pre-Approved@SMEsGoDigital Vendor; and
  - b. interim/ad-hoc assessment or audit by IMDA at IMDA's sole and absolute discretion from time to time.
- 5.2. The Evaluation are based on the requirements of Pre-Approved@SMEsGoDigital set out in the Guide, as may be amended, varied, modified, supplemented and/or replaced by IMDA at its sole and absolute discretion from time to time (the "**Programme Requirements**").
- 5.3. The Evaluation may include but not limited to the following:
  - a. Technical evaluation on Applicant/Pre-Approved@SMEsGoDigital Vendor's digital solution functionality and performance claims;
  - b. Any other evaluation that IMDA at its sole and absolute discretion deems necessary for the purposes of Pre-Approved@SMEsGoDigital.
- 5.4. IMDA shall at its sole and absolute discretion decide to conduct a full or partial Evaluation.

- 5.5. IMDA reserves the right to and may at its sole and absolute discretion appoint an external party to conduct any Evaluation.
- 5.6. It is the sole responsibility of the Applicant/Pre-Approved@SMEsGoDigital Vendor to provide all relevant and supporting documents, material information and/or records to IMDA to demonstrate how they have implemented, and fulfilled the Programme Requirements so as to enable IMDA to conduct an informed, fair and objective Evaluation.

## **6. Waiver from Pre-Approved@SMEsGoDigital Requirements**

- 6.1. The Applicant/Pre-Approved@SMEsGoDigital Vendor may submit a written application with relevant and supporting documents to IMDA to request for waiver from any of the Programme Requirements that is not applicable to the Applicant/Pre-Approved@SMEsGoDigital Vendor.
- 6.2. Any waiver from specific Programme Requirements granted by IMDA will be valid throughout the period of appointment unless otherwise stated.
- 6.3. IMDA reserves the right to review and rescind the waiver granted to the Applicant/Pre-Approved@SMEsGoDigital Vendor at any time under Clause 6.2 at its sole and absolute discretion.
- 6.4. The Applicant/Pre-Approved@SMEsGoDigital Vendor shall inform IMDA immediately if the conditions for the waiver(s) granted are no longer valid at any point of the period of appointment. IMDA reserves the right to direct the Applicant/Pre-Approved@SMEsGoDigital Vendor to undergo an ad-hoc Evaluation. IMDA shall at its absolute discretion decide on a full or partial ad-hoc Evaluation.

## **7. Appointment as Pre-Approved@SMEsGoDigital Vendor**

- 7.1 Applicants which, IMDA has assessed to have passed the Evaluation and met the Programme Requirements will be appointed as a Pre-Approved@SMEsGoDigital Vendor.
- 7.2 For the avoidance of doubt, the appointment as a Pre-Approved@SMEsGoDigital Vendor by IMDA is not a guarantee or endorsement that the solution provided by the Pre-Approved@SMEsGoDigital Vendor is fit for any purposes, and/or free from any defects. IMDA is not liable for any loss or damage whatsoever and howsoever incurred by any party arising as a result of the use of, or any representations made in respect of the pre-approved solution(s) provided by the Pre-Approved@SMEsGoDigital Vendor.
- 7.3 The appointment as a Pre-Approved@SMEsGoDigital Vendor does not free the Pre-Approved@SMEsGoDigital Vendor from its legal responsibility (if any) in case of any loss or damage incurred by any party arising from the use of the pre-approved solution(s).

- 7.4 Notwithstanding any requests, IMDA reserves the right to and may, at its sole and absolute discretion, choose not to disclose to the Pre-Approved@SMEsGoDigital Vendor and its customers, users and potential customers of the pre-approved solution, of the detailed results of the Evaluation.
- 7.5 IMDA will notify the Applicant of its award status and a letter of appointment (the “**Appointment Letter**”) will be issued.
- 7.6 The Appointment Letter shall remain the property of IMDA, and the Pre-Approved@SMEsGoDigital Vendor’s right to use the Appointment Letter is subject to these Terms and Conditions. The Pre-Approved@SMEsGoDigital Vendor agrees not to assign, charge, licence, transfer or otherwise deal with the Appointment Letter in any way.
- 7.7 The appointment as a Pre-Approved@SMEsGoDigital Vendor and the Appointment Letter are not transferable under any circumstances.
- 7.8 The appointment as a Pre-Approved@SMEsGoDigital Vendor is valid for a period of one (1) year or for such other periods as may be stated in the Appointment Letter. IMDA shall have the absolute right to amend the appointment validity at any time after the appointment.
- 7.9 The appointment as a Pre-Approved@SMEsGoDigital Vendor is conditional upon the Pre-Approved@SMEsGoDigital Vendor’s continued compliance with these Terms and Conditions including but not limited to the Scheme Requirements as set out in the Programme Documents, any of the terms and conditions set out in the Appointment Letter.
- 7.10 The Pre-Approved@SMEsGoDigital Vendor shall inform IMDA as soon as reasonably practicable if, at any time, it becomes unable to perform its obligations as set out in these Terms and Conditions and Programme Documents.
- 7.11 IMDA reserves the right to and may, in its sole and absolute discretion, terminate the appointment without the need to give any reasons for such termination or refusal.
- 7.12 Without prejudice to Clauses 6, IMDA may, in its absolute discretion, refuse to appoint if:
  - a. the application submitted by the Applicant/ Pre-Approved@SMEsGoDigital Vendor is not in accordance with the form required by IMDA;
  - b. the Applicant/ Pre-Approved@SMEsGoDigital Vendor fails to satisfy any of the Programme Requirements, including the failure to submit or make any declarations (if any) required under the Programme Documents;
  - c. the Applicant/ Pre-Approved@SMEsGoDigital Vendor fails to pay any outstanding fee(s);
  - d. the Applicant/Pre-Approved@SMEsGoDigital Vendor provides any information to the IMDA which is misrepresented, false, misleading, inaccurate or insufficient;

- e. the Applicant/ Pre-Approved@SMEsGoDigital Vendor is in breach of any of these Terms and Conditions;
- f. the commencement of any proceedings for liquidation, insolvency, bankruptcy, receivership, winding up or judicial management of the Applicant/Pre-Approved@SMEsGoDigital Vendor, or the making of any composition or schemes of arrangement by the Applicant/Pre-Approved@SMEsGoDigital Vendor with its creditors;
- g. the Applicant/Pre-Approved@SMEsGoDigital Vendor ceases to carry on business;
- h. the Applicant/Pre-Approved@SMEsGoDigital Vendor contravenes any applicable laws or regulations in Singapore; or
- i. for any other reason, the IMDA at its sole and absolute discretion is of the opinion that it is undesirable to appoint the Applicant as a Pre-Approved@SMEsGoDigital Vendor.

## **8. Non-Compliance with Terms and Conditions**

- 8.1 Without prejudice to any of the IMDA's powers and rights to take such action as it deems fit, a Pre-Approved@SMEsGoDigital Vendor that fails to abide by any of these Terms and Conditions may be given a written warning by the IMDA. If the Pre-Approved@SMEsGoDigital Vendor fails to comply with the demands of the written warning within the stipulated timeframe, IMDA may suspend or terminate the appointment immediately without further notice or reference to the Pre-Approved@SMEsGoDigital Vendor.
- 8.2 For the avoidance of doubt, IMDA reserves the right to and may, in its sole and absolute discretion, suspend or terminate the appointment at any time if the Pre-Approved@SMEsGoDigital Vendor is in default of any of these Terms and Conditions without issuing any prior notice or warning to the Pre-Approved@SMEsGoDigital Vendor.

## **9. Compliance with Applicable Laws**

- 9.1 The Applicant/Pre-Approved@SMEsGoDigital Vendor shall comply with all applicable laws and regulatory requirements.

## **10. Suspension and Termination of Appointment**

- 10.1 IMDA may, in its absolute discretion, terminate or suspend an appointment, if it is satisfied that the Pre-Approved@SMEsGoDigital Vendor:
  - a. obtains the appointment by making or causing any false or fraudulent declaration, certification or representation, either in writing or otherwise;

- b. gives and/or declares false, misleading, misrepresented or inaccurate information to IMDA;
  - c. fails to maintain or causes IMDA to suspect that the Pre-Approved@SMEsGoDigital Vendor failed to maintain a standard that complies with the Programme Requirements;
  - d. fails to submit or make any declaration required under the Programme Documents;
  - e. contravenes or fails to comply with any of the terms and conditions issued to the Pre-Approved@SMEsGoDigital Vendor including but not limited to the Pre-Approved@SMEsGoDigital Brand User Guide issued by IMDA under Clause 11 below;
  - f. fails to provide access to facilities, documents and/or personnel, or to comply with any other requirement imposed by IMDA, as may be reasonable and necessary to enable evaluators to perform their assessment and/or evaluation under these Terms and Conditions;
  - g. fails to rectify any default of these Terms and Conditions or such other requirements imposed by IMDA in connection with Pre-Approved@SMEsGoDigital within the agreed time frame;
  - h. fails to pay all necessary fees payable and/or imposed by IMDA from time to time in a timely manner;
  - i. contravenes any applicable laws or regulations;
  - j. the initiation by the relevant authorities of any investigation into any alleged wrongdoing by the Applicant/Pre-Approved@SMEsGoDigital Vendor and/or its officers in relation to the affairs of the Applicant/Pre-Approved@SMEsGoDigital Vendor; or
  - k. is for any other reason in IMDA's sole and absolute discretion, deemed unfit to continue to be appointed as a Pre-Approved@SMEsGoDigital Vendor and/or its act or omission brings IMDA, the Pre-Approved@SMEsGoDigital programme or the info-communications and media industry into disrepute.
- 10.2 The Pre-Approved@SMEsGoDigital Vendor will be informed in writing by IMDA of the suspension or termination of appointment. The letter will be sent to the contact address of the Pre-Approved@SMEsGoDigital Vendor provided to IMDA.
- 10.3 The Pre-Approved@SMEsGoDigital Vendor with a suspended appointment may have its appointment status reinstated, subject to any evaluations and/or conditions that IMDA may impose.
- 10.4 IMDA may, at any time and for such reason as it deems fit, vary the period for which the appointment has been suspended.

- 10.5 The Pre-Approved@SMEsGoDigital Vendor may voluntarily withdraw its appointment by giving at least thirty (30) days of prior written notice to IMDA.
- 10.6 Once the Pre-Approved@SMEsGoDigital Vendor is notified by IMDA that its appointment has been suspended or terminated or the Pre-Approved@SMEsGoDigital Vendor voluntarily withdraws its appointment, the Pre-Approved@SMEsGoDigital Vendor shall:
- a. immediately cease to hold itself out as and/or refer to itself as a Pre-Approved@SMEsGoDigital Vendor;
  - b. within fourteen (14) days notify its customers that it no longer is a Pre-Approved@SMEsGoDigital Vendor;
  - c. immediately cease its use of the Confidential Information and shall act in accordance with the said notice to return all copies of the Confidential Information;
  - d. within fourteen (14) days return the original Pre-Approved@SMEsGoDigital Appointment Letter to IMDA;
  - e. immediately remove the Pre-Approved@SMEsGoDigital Brand Mark from its official website;
  - f. within fourteen (14) days cease to use marketing collateral with the Pre-Approved@SMEsGoDigital Brand Mark or otherwise use the Pre-Approved@SMEsGoDigital Brand Mark in any form or medium;
  - g. Within thirty (30) days of such notification or withdrawal, confirm to IMDA that it has:
    - i. destroyed all such marketing collateral bearing the Pre-Approved@SMEsGoDigital Brand Mark; and
    - ii. ceased the use of the Pre-Approved@SMEsGoDigital Brand Mark in any form or medium.
- 10.7 Where pursuant to these Terms and Conditions, the Pre-Approved@SMEsGoDigital Vendor has been appointed, or the appointment suspended or terminated by the IMDA, or withdrawn by the Pre-Approved@SMEsGoDigital Vendor, IMDA may at its discretion publish a notification of the appointment, suspension, termination or withdrawal.
- 10.8 Termination of the appointment of a Pre-Approved@SMEsGoDigital Vendor by IMDA (pursuant to any provision of the Terms and Conditions or any Programme Documents), or the expiration of the Appointment Period or Extended Appointment Period (as respectively defined in the Pre-Approved@SMEsGoDigital Appointment Letter) of the Pre-Approved@SMEsGoDigital Vendor shall not:
- (a) release the said Vendor from any obligation or liability which, at the time of such termination or expiration, has already accrued or which is attributable to a period prior to such termination or expiration of the Appointment/Extended Appointment Period, and shall include, without limitation, the Vendor's obligations in respect of all approved grant applications (of companies that purchase digital solution(s)

from the Vendor) to complete all outstanding projects as soon as possible and to meet all delivery and quality standards in respect of the same in accordance with the Programme Documents, such that the SMEs/companies involved are able to fully complete their grant claims; nor

- (b) preclude IMDA from pursuing any rights and remedies it may have under the Programme Documents or at law or in respect to any breach of the terms of the Programme Documents by the Vendor.

## **11. Access to Records, Information and Documents**

### **11.1 The Pre-Approved@SMEsGoDigital Vendor shall**

- a. upon five (5) working days' prior written notice from IMDA, permit IMDA, funding agencies and/or their appointed agents full and free access to its place of operation, sites of deployment, assets acquired for the purposes of Pre-Approved@SMEsGoDigital; and
- b. within seven (7) working days from IMDA's written request, provide all relevant information in written form

as may be required for the purpose of monitoring Pre-Approved@SMEsGoDigital (including the benefits derived post implementation), any investigations (including suspected fraud or abuse of the Pre-Approved@SMEsGoDigital) and conducting the Evaluation(s).

11.2 The Pre-Approved@SMEsGoDigital Vendor shall allow IMDA, funding agencies and/or their appointed agents to inspect, copy or make extracts from such registers, statements, books, documents, papers and information for the aforesaid purposes.

11.3 For avoidance of doubt, "funding agencies" refers to the government agencies who give out grants or other funding support to companies that purchase digital solutions from the Pre-Approved@SMEsGoDigital Vendor.

## **12. Use of the Pre-Approved@SMEsGoDigital Brand Mark**

12.1 Only the appointed Pre-Approved@SMEsGoDigital Vendors are entitled to use the Pre-Approved@SMEsGoDigital Brand Mark, provided always that such use is:

- a. Solely in connection with the promotion and conduct of the offering of pre-approved solution the Pre-Approved@SMEsGoDigital Vendor provides in relation to the Pre-Approved@SMEsGoDigital; and
- b. In accordance with these Terms and Conditions and the Pre-Approved@SMEsGoDigital Brand User Guide.

12.2 A copy of the Pre-Approved@SMEsGoDigital Brand User Guide that specifies the application of the Pre-Approved@SMEsGoDigital Brand Mark appropriately and correctly across all communications platforms may be provided by IMDA to the Pre-Approved@SMEsGoDigital Vendor upon appointment.

12.3 The Pre-Approved@SMEsGoDigital Vendor may use the Pre-Approved@SMEsGoDigital Brand Mark on a variety of communication materials such

as brochures, advertisements and website in accordance with these Terms and Conditions and the Pre-Approved@SMEsGoDigital Brand User Guide. Save as expressly permitted in these Terms and Conditions and the Pre-Approved@SMEsGoDigital Brand User Guide, the Pre-Approved@SMEsGoDigital Vendor shall not state or imply, in any form, in its marketing publications that the pre-approved solution is so approved or any other referrals to imply endorsement by IMDA on the pre-approved solution.

- 12.4 The appointment as a Pre-Approved@SMEsGoDigital Vendor is not tantamount to endorsement or recognition by IMDA of the fitness for purpose or satisfactory quality of digital solution provided by the Pre-Approved@SMEsGoDigital Vendor. Nothing in this section affects the scope of the Pre-Approved@SMEsGoDigital Vendor's statutory duties, including but not limited to the statutory duties as defined in the Sale of Goods Act 1999 (Cap. 393) and Supply of Goods Act 1999 (Cap. 394).
- 12.5 The Pre-Approved@SMEsGoDigital Vendor shall immediately discontinue the use of the Pre-Approved@SMEsGoDigital Brand Mark upon the expiry, suspension or termination of the appointment.
- 12.6 The right to use the Pre-Approved@SMEsGoDigital Brand Mark does not extend to any other marks of IMDA. Any goodwill attaching to the Pre-Approved@SMEsGoDigital Brand Mark from the Pre-Approved@SMEsGoDigital Vendor's use shall inure to the benefit of IMDA.
- 12.7 The Applicant/ Pre-Approved@SMEsGoDigital Vendor shall not:
- a. Challenge IMDA as to the sole, absolute or exclusive owner of all right, title and interest in the Pre-Approved@SMEsGoDigital SG Brand Mark and the goodwill associate therewith;
  - b. Challenge the validity, control or use of the Pre-Approved@SMEsGoDigital Brand Mark;
  - c. Register, use, adopt or promote any mark that is confusing similar to the Pre-Approved@SMEsGoDigital Brand Mark;
  - d. Take or encourage any action which would impair the rights of IMDA in and to the Pre-Approved@SMEsGoDigital Brand Mark or any goodwill associated therewith; or
  - e. Infringe the Pre-Approved@SMEsGoDigital Brand Mark or any other marks owned by IMDA.
- 12.8 In addition to IMDA's rights arising under these Terms and Conditions, IMDA reserves the right to take such civil and/or criminal action against any person or party who misuses or misrepresents the Pre-Approved@SMEsGoDigital Brand Mark in any way.

### **13. Undertakings of the Applicant/Pre-Approved@SMEsGoDigital Vendor**

- 13.1 The Applicant/ Pre-Approved@SMEsGoDigital Vendor shall furnish to IMDA in a timely manner all relevant information and documentation relating to the Applicant's/ Pre-Approved@SMEsGoDigital Vendor's solution for the purpose of IMDA's evaluation of the application for appointment as a Pre-Approved@SMEsGoDigital Vendor.
- 13.2 The Pre-Approved@SMEsGoDigital Vendor shall inform IMDA forthwith if, at any time, it becomes unable to perform its obligations as set out in these Terms and Conditions or Programme Documents.
- 13.3 The Applicant/ Pre-Approved@SMEsGoDigital Vendor warrants and undertakes to the IMDA that:
- a. the Applicant/ Pre-Approved @SGD Vendor shall not contravene any applicable laws or regulations or cause IMDA to be in breach of any applicable laws or regulations in the course of its appointment as a Pre-Approved@SMEsGoDigital Vendor;
  - b. the Applicant/ Pre-Approved@SMEsGoDigital Vendor's pre-approved solution(s) does not violate or infringe any intellectual property right, or any right of privacy or publicity of any third party or any other right of any person or entity;
  - c. the Applicant/Pre-Approved@SMEsGoDigital Vendor will immediately notify IMDA of any material changes to any information provided in connection with the Applicant's/Pre-Approved@SMEsGoDigital Vendor's participation in Pre-Approved@SMEsGoDigital programme including but not limited to any changes in the Applicant's/Pre-Approved@SMEsGoDigital Vendor's legal entity, financials, location, business type, or pre-approved solution(s) offered;
  - d. it will keep a record of any material defects reported to and remedial actions taken by the Applicant/ Pre-Approved@SMEsGoDigital Vendor, if any, relating to the pre-approved solution(s) and make such record available to IMDA when requested;
  - e. it will keep a record of all material feedback, complaints and remedial actions, if any, relating to the pre-approved solution(s) and make such record available to IMDA when requested;
  - f. comply with such other requirement or conditions as may be stipulated by the IMDA and/or the relevant authorities from time to time.

#### **14. Confidentiality**

- 14.1 Save as provided herein, all information, materials and documents supplied by the Applicant/Pre-Approved@SMEsGoDigital Vendor to IMDA under the Pre-Approved@SMEsGoDigital programme shall be treated as Confidential Information. For the avoidance of doubt, Confidential Information shall NOT include any of the following:
- a. Information that was already known to or in the possession of IMDA prior to disclosure by the Applicant/Pre-Approved@SMEsGoDigital Vendor;

- b. Information which is independently learned or developed by IMDA without use of any of the information disclosed by the Applicant/ Pre-Approved@SMEsGoDigital Vendor to IMDA under Pre-Approved@SMEsGoDigital;
- c. Information which is received by IMDA from a third party who has the right to disclose such information and/or who is not bound by duties or obligations of confidentiality to the Applicant/Pre-Approved@SMEsGoDigital Vendor;
- d. Information that is or becomes publicly available without the IMDA's breach of these Terms and Conditions; and
- e. Information that the Applicant/ Pre-Approved@SMEsGoDigital Vendor has given or gives its written authorisation for release or use

14.2 Subject always to Clause 14.3 below, IMDA agrees and undertakes:-

- a. not to directly or indirectly disclose or make available any Confidential Information, in whole or in part, to any person or party whom the Applicant/ Pre-Approved@SMEsGoDigital Vendor notifies IMDA in writing, or who is not expressly authorised to receive such information pursuant to or in accordance with these Terms and Conditions;
- b. to take reasonable precautions to prevent unauthorised access to Confidential Information by any person or party by using at least the same protective measures as are used by the Applicant/Pre-Approved@SMEsGoDigital Vendor to protect its own confidential and/or proprietary information and in any event, not less that at a reasonable standard of care; and
- c. to notify the Applicant/Pre-Approved@SMEsGoDigital Vendor in writing as soon as reasonably practicable upon discovery of any unauthorised use or disclosure of Confidential Information by IMDA, and to co-operate with Applicant/Pre-Approved@SMEsGoDigital Vendor in a reasonable way to help the Applicant/ Pre-Approved@SMEsGoDigital Vendor regain possession of the Confidential Information, and prevent further unauthorised use and/or disclosure of the same.

14.3 IMDA may use the Confidential Information or disclose the same:

- a. To evaluate the Applicant's/ Pre-Approved@SMEsGoDigital Vendor's compliance with the requirements of the Pre-Approved@SMEsGoDigital, including but not limited for the purposes of the Evaluation referred to in clause 5 and investigations (including suspected fraud or abuse of the Pre-Approved@SMEsGoDigital);
- b. To monitor or benchmark the Applicant's/ Pre-Approved@SMEsGoDigital Vendor's performance and/or the performance of Pre-Approved@SMEsGoDigital;
- c. To perform any of its rights, obligations and/or responsibilities under these Terms and Conditions;
- d. To facilitate the performance of (a), (b) and/or (c) by a third party appointed by IMDA for the purposes of Pre-Approved@SMEsGoDigital;

- e. With the prior written consent of the Applicant/Pre-Approved@SMEsGoDigital Vendor but subject to any terms and/or limitations which may be imposed by the Applicant/Pre-Approved@SMEsGoDigital Vendor for such disclosure;
- f. If required to do so pursuant to any law or regulation, subpoena, order of court or pursuant to other judicial or administrative process, except that IMDA shall give prompt notice of any such impending disclosure to the Applicant/Pre-Approved@SMEsGoDigital Vendor; or
- g. To such of its officers, employees and/or professional advisors who need to know the same for the purpose(s) of Pre-Approved@SMEsGoDigital or for seeking advice on any matter arising out of these Terms and Condition or Pre-Approved@SMEsGoDigital provided that IMDA shall ensure that any of its officers, employees and professional advisors to whom Confidential Information is to be disclosed are made aware of, and agree to abide by the confidentiality obligations in these Terms and Conditions before any disclosure to them is made.

14.4 IMDA shall not be liable for any damages or losses suffered by the Applicant/Pre-Approved@SMEsGoDigital Vendor as a result of any disclosure of information by IMDA other than due to the wilful default or gross negligence of IMDA or its representatives.

14.5 The Applicant/Pre-Approved@SMEsGoDigital Vendor, its staff and agents shall keep confidential and shall not disclose to any third party:

- a. information relating to its application for the appointment as a Pre-Approved@SMEsGoDigital Vendor, until such appointment is made or rejected by IMDA; and
- b. all correspondences between the Applicant/Pre-Approved@SMEsGoDigital Vendor and IMDA.

## **15. Exclusion and Limitation of Liability**

15.1 IMDA shall in all events not be liable to the Applicant/ Pre-Approved@SMEsGoDigital Vendor and its proprietors, directors, shareholders, officers, employees, personnel, agents or contractors for any claims, expenses, losses or damages (including solicitors' fees) whether direct or indirect suffered by the Applicant/ Pre-Approved@SMEsGoDigital Vendor or and its proprietors, directors, shareholders, employees, personnel, agents or contractors (whether such claims, expenses, losses or damages have been informed by Applicant/Pre-Approved@SMEsGoDigital Vendor to the IMDA) as a consequence of:

- a. the Pre-Approved@SMEsGoDigital Vendor's appointment, the Evaluation and/or as a result of the assessment of the Applicant'/ Pre-Approved@SMEsGoDigital Vendor's compliance with Pre-Approved@SMEsGoDigital Requirements by IMDA; or
- b. IMDA's refusal to appoint, suspend or terminate the appointment, for any reason whatsoever.

15.2 In the event that IMDA is found liable by the operation of the law, the maximum amount of IMDA's liability shall be limited to the fees paid by the Applicant/Pre-Approved@SMEsGoDigital Vendor to IMDA for Pre-Approved@SMEsGoDigital.

## **16. Indemnity**

16.1 The Applicant/ Pre-Approved@SMEsGoDigital Vendor agrees and undertakes to indemnify IMDA and its directors, shareholders, officers, employees, personnel, agents or contractors fully against all claims, expenses, losses or damages (including solicitors' fees) suffered by IMDA including but not limited to all claim(s) by any third parties against IMDA ("3P Claims"), arising from the Applicant/ Pre-Approved@SMEsGoDigital Vendor appointment and/or the Applicant/Pre-Approved@SMEsGoDigital Vendor's breach of these Terms and Conditions. The Applicant/Pre-Approved@SMEsGoDigital Vendor's liability under this clause shall be limited to the value of the agreement between the Applicant/Pre-Approved@SMEsGoDigital Vendor and the aforementioned third party in respect of the solution referred to in the Pre-Approved@SMEsGoDigital Vendor appointment. The Applicant/Pre-Approved@SMEsGoDigital Vendor shall exclude its (direct and indirect) liability entirely to IMDA to the extent allowed by the law, for any claims, expenses, losses or damages (including solicitors' fees) suffered by IMDA which do not arise out of or are not in relation to 3P Claims.

## **17. Governing Law and Dispute Resolution**

17.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of the Republic of Singapore.

17.2 Any dispute arising out of or in connection with these Terms and Conditions, including any questions regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the arbitration rules of the Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference to this Clause 17.2.

## **18. Miscellaneous**

18.1 The invalidity, illegality or unenforceability of any part of these Terms and Conditions shall not affect the validity, legality and enforceability of the other parts of these Terms and Conditions.

18.2 No third party shall have any right to enforce any of the provisions under the Contracts (Right of Third Party) Act (Cap.53B).

18.3 Clauses 11, 15 and 16 herein shall survive termination or expiry of these Terms and Conditions.

18.4 These Terms and Conditions together with the Programme Documents form the entire agreement between the Applicant/Pre-Approved@SMEsGoDigital Vendor and IMDA with respect to the matters stated herein.