

SECTION 2: TERMS AND CONDITIONS FOR THE SUPPLY OF EQUIPMENT

2.2.1. DEFINITIONS

2.2.1.1. In these Terms and Conditions, unless the context otherwise requires:

- a) **"Account Manager"** has the meaning ascribed to it in **Clause 2.2.32**.
- b) **"Company"** means Singapore General Hospital Pte Ltd (UEN number 198703907Z).
- c) **"Contract Price"** means the price payable to the Vendor for the supply of the Equipment to the Company under this Contract.
- d) **"Equipment"** means all the equipment which the Vendor is required to supply to the Company, and includes all accompanying or necessary Software.
- e) **"Force Majeure Event"** has the meaning ascribed to it in **Clause 2.2.21.1**.
- f) **"GIRO"** means the Interbank GIRO system of payment and settlement which allows customers of a participating bank, upon successful application for the scheme, to transfer funds, through direct debits and credits, to the account(s) of another customer of other participating banks.
- g) **"GST"** means the goods and services tax chargeable under the Goods and Services Tax Act (Cap.117A).
- h) **"Intellectual Property Rights"** includes but is not limited to any patent, copyright, design right, trade mark, service mark, trade dress, trade name, goodwill, geographical indication, integrated circuit layout-design right, know-how, confidential information, trade secret, any application (whether pending, in process or issued) for any of the foregoing, and any other industrial, intellectual property or protected right similar to the foregoing (whether registered, registrable or unregistered) in any country, in any form, media, or technology now known or later developed.
- i) **"Request for Proposal"** or **"RFP"** means the request for proposal for the supply of Equipment as specified in Section 5 issued by the Company upon the terms set out in the RFP Documents.
- j) **"Letter of Acceptance"** has the meaning ascribed to it in **Clause 2.2.8.4 of Section 1**.
- k) **"SIAC"** has the meaning ascribed to it in **Clause 2.2.25.1**.
- l) **"Singapore Dollar(s)"** and the sign **"S\$"** mean the lawful currency of Singapore.
- m) **"Software"** means any computer programmes, applications, or codes which may be ancillary or supplementary to, or necessary for the efficient operation of, the equipment to be supplied to the Company by the Vendor under this Contract, together with the legitimate license granted by the owners of the Intellectual Property Rights therein; and the media in which the programmes, applications, or codes are stored; together with the accompanying documentation relating to the installation, maintenance and usage of the same.
- n) **"RFP Documents"** means the **Section 1 to Section 5**, and all schedules and appendices thereto of the RFP. Any reference in this Agreement to Section 1 to Section 5 is a reference to the Sections of the RFP.
- o) **"Price Proposal"** has the meaning ascribed to it in **Section 1**.
- p) **"Terms and Conditions"** means the terms and conditions set out in this **Section 2** and any amendments and supplement to the same effected in accordance with the terms herein.

- q) **"Vendor"** means the party or parties who or which has undertaken to supply the Equipment under this Contract, and where there is more than one party who or which has so undertaken, refers to all such parties jointly and severally.
 - r) **"Vendor's Agents"** has the meaning ascribed to it in **Clause 2.2.30.1**.
 - s) **"Vendor's Personnel"** means the representatives, agents, sub-contractors and employees appointed by the Vendor for the purposes of performing this Agreement, including but not limited to the Account Manager and the deliverymen appointed pursuant to **Clause 2.2.33**;
 - t) **"Warranty Period"** has the meaning ascribed to it in **Clause 2.2.16.1**.
- 2.2.1.2. Words importing the singular include the plural and *vice versa*. Words denoting the masculine gender shall include, where appropriate, the feminine gender and the neuter gender, and *vice versa*.
- 2.2.1.3. Any reference to time is a reference to Singapore time.
- 2.2.1.4. Any reference to any legislation, statute or statutory provision in these Terms and Conditions includes a reference to that legislation, statute or statutory provision as from time to time modified or re-enacted, and to any repealed legislation, statute or statutory provision which it re-enacts (with or without modification), and all regulations, rules and statutory instruments (however described) issued under it.
- 2.2.1.5. Unless otherwise expressly provided, any reference in these Terms and Conditions to a **"Clause"** or a **"Schedule"** is a reference to the relevant clause of, or schedule to, these Terms and Conditions.
- 2.2.1.6. Where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

2.2.2. SUPPLY OF EQUIPMENT

- 2.2.2.1. The Vendor agrees to supply the equipment to the Company as per the requirements set out in **Section 5** of the RFP Documents (as modified by the statement of **Agreement to Requirements of Sections 5** and any relevant acceptance by the Company), on these Terms and Conditions.
- 2.2.2.2. The Equipment shall, where relevant, be supplied by the Vendor together with all ancillary cables, plugs, power adapters, operating and maintenance manuals and such other parts, components or items which are necessary for the normal and efficient use of the Equipment, and all such parts, components or items shall be deemed part of the Equipment for the purposes of this Agreement, and all warranties and provisions relating to delivery and passing of title and risk under this Agreement shall accordingly be applicable thereto. The cost of providing all such parts, components or items is deemed to be included in the Contract Price.

2.2.3. DELIVERY

- 2.2.3.1. Time of delivery is of the essence.
- 2.2.3.2. If the Vendor fails to deliver the Equipment by the delivery time(s) and date(s) specified by the Company, the Company shall be entitled, without prejudice to its accrued rights against the Vendor for failure of or late delivery to obtain such Equipment from other sources and in such event to reject late delivery of the Vendor's Equipment in favour of delivery by such substitute source, and all additional costs in obtaining such Equipment from such alternative sources, including the Company's administrative costs and any positive price differential for the Equipment or such generic substitute or alternatives thereto accepted by the Company, shall be borne by the Vendor.

- 2.2.3.3. Delivery shall be made at such date(s), time(s) and location(s) as notified by the Company to the Vendor, at the expense of the Vendor. If the Company does not specifically provide the date, time and location for delivery, delivery shall be made at Materials Management Department, Blk 8, Level 1, Singapore General Hospital, Outram Road, Singapore 169608, within six (6) weeks from the issue of the Letter of Acceptance.
- 2.2.3.4. This Company shall not be considered to have accepted delivery of, and delivery shall not be deemed to have occurred for, the Equipment or any part thereof until after the Company or its appointed representative has actually inspected the Equipment at the place of delivery under **Clause 2.2.3.3** above and ascertained that it appears to be in accordance with this Contract, and the Company has notified the Vendor of the same. The Company may reject the Equipment if it is not in full compliance with the requirements under this Contract, and the Vendor shall at its own expense immediately take all necessary steps to ensure due compliance.
- 2.2.3.5. Where testing of the Equipment is required by the Company, delivery shall not be deemed to have taken place unless and until the Equipment has been tested by the Company, and the Company is satisfied that the Equipment is in full compliance with the requirements under this Contract.
- 2.2.3.6. Where installation of the Equipment is required, the Company shall not be considered to have accepted delivery of, and delivery shall not be deemed to have occurred for, the Equipment or any part thereof until the Equipment has been properly installed and, if required by the Company, duly commissioned in accordance with **Clause 2.2.4**.
- 2.2.3.7. In the event that part or all of the Equipment is rejected by the Company, the Vendor shall, within three (3) working days of notification of rejection from the Company, collect the same from the Company, failing which the Company may dispose of such rejected Equipment as it sees fit, **PROVIDED** that if the Company sells such rejected Equipment, the Company shall account to the Vendor for the net proceeds of such sale after deducting all expenses incurred in connection with the sale, subject to the right of the Company to set off any amounts owing by the Vendor to the Company.
- 2.2.3.8. The Vendor shall obtain at its own risk and expense all export and import licences and other official authorisation or other documents which may be necessary for the delivery of the Equipment to the Company, and shall carry out, where applicable, all customs formalities necessary for the export of the Equipment, for their transit through any country and for their import and delivery to the Company.

2.2.4. INSTALLATION AND COMMISSIONING

- 2.2.4.1. Where installation of the Equipment is required, the Vendor shall fully acquaint itself with the structural, electrical, plumbing and/or other provisions pertinent to the Equipment to be supplied and shall install the Equipment, without any additional charge, as directed by the Company. The cost of such installation is deemed to be included in the Contract Price.
- 2.2.4.2. The Vendor warrants that the installation of the Equipment shall be free from all defects patent or latent, and that upon completion of installation, the Equipment shall be fully and efficiently operable in compliance with all applicable legal and regulatory requirements when used in accordance with any relevant operating manuals, and shall be fit and safe for its intended uses.
- 2.2.4.3. The Vendor shall be responsible for and shall make good any damage to any property caused by its employees or agents in the course of installing the Equipment, and shall leave the same in as good a state of repair as it was in prior to the installation.
- 2.2.4.4. Where testing and commissioning of the Equipment is required by the Company, the Vendor shall be suitably equipped with all necessary test and measuring instruments, which shall be fully calibrated, and shall provide competent personnel who shall test and demonstrate the Equipment in accordance with the instructions of, and in the presence and to the satisfaction of, personnel designated by and representing the Company. Any Equipment in respect of which such testing is required shall not be deemed accepted and commissioned until the Company notifies the Vendor of the same.

2.2.5. MARKINGS AND PACKAGING OF EQUIPMENT

- 2.2.5.1. Without prejudice to the generality of the foregoing, the Equipment shall be marked in accordance with the instructions of the Company or the requirements set out in **Section 5** and all applicable legal and regulatory requirements, and shall be properly packed and secured so as to allow for efficient and convenient transportation of the Equipment without any detriment to the condition of the same.
- 2.2.5.2. The Equipment shall be marked and/or packed and secured and delivered in compliance with all applicable legal and regulatory requirements.

2.2.6. TESTING OF EQUIPMENT

- 2.2.6.1. If so required by any Company, the Vendor shall, prior to delivery, arrange for the Equipment to be tested in the presence of an appointed representative(s) of the Company on such date and at such time as may be requested by the Company.
- 2.2.6.2. If the Equipment are found to not comply with the requirements of this Agreement in any way, the Vendor shall at its own expense immediately take such actions as may be necessary to ensure due compliance.
- 2.2.6.3. Testing of the Equipment by the Company pursuant to this **Clause 2.2.6** shall not in any way prejudice the right of the Company to require further testing of any Equipment in accordance with **Clause 2.2.3.5** prior to accepting delivery.

2.2.7. LIQUIDATED DAMAGES

- 2.2.7.1 Without prejudice to the Company's rights under **Clause 2.2.3.2** above, but in the event of the Company accepting late delivery of Equipment from the Vendor, the Company reserves the right to require the Vendor to pay or to deduct from the Contract Price, as and for liquidated damages (and not as a penalty), a sum to be calculated at the rate of one-half per cent. ($\frac{1}{2}\%$) of the Contract Price for each day which may elapse between the date of delivery specified in accordance with this Contract, and the actual delivery date, up to a maximum of ten per cent. (10%) of the price of the Equipment so delayed.
- 2.2.7.2. The Vendor acknowledges and agrees that the sum stipulated above constitutes a genuine pre-estimate by the Vendor and the Company of the potential loss that would be suffered by the Company resulting from or in connection with the Vendor's late delivery, taking into account all relevant considerations, including without limitation the disruptions caused to the Company's operations and the possible costs in sourcing for substitute sources before the late delivery was effected.

2.2.8. QUALITY AND STANDARDS

- 2.2.8.1. The Vendor undertakes in favour of the Company that the Equipment supplied shall conform in all respects to the relevant specifications set out in this Contract, and shall be tropicalised and capable of continuous, trouble-free and efficient operation in the ambient non-air-conditioned environment of Singapore.
- 2.2.8.2. The Vendor further undertakes in favour of the Company that the Equipment supplied or to be supplied shall be free from all defects, patent or latent, and fit not only for the purposes for which they may generally be expected to be used for, but also for all relevant purposes notified (whether in writing or orally) to the Vendor for the purposes of this Contract, and shall meet the standard of satisfactory quality, as the same is provided in the Sale of Goods Act, Chapter 393 of Singapore. The Vendor hereby also acknowledges that it is aware of the purposes for which the Equipment is intended.

2.2.8.3. The Vendor warrants that the Equipment supplied shall in all respects (including the design, manufacture, processing, storage and testing thereof) comply with all legal, regulatory and health and safety requirements, and meet all relevant industry standards, and undertakes to comply at all times with all legal and regulatory requirements and obtain all licences, consents and permits as may be necessary for the supply and delivery of the Equipment from time to time. In the event of a change in legal or regulatory requirements during the course of the supply of the Equipment under this Contract, the Vendor undertakes to take all necessary actions for complying with the same, at its own expense.

2.2.8.4. All representations, statements or warranties made or given by the Vendor, its servants or agents to the Company, whether in writing or orally, regarding the quality or fitness for purpose of the Equipment or any part thereof shall be deemed to be express conditions of this Contract, **PROVIDED** that nothing in such representations, statements or warranties shall entitle the Vendor to derogate from, or relieve the Vendor in any way of, its obligations to ensure that Equipment supplied comply with all requirements, warranties and conditions in these Terms and Conditions and in **Section 5** of the RFP Documents.

2.2.8.5. The exhibition or demonstration of the Equipment by the Vendor to the Company shall not in any way prejudice the requirements of **Clause 2.2.8**, and shall not entitle the Vendor to derogate from, or relieve the Vendor in any way of, its obligations to ensure that Equipment supplied comply with all requirements, warranties and conditions in these Terms and Conditions and in **Section 5** of the RFP Documents.

2.2.8.6. For the avoidance of doubt, the Vendor shall be liable to compensate the Company for any non-compliance with this **Clause 2.2.8**.

2.2.9. INSPECTION OF EQUIPMENT IF REQUIRED BY THE COMPANY

2.2.9.1 Without prejudice to **Clause 2.2.3.4** above, where inspection of any of the Equipment, whether completed or in the course of production, is required by the Company, the Vendor shall give or procure for the Company free access to the Equipment or the production premises as and when required for that purpose and shall provide without any fees or charges reasonable assistance and facilities as may be required.

2.2.10. STORAGE OF EQUIPMENT

2.2.10.1 If a particular mode or means of containment is required for the storage of the Equipment, the Vendor shall at its own expense provide the Company with such instructions and training as may be necessary for the Equipment to be properly stored in full compliance with all legal, regulatory and safety requirements, as well as all relevant industry standards, as may from time to time be applicable thereto, and so as to ensure that the Equipment continue to meet the requirements of **Clause 2.2.8**.

2.2.10.2 In the event of a change in legal, regulatory or safety requirements or industry standards from time to time, the Vendor undertakes to inform the Company of such changes, and to provide any particular mode or means of containment and such instructions and training as may be necessary for the Equipment to be properly stored in full compliance with all prevailing legal, regulatory and safety requirements, as well as all relevant industry standards.

2.2.10.3 The Vendor accepts that the Company relies on the Vendor in respect of the provision of the means of containment and instructions and training by the Vendor pursuant to **Clauses 2.2.10.1 and 2.2.10.2** in relation to the storage of the Equipment, and the making of any request or the provision of any means of containment, instruction and training in relation to the same by the Company by itself or through any third parties shall not in any way prejudice or affect the reliance placed by the Company on the Vendor, or the responsibility of the Vendor to meet its obligations under **Clauses 2.2.10.1 and 2.2.10.2**.

2.2.11. INFORMATION

2.2.11.1 The Vendor shall from time to time provide the Company with information regarding the latest developments and availability (whether on the market or from the Vendor) of new

technology and/or upgraded or improved hardware and/or software which are relevant or related to the Equipment or the intended use of the Equipment. Such information shall be provided to the Company in accordance with **Clause 2.2.34**.

2.2.12 REPORTING

2.2.12.1 The Vendor shall from time to time, upon request by the Company, furnish written reports to the Company containing such information as the Company may require about this Agreement, including but not limited to the quantity and/or the value of Equipment purchased by the Company (for each line item).

2.2.13. DISPOSAL OF EQUIPMENT

2.2.13.1 The Vendor undertakes to remove at its own expense from the premises of the Company such Equipment, including any by-products or residue thereof, and regardless of whether the same may be used (wholly or partially), damaged or expired, at such dates and times and in such manner as the Company may from time to time require, and to dispose of the same, by such mode and means of containment, transportation and disposal as may be prudent or necessary.

2.2.13.2 The Vendor further undertakes to ensure that the removal and disposal of the Equipment pursuant to **Clause 2.2.13.1** shall at all times comply with all legal, regulatory and safety requirements, and meet all relevant industry standards, applicable thereto. In the event of a change in legal or regulatory requirements or industry standards from time to time, the Vendor shall be required to do all that is necessary for complying with the same, at the Vendor's expense.

2.2.13.3 If a particular mode or means of containment is required for temporary storage, prior to removal and disposal, of any used (wholly or partially), damaged or expired Equipment, including any by-products or residue thereof, the Vendor shall at its own expense provide the Company with the means to so contain the used, damaged or expired Equipment, and such instructions and training as may be necessary for the used, damaged or expired Equipment to be properly stored in full compliance with all legal, regulatory and safety requirements, as well as all relevant industry standards, as may from time to time be applicable thereto.

2.2.13.4 The Vendor accepts that the Company relies on the Vendor to ensure full compliance with any applicable legal and regulatory requirements in relation to the temporary storage, removal and disposal of the Equipment pursuant to **Clause 2.2.13.1**, and the making of any request or the provision of any instruction by the Company in relation to the same shall not in any way prejudice or affect the reliance placed by the Company on the Vendor, or the responsibility of the Vendor to meet its obligations under **Clause 2.2.13.2**.

2.2.14. INDEMNITY

2.2.14.1 If in the course of the delivery, acceptance, use or operation of the Equipment, or any part or unit thereof, damage to property or death or personal injury occurs or is caused by faulty workmanship in the manufacture of the Equipment, or any part or unit thereof, or the use of sub-standard materials in the manufacture, or defective design, or by any negligence on the part of the Vendor howsoever arising, the Vendor shall keep the Company harmless and indemnified (including legal costs on an indemnity basis) against any and all losses, damage (including without limitation damage to property or death or personal injury), costs or claims arising therefrom or referable thereto and all expenses incurred thereby.

2.2.14.2 The Vendor shall also to the same extent indemnify and keep the Company harmless against any claim arising out of or referable to non-compliance by the Vendor with the provisions of these Terms and Conditions, including without limitation **Clause 2.2.8**.

2.2.15. REMEDIES FOR INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS

2.2.15.1 All royalties and fees whatsoever claimable by or payable to any person, firm, corporation or government for or in connection with any Intellectual Property Rights used in respect of the

Equipment, or any part or unit thereof supplied under a Contract, shall be deemed to be included in the Contract Price.

2.2.15.2 The Vendor warrants in favour of the Company that the Equipment to be supplied to it or any part thereof does not and will not infringe the Intellectual Property Rights of any person. In the event of the Company (including for this purpose, every employee, officer or agent of the Company) being held liable in any way in respect of any claim (whether for damages, account of profits or otherwise) relating to such Intellectual Property Rights arising out of or referable to the Company's acceptance, possession, purchase, use or distribution of the Equipment or any part or unit thereof under this Contract, the Vendor shall indemnify the Company and its employees and officers against all such claims and costs, charges and expenses in respect thereof.

2.2.15.3 Without prejudice to the Company's right to defend a claim alleging such infringement, the Vendor shall, if requested by the Company, but at the expense of the Vendor, defend such claim. The Vendor shall observe the Company's directions relating to the defence or negotiation for settlement of the claim.

2.2.15.4 The Company shall, if requested, and at the Vendor's expense, provide the Vendor with reasonable assistance in the defence of such claim.

2.2.15.5 In the event of any such infringement, the Vendor shall at the Vendor's own expense and in favour of the Company:

- a) procure for the Company the right to continue accepting, possessing, purchasing, using or distributing the Equipment; and/or
- b) modify or amend or procure the modification of the Equipment or infringing part thereof so that the same becomes non-infringing without affecting the capacity and performance of the Equipment; and/or
- c) replace the Equipment or infringing part thereof by other Equipment or part thereof of identical capability and performance and of equivalent quality.

Provided always that such actions as aforesaid shall not prejudice or affect any right of action or remedy of the Company against the Vendor.

2.2.15.6 In the event of any actions being contemplated or instituted for alleged infringement of any Intellectual Property Rights, the Company reserves the right to cancel immediately its Contract for delivery of the Equipment or parts thereof yet to be supplied to the Company and/or return the Equipment or parts thereof already delivered and the Vendor shall compensate the Company with the Contract Price already paid to the Vendor and without prejudice to **Clause 2.2.3.2** the Company reserves its right to purchase the Equipment or parts thereof from other sources without prejudice to all or any of the rights of the Company's rights as contained in these Terms and Conditions and in this Contract.

2.2.16. WARRANTY

2.2.16.1 The Vendor shall provide without prejudice to the rights of the Company under law and in addition thereto a warranty period of a minimum of a **twenty-four (24) months**, or such other period the Company may require in respect of Equipment delivered to it, commencing from the date of delivery of the Equipment (the "**Warranty Period**"), during which period the Vendor

shall within two (2) days after notification by the Company render any necessary repairs to the Equipment on-site, including the replacement of any parts, free of charge.

2.2.16.2 If, in the reasonable opinion of the Company, the repairs and/or replacement of any parts is unable to, or is unlikely to be able to, restore the Equipment to satisfactory working condition, or if such repair and/or replacement will take an unacceptably long period of time, the Vendor shall deliver to the Company a replacement for the Equipment free of charge within one (1) week of notification from the Company of the same.

2.2.16.3 If the Vendor is unable to replace the Equipment within the stipulated time period under **Clause 2.2.16.2**, the Vendor shall procure free of charge a suitable and satisfactory temporary replacement for the Equipment within one (1) week of notification from the Company, which shall be at the disposal of the Company until a permanent replacement for the Equipment is delivered to the Company.

2.2.16.4 The Vendor warrants to the Company that spare parts and consumables for the Equipment will be available for a period of at least seven (7) years from the date of delivery of the Equipment. If these become unavailable as a result of product obsolescence, the Vendor undertakes to provide economically and functionally viable alternatives. The cost of any spare parts and consumables supplied and/or used in the course of any repairs performed on the Equipment pursuant to this **Clause 2.2.16** during the warranty period shall be deemed to be included in the Contract Price.

2.2.16.5 The provisions of **Clause 2.2.3** shall apply *mutatis mutandis* to the delivery of any replacements for the Equipment.

2.2.17. TITLE OF EQUIPMENT

2.2.17.1 The Vendor represents, warrants and undertakes to the Company that it has full legal and beneficial title to the Equipment, free of any form of encumbrance, prior to delivery of the same to the Company.

2.2.17.2 The Vendor also represents and warrants to the Company that title to the Equipment shall pass from the Vendor to the Company, free of all encumbrances, upon delivery in accordance with **Clause 2.2.3**.

2.2.18. RISK

2.2.18.1 Irrespective of the passing of title as provided under **Clause 2.2.17**, risk of loss or damage in respect of the Equipment shall not pass until the Equipment have been delivered to the Company in accordance with **Clause 2.2.3** above.

2.2.19. PAYMENT

2.2.19.1 The Vendor shall within seven (7) days of the delivery of the Equipment or part thereof submit to the Company the commercial invoice(s), delivery note(s) and such other documents as may be required by the Company for the Contract Price payable for such delivered Equipment. Where so required by the Company, the Contractor shall split any invoice into two (2) or more invoices and/or provide such breakdown in respect of such invoice, as the Company may notify.

2.2.19.2 Unless otherwise provided for in the relevant RFP Documents or agreed as between the parties, the Company shall, within thirty (30) days of the delivery of the Equipment or part thereof, pay the Contract Price for such delivered Equipment upon the presentation by the Vendor of the commercial invoice(s), delivery note(s) and such other documents as may be required by the Company, **PROVIDED** that such payment shall not affect the Company's right to reject any of the equipment for non-compliance with this Contract, or the Vendor's responsibility to replace defective or damaged equipment on an immediate basis (and the provisions of **Clause 2.2.3.2** above as to the Company's right to obtain Equipment from an alternative source shall *mutatis mutandis* apply) and shall be without prejudice to the Company's accrued rights as against the Vendor.

2.2.19.3 The Contract Price excludes GST payable on the supply of the Equipment, and the Company shall upon making payment of any part of the Contract Price, make payment in respect of GST payable thereon.

2.2.19.4 In making payment of the Contract Price in accordance with this **Clause 2.2.19**, the Company shall have the right to set off against the Contract Price any amounts which may be owing to the Company from the Vendor.

2.2.19.5 Payments made by the Company to the Vendor may be effected by way of GIRO, cheque, banker's draft, cashier's order or such other means as the Company may notify the Vendor in writing from time to time. Where payment of any amount by the Company is made by GIRO, the amount shall be deemed to be paid to the Vendor when such amount has been deducted from the relevant GIRO account of the Company, regardless of whether the corresponding amount has been credited to the GIRO account of the Vendor.

2.2.20. ASSIGNMENT & SUBCONTRACTING

2.2.20.1 The Vendor shall not subcontract, transfer or assign this Contract or any part, share or interest therein without the written consent of the Company.

2.2.20.2 The Company shall be entitled to subcontract, transfer or assign this Contract or any part, share or interest therein, at its sole discretion.

2.2.21. FORCE MAJEURE

2.2.21.1 Subject to the provisions of these Terms and Conditions, the Vendor shall not be liable for any failure or delay to comply with the Vendor's obligations under this Contract where such failure is caused solely and directly by an Act of God or by any riot, civil commotion, strike, lockout or other labour disturbance, or by any fire, war, acts of foreign enemies or perils of the sea or other perils (other than delays caused by the Vendor or the Vendor's sub-contractors) beyond the control of the Vendor (each an "**Force Majeure Event**"). The Vendor shall immediately notify the Company in writing of any force majeure event on the Vendor being aware that such force majeure event would cause it to fail or delay in complying with its obligations, **PROVIDED** that the Vendor shall in any event use its best endeavours at all times and notwithstanding the occurrence and/or continuation of any force majeure event to satisfy its obligations to the Company whether in whole or in part. For the avoidance of doubt, the preceding best endeavours obligation will require the Vendor with respect to any force majeure event that prejudices the Vendor's ability to deliver the Equipment only because of lack of or reduced supplies of the Equipment to fill the requirements of the Company on a priority basis.

2.2.21.2 In any event mentioned in **Clause 2.2.21.1** the Vendor shall, subject to the obligations of the Vendor therein set out, for the duration of such force majeure event, be relieved of any obligation under this Contract but only to the extent that the same is directly prevented or delayed by such force majeure event;

PROVIDED that the provisions of this Contract shall remain in force with regard to all other obligations under this Contract which are not affected by such force majeure event;

AND FURTHER PROVIDED that the Company may, while the relevant force majeure event continues, attempt to source for the Equipment from any alternative source and to the extent that it is successful shall not be obliged to purchase the same from the Vendor but is entitled to do so, and should the event or force majeure event continue for any significant duration of time such that the Company believes in good faith that its interests would be better served in a termination of this Contract that it be entitled to do so by notice in writing to the Vendor, whereupon all unfulfilled purchases of the Equipment (otherwise than arising from or in connection with a breach by the Vendor, in which case the relevant provisions dealing with such breach shall apply) shall be deemed cancelled without any liabilities to either the Vendor or the Company and the Vendor shall within fourteen (14) days from such notice refund any excess advance payment to the Company after deducting the cost of delivered Products at prices stated in this Contract.

2.2.22. TERMINATION

- 2.2.22.1 The Company may at anytime, by giving thirty (30) days' notice to the Vendor, terminate this Contract with respect to any outstanding hardware and/or software which have not yet been delivered in accordance with **Clause 2.2.3** without being liable therefore in damages.
- 2.2.22.2 If the Vendor is in default in the performance of this Contract with the Company, or in the performance of any other contract arising from the same RFP Proposal by which the Vendor entered into this Contract, or fails to fulfil any part or obligation under this Contract or such contract, the Company shall have the right to terminate this Contract and such other contract with the Vendor forthwith, after notification to the Vendor of its default, without being liable therefore in damages.
- 2.2.22.3 Upon termination of this Contract under this **Clause 2.2.22**, the purchase by the Company from the Vendor of the Equipment shall be deemed cancelled in respect of all hardware and/or software which have not been delivered in accordance with **Clause 2.2.3**, and the Vendor shall have no claim whatsoever against the Company in respect of these undelivered hardware and/or software.
- 2.2.22.4 In the event of termination under this **Clause 2.2.22**, the Vendor shall refund and repay to the Company any advance payment received from the Company without prejudice to the Company's right to claim for damages under this Contract, including without limitation compensation for increased costs in obtaining the Equipment from other sources.
- 2.2.22.5 The provisions of this Agreement that are contemplated to be enforceable after the termination of this Agreement shall survive the termination of this Agreement.

2.2.23. VARIATION OF CONTRACT

- 2.2.23.1 No variation in the terms of this Contract shall apply thereto unless such variation has first been accepted in writing by both the Vendor and the Company.
- 2.2.23.2 Without prejudice to the generality of **Clause 2.2.23.1**, the Vendor shall not, in respect of this Contract, supply any upgraded or improved models or variants in substitution of the Equipment, or vary the Contract Price, without the prior agreement in writing of the Company.

2.2.24. BANKER'S GUARANTEE OR PERFORMANCE BOND

- 2.2.24.1 The vendor shall prior to commencement of this Contract provide a security deposit or obtain a banker's guarantee or a performance bond from such bank, and in such form and substance acceptable to the Company, of a value no less than ten per cent (10%) of the total annual contract value, of this Contract, as security for the performance of all its obligations under this Contract, including the payment of liquidated damages under **Clause 2.2.7**.
- 2.2.24.2 Where the security deposit, banker's guarantee or performance bond provided or obtained by the Vendor pursuant to **Clause 2.2.24.1** is of a duration less than the Warranty Period, the Vendor undertakes to renew such banker's guarantee or performance bond prior to expiry, for the remaining duration of the Warranty Period.
- 2.2.24.3 In the event the Banker's Guarantee is likely to or may expire at any time during the Contract Period for whatever reason, Supplier shall without demand, secure a renewal thereof or obtain a fresh Banker's Guarantee for the same amount and on the same terms as the expiring Banker's Guarantee and deposit the same with SGH. If such renewal or fresh Banker's

Guarantee is not deposited with SGH [30] days before the expiry date of the expiring Banker's Guarantee, SGH shall have the right to call upon the bank to pay the sum stated therein.

2.2.25. DISPUTE RESOLUTION

2.2.25.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be submitted to mediation at the Singapore Mediation Centre in accordance with its rules and procedures. If and to the extent that such dispute has not been settled by such mediation within fifteen (15) days of the commencement of such mediation, it shall be

- (i) referred to and finally resolved by arbitration in Singapore at the Singapore International Arbitration Centre ("**SIAC**") in accordance with the Domestic Arbitration Rules of SIAC for the time being in force, which rules are deemed to be incorporated by reference to this **Clause 2.2.25**; or
- (ii) at the sole option of the Company, be submitted to the Courts of Singapore, which jurisdiction the Vendor hereby irrevocably submits to.

2.2.25.2 The tribunal shall consist of one (1) arbitrator to be appointed by the Chairman of the SIAC.

2.2.25.3 The commencement of any mediation, arbitration or court proceedings under this **Clause 2.2.25** shall in no way stop, delay or affect the performance of the obligations of the Vendor under this Contract which shall continue without interruption except insofar as such obligations relate to the subject matter of such proceedings.

2.2.25.4 All mediation, arbitration and court proceedings shall be in the English language.

2.2.26. APPLICABLE LAW

2.2.26.1 This Contract is deemed to be made in Singapore, and will be subject to and governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose. The application of the United Nations Convention on Contracts for the International Sale of Goods 1980 to each Contract is hereby expressly excluded.

2.2.27. LANGUAGE

2.2.27.1. All business relating to this Contract, both written and oral, shall be conducted in the English language.

2.2.28. RELIANCE

2.2.28.1. The Vendor accepts that the Company relies on, inter alia, the skill and judgement of the Vendor in relation to the design, description, manufacturing, quality, reliability, function, suitability and performance of the Equipment to be provided, as well as all representations and warranties, written or oral, including those contained in these Terms and Conditions, given by the Vendor, its servants or agents to the Company.

2.2.28.2. The inspection of the Equipment by the Company or any representative thereof shall not in any way prejudice or affect the reliance placed by the Company on the Vendor as provided in Clause 2.2.28.1.

2.2.28.3. Neither the exhibition or demonstration of the Equipment by the Vendor to the Company nor the inspection of the Equipment by the Company or any representative thereof shall in any way prejudice or affect the reliance placed by the any on the Vendor as provided in **Clause 2.2.28.1**.

2.2.29. INSOLVENCY

2.2.29.1. The Company may at any time by notice in writing immediately determine this Contract or any unperformed balance of this Contract, without compensation to the Vendor in any of the following events:

- a) if the Vendor being an individual or where the Vendor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors;
- b) if the Vendor, being a company, shall pass a resolution or the Court shall make an order that the company shall be wound up (otherwise than for the purposes of amalgamation or reconstruction), or if a receiver or manager on behalf of a creditor shall be appointed, or shall propose to the company for a composition in satisfaction of its debts or a scheme of arrangement of its affairs or application to the Court for the appointment of a judicial manager, or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding order; or
- c) if the Vendor is unable to pay its debts as and when they fall due, or is considered by the Company in its reasonable opinion to be in an adverse financial situation or is otherwise unable to fulfil its obligations under this Contract;

PROVIDED always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Company.

2.2.29.2. Any termination under **Clause 2.2.29.1** above shall cancel the purchase by the Company from the Vendor of the Equipment in respect of all hardware/software which have not been delivered in accordance with **Clause 2.2.3**, and shall discharge the parties from any liability for further performance of this Contract, and the Company shall be repaid immediately any sums previously paid under this Contract (whether paid by way of a deposit or otherwise) and to recover from the Vendor the amount any loss or damage sustained or incurred in the Company as a consequence of such termination.

2.2.30. CONFIDENTIALITY

2.2.30.1. All communications from the Company and its officers, representatives and agents to the Vendor or the Vendor's representatives, agents or servants (collectively, the "**Vendor's Agents**") and all information and other material supplied to or received by the Vendor, regardless of whether the same are marked "confidential" unless the same is in the public domain shall be kept confidential by the Vendor and the Vendor shall ensure that the same shall be kept confidential by each and every of the Vendor's Agents unless or until respectively compelled to disclose by judicial or administrative procedures or in the opinion of its counsel, by other requirements of law, or the recipient can reasonably demonstrate that (a) it is or part of it is, in the public domain, whereupon, to the extent that it is a public, this obligation shall cease or (b) it is required to be furnished to any regulatory agencies as part of a public flotation exercise involving the Vendor, and in such cases, this obligation shall cease only to the extent required under the respective circumstances, and provided that the Vendor notifies the Company promptly of the same and the extent of disclosure that the Vendor or the Vendor's Agents will be effecting.

2.2.31. AUTHORISED REPRESENTATIVE

2.2.31.1. For the purposes of this Contract, the Company shall be represented solely as follows, unless otherwise notified to the Vendor:

Materials Management Department
c/o Singapore General Hospital Pte Ltd
Block 8 Level 1,
Outram Road, Singapore 169608

and the Vendor agrees that all notices or other communication in relation to this Contract shall be directed only to the attention of the above representative of the Company and not to any other personnel of any other department of the Company.

2.2.31.2. All notices or other communication between the Vendor and the Company for the purposes of this Contract shall be with the representative of the Company set out in or notified in accordance with **Clause 2.2.31.1**. No other personnel, employee, officer, agent or contractor of any of the Company shall be authorised to issue any notice or communication or make any representation in relation to this Contract.

2.2.32. ACCOUNT MANAGER AND DELIVERY STAFF

2.2.32.1. The Vendor shall appoint a suitably qualified account manager ("**Account Manager**") to supervise and coordinate all aspects for the supply of the Equipment and all matters relating to this Contract. The identity and particulars of the Account Manager must be notified to the Company in writing and accepted by the Company prior to appointment.

2.2.32.2. For the duration of his appointment as Account Manager, the Account Manager shall be deemed to be the agent of the Vendor, with full authority granted by the Vendor to handle all matters and make all decisions pertaining to this Contract. Any communications made to the Account Manager shall be deemed to have been made to the Vendor.

2.2.32.3. In the event that the Account Manager or any deliveryman is on an off day, or on leave or medical leave, or leaves the employ of the Vendor, or is otherwise unable to perform his duties in respect of this Contract, the Vendor must immediately appoint a suitable replacement, provided that the designation of any proposed replacement must also be notified to and accepted by the Company in writing prior to his appointment.

2.2.32.4. The Vendor shall, at the request of the Company, replace the Account Manager and deliveryman or their replacements within three (3) calendar days of notice from the Company if he is deemed to be unsuitable by the Company at its sole discretion. The proposed appointment of any replacement Account Manager must be notified to and approved by the Company in writing prior to appointment.

2.2.32.5. For the avoidance of doubt, each Account Manager shall remain the employee of the Vendor. The Vendor shall remain responsible for the wages, Central Provident Fund contributions, insurance, and staff welfare benefits for each Account Manager appointed by the Vendor pursuant to this **Clause 2.2.32**.

2.2.33. REQUIREMENTS FOR VENDOR'S PERSONNEL

2.2.33.1. The Vendor undertakes to the Company that all Vendor's Personnel shall, in performing their duties in relation to this Contract (whether on the premises of the Company or otherwise), observe the security and safety requirements of the Company, and comply with such instructions or rules and regulations as may be issued by the Company from time to time.

2.2.34. NOTICES

2.2.34.1. Any notice or other communication sent by the Company shall be in writing, and shall be delivered personally, or sent under registered mail cover to the Vendor's address as specified in the Vendor's RFP Proposal, or sent by electronic transmission to the email address of the Vendor as specified in the Vendor's RFP Proposal.

2.2.34.2. Any notice or other communication sent by the Vendor to the Company shall be in writing, and shall be delivered personally, or sent under registered mail cover, or sent by electronic transmission to the Company at the address or email address (as the case may be) specified in **Clause 2.2.31.1** or such other address or email address as may be notified to the Vendor from time to time.

2.2.34.3. Any notice or communication shall be deemed to have been duly served immediately if delivered personally or transmitted error-free by electronic transmission, or two business days after posting if delivered under registered mail cover.

2.2.35. REASONABLENESS

2.2.35.1. The Vendor acknowledges that the Clauses stated herein are reasonable and that the Vendor accepts the same on an informed basis after having (where it deemed necessary) consulted its own advisers.

2.2.36. WAIVER

2.2.36.1. In the event the Company should waive any of its rights under this Contract, the Company shall be deemed to have waived those rights only on that particular occasion, and shall have the right to assert in full its rights on any subsequent occasion.

2.2.37. SEVERANCE

2.2.37.1. The illegality, invalidity, unenforceable of any provision herein shall not effect the legality or enforceability of any other provision.

2.2.38. GIFTS, INDUCEMENTS AND REWARDS

2.2.38.1. The Company shall be entitled to determine this Contract and to recover from the Vendor the amount of any loss resulting from such determination, if the Vendor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract with the Company or for showing or forbearing to show favour to any person in relation to any contract with the Company, or if the like acts shall have been done by any person employed by the Vendor or acting on its behalf (whether with or without the knowledge of the Vendor) or if in relation to any contract with the Company, the Vendor or any person employed by him or acting on his behalf shall have committed any offence under Chapter IX of the Penal Code, Chapter 224 of Singapore or under the Prevention of Corruption Act, Chapter 241 of Singapore or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under the Penal Code or the Prevention of Corruption Act.

2.2.39. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

2.2.39.1. Any person who is not a party to this Contract (whether or not such person shall be named, referred to, or otherwise identified, or form part of a class of persons so named, referred to or identified, in this Contract) shall have no right whatsoever under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore to enforce this Contract or any of its terms.

2.2.40. STATUTORY RIGHTS AND REMEDIES

2.2.40.1. Nothing herein shall derogate from the Company's statutory or common law rights and remedies.

2.2.41. HEALTH SCIENCE AUTHORITY (HSA) REGULATORY REQUIREMENTS

2.2.41.1 The Vendor shall ensure compliance with Health Sciences Authority (HSA) regulatory requirements. This includes compulsory registration for all products under the risk classification A, B, C and D as of 1 Jan 2012. The products belonging to all risk classifications, excluding exempted medical devices specified by HSA in GN-22, proposed by the vendor under this RFP, must be registered and approved by HSA under the Health Products Act (Chapter 122D) - Health Products (Medical Devices) Regulations 2010.

2.2.42. TRIPARTITE GUIDELINES ON FAIR EMPLOYMENT PRACTICES

2.2.42.1 The Vendor is required to adopt the **Tripartite Guidelines on Fair Employment Practices** as advised by Tripartite Alliance for Fair Employment Practices and to ensure workers are

accorded the terms and conditions as stipulated under the Employment Act. In addition, workers are to be given a set of their employment contract stating clearly the working hours, the remuneration, the benefits and etc as recommended by the Tripartite Guide on Responsible Outsourcing.

2.2.43. PERSONAL DATA PROTECTION ACT

2.2.43.1 Vendor acknowledges that Institution Personal Data is the property of the Company and the Company retains all rights, title and interest to Institution Personal Data. Vendor agrees and undertakes, and shall procure that its personnel, agents and sub-contractors (together with Vendor, each a "Data Handler") agree and undertake, as follows:

- (a) any collection or use of Institution Personal Data shall be strictly for the provision of the Products/Services under the Contract to the Company ("Permitted Purposes");
- (b) to the extent that any of the Data Handlers collects, uses or discloses Institution Personal Data, such Data Handler shall at its own expense ensure that all necessary consents in accordance with applicable law have been obtained from the relevant individuals;
- (c) each of the Data Handlers shall, in respect of any Institution Personal Data collected, used, disclosed, accessed and/or processed comply with any reasonable requests which the Company may provide from time to time;
- (d) Upon the termination or expiry of the Contract, each of the Data Handlers shall deliver to the Company all records relating to any Institution Personal Data which it has collected, used or disclosed in connection with the Contract, and thereafter at its expense return, delete, or destroy such Institution Personal Data as required by applicable law; and

Vendor shall defend, indemnify and hold harmless Institution, from and against any claim, action, demand or complaint, as well as all liabilities, penalties, losses, costs, damages and expenses which Institution or its related corporations may suffer in connection with any breach by any Data Handler of Clause 2.2.41 or any Data Handler's failure to comply with the PDPA.

Vendor shall ensure that all Data Handlers keep complete and proper records relating to all collection, use and disclosure of the Institution Personal Data, all consents relating thereto, and shall upon reasonable notice by the Company provide unrestricted access to such records.

For the purposes of the Contract,

- (a) "PDPA" shall refer to the Personal Data Protection Act (Act 26 of 2012 of Singapore), as may be amended and modified from time to time; and
- (b) "Institution Personal Data" means any personal data, as defined in the PDPA, collected by Vendor for the purposes of the Contract; or by the Company and/or its related corporations, their agents and representatives, and third party service providers and disclosed to Vendor for the purpose of the Contract.

2.2.44. TOUTING FOR BUSINESS

2.2.44.1 The vendor shall not, and shall ensure that its personnel, agents and sub-contractors do not, hawk, tout or solicit for business and/or customers to any of company's premises without company's express written consent.