



# Hyr Medical – Provider Terms & Conditions

*Last Updated: 05/13/2020*

## **0. Preamble**

0.1 Capitalized terms used in these Terms and Conditions are defined in §15 below. To use the Software Product, you must click "I AGREE" when prompted during account sign-up. Do not click "I AGREE" unless you intend to enter into a legally binding and enforceable contract. If you click "I AGREE", these Terms and Conditions will constitute a legally binding and enforceable contract. That contract will be between you and Hyr Medical. Upon clicking "I AGREE", which constitutes your electronic execution of the legally binding and enforceable contract between you and Hyr Medical, you will be bound by these Terms and Conditions.

## **1. License Terms; Access.**

1.1 Hyr Medical hereby grants the Software License to the Provider.

1.2 After the Acceptance Date, Hyr Medical will activate the Provider Login. The Provider shall maintain the Provider Login in confidence, may not share the Provider Login with any other party whatsoever and may not authorize or otherwise allow any other party to use the Software Product or any part thereof (whether directly or indirectly). The Provider shall immediately notify Hyr Medical of any actual or suspected breach or improper use or disclosure of the Provider Login or the Software Product.

## **2. Fees.**

2.1 The Provider is entitled to a Provider Fee [represents: hours worked + travel lump sum], which Provider Fee shall be the only payment the Provider will receive in connection with the provision of services on behalf of Medical Facilities to which such Provider Fee applies. The Provider may not be entitled to, and may not seek, from Hyr Medical and/or any Medical Facility reimbursement for any of the Provider's fees, costs, expenses or any other amounts incurred by the Provider in providing services on behalf of Medical Facilities.

2.2 The Provider hereby appoints Hyr Medical as the Provider's limited payment collection agent solely for the purpose of accepting the Provider Fee for each Medical Facility to which the Provider provides services on behalf of a Medical Facility via the payment processing functionality facilitated by Hyr Medical. The Provider acknowledges that any payment made by a Medical Facility to Hyr Medical will be considered the same as if payment was made directly to the Provider by such Medical Facility.

2.3 After providing services on behalf of a Medical Facility, the Provider shall submit a Time Sheet. After receiving a properly completed and submitted Time Sheet from the Provider and approval of the Time Sheet from the Medical Facility, Hyr Medical shall invoice the Medical Facility referenced in such Time Sheet. Hyr Medical shall remit, or cause to be remitted, to the Provider the Provider Fee within 30 days of Time Sheet

approval. Such Provider Fee shall be delivered to the street address or post office box provided by the Provider to Hyr Medical or via ACH direct deposit.

### **3. Provider Acknowledgements.**

3.1 The Provider expressly acknowledges (a) that the Provider's provision of services on behalf of Medical Facilities creates a direct business relationship between the Provider and each such Medical Facility, (b) that Hyr Medical is not responsible or liable for the actions or inactions of a Medical Facility in relation to the Provider, the Provider's provision of services on behalf of Medical Facilities, (c) the Provider shall have the sole responsibility for any obligations or liabilities to any Medical Facility or third parties that arise from the Provider's provision of services on behalf of Medical Facilities, (d) that the Provider is, and the Provider shall be, solely responsible for taking any and all precautions as may be reasonable and proper (including maintaining adequate insurance that meets the requirements of all applicable laws) regarding the Provider's provision of services on behalf of Medical Facilities and (e) that Hyr Medical may release and/or deliver to a Medical Facility in anticipation of, and/or in furtherance of, the Provider's provision of services on behalf of Medical Facilities the Provider's Contact Information and/or any information or documentation related to the Provider's license, certification, permit, approval, authorization, other legal requirement and/or policies of insurance applicable to the Provider's providing services on behalf of Medical Facilities.

3.2 The Provider expressly acknowledges (a) that Hyr Medical's provision to the Software License creates a direct business relationship between Hyr Medical and the Provider, (b) that Hyr Medical does not, and may not be deemed to, direct or control the Provider generally, in the Provider's performance according to these Terms and Conditions and/or in the Provider's provision of services on behalf of Medical Facilities, (c) that the Provider retain the sole right to determine when, where, and for how long the Provider will utilize the Software Product, (d) that the Provider retains the sole right to determine if the Provider provides services on behalf of Medical Facilities, (e) that the Provider retains the option, via the Software Product, to accept and/or decline a Medical Facility's request that the Provider provide services on behalf of a Medical Facility, (f) that Hyr Medical has no right to require the Provider to (1) display any names, logos or colors while the Provider provides services on behalf of Medical Facilities and/or (2) wear a uniform or any other clothing displaying any specific names, logos or colors, (g) that the Provider has complete discretion (1) whether or not to provide services on behalf of Medical Facilities and/or (2) whether or not to otherwise engage in other business or professional activities. For the avoidance of doubt, the Provider expressly acknowledges that the Provider understands that the Provider retains the complete right to (h) use other software application services in addition to the Software Product and (i) engage in another occupation or business.

3.3 Hyr Medical may deactivate the Provider Login, and/or otherwise restrict the Provider's use of the Software Product, (a) if the Provider breaches, or is alleged to have breached, a covenant, representation or warranty made in these Terms and Conditions or fails to perform, or comply with, the Provider's obligations according to these Terms and Conditions, (b) if the Provider disparages Hyr Medical or any of the Medical Facilities, (c) if the Provider's acts or omissions cause harm to Hyr Medical or any Medical Facility, as determined by Hyr Medical in its sole discretion and/or (d) if the Provider fails to satisfy and/or meet any of the requirements placed upon the Provider in these Terms and Conditions, (e) if the results of the background check or credentialing process present Hyr Medical with sufficient doubt and risk regarding the quality of the Provider's work. This is based on the judgement of Hyr Medical's Provider peer review committee.

#### **4. Licensure and Insurance.**

4.1 At all times, the Provider shall (a) hold and maintain all licenses, certifications, permits, approvals, authorizations, other legal requirements and/or policies of insurance applicable to the Provider's providing services on behalf of Medical Facilities, (b) possess and hold the appropriate and current/up-to-date levels of training, expertise and experience to provide services on behalf of Medical Facilities in a professional manner with due skill, care and diligence and (c) maintain high standards of professionalism, service and courtesy.

4.2 The Provider acknowledges that the Provider may be subjected to certain background and other record checks from time to time in order to qualify to provide, and remain eligible to provide, services on behalf of Medical Facilities and hereby consents to Hyr Medical obtaining the same.

4.3 To ensure the Provider's compliance §§4.1 and/or 4.2, the Provider shall (a) provide to Hyr Medical written copies of any and all licenses, certifications, permits, approvals, authorizations and/or legal requirements applicable to the Provider's providing services on behalf of Medical Facilities and (b) provide to Hyr Medical written evidence of all of the same as they are renewed, (c) allow Hyr Medical to review such any and all licenses, certifications, permits, approvals, authorizations and/or legal requirements from time to time and (d) allow, and/or complete any documentation necessary to permit Hyr Medical to independently verify all such licenses, certifications, permits, approvals, authorizations and/or legal requirements from time to time and in any way that Hyr Medical deems appropriate in its sole discretion.

#### **5. Representations & Warranties.**

5.1 The Provider hereby represents and warrants to Hyr Medical that, as of the Acceptance Date, the Provider has the full right, power and authority to enter into, and fully perform its obligations according to, these Terms and Conditions.

5.2 Hyr Medical hereby represents and warrants to the Provider that, as of the Acceptance Date, (a) it has the full right, power and authority to enter into, and fully perform its obligations according to, these Terms and Conditions, (b) it has the full right, power and authority to grant to the Provider the rights and licenses described herein and (c) it has not knowingly infringed upon the intellectual property rights of any third party or knowingly misappropriated the trade secrets of any third party in granting the Software License to the Provider.

#### **6. Relationship of the Parties**

6.1 Except as otherwise expressly provided in §2.3 with respect to Hyr Medical acting as the Provider's limited payment collection agent, the relationship between the Parties is solely that of independent contracting parties. The Parties expressly that (a) these Terms and Conditions are not an employment agreement, (b) these Terms and Conditions do create an employment relationship, whether between Hyr

Medical and the Provider, between a Medical Facility and the Provider or otherwise and (c) no joint venture, partnership or agency relationship exists between Hyr Medical and the Provider.

6.2 The Provider has no authority to bind Hyr Medical and the Provider may not hold out the Provider, or any other, as an employee, agent or authorized representative of Hyr Medical. Where, by implication of mandatory law or otherwise, the Provider may be deemed an agent or representative of Hyr Medical, the Provider shall indemnify, defend and hold harmless Hyr Medical from and against any claims by any person or entity based on such implied agency or representative relationship.

## **7. Restrictive Covenants.**

7.1 The Provider may not, for so long as these Terms and Conditions are in effect, and 1 year after it is terminated, solicit or induce, or attempt to solicit or induce, any other Provider using the Software Product, and/or employee or affiliate of Hyr Medical, to discontinue using the Software Product and/or leave Hyr Medical for any reason whatsoever and may not hire or solicit the services of any such Provider, employee or affiliate.

## **8. Indemnification by Hyr Medical.**

8.1 Hyr Medical shall indemnify, defend and hold harmless the Provider from and against any liabilities, costs, fees and/or damages that arise out of any Provider Claim, provided, however, that In the event an Provider Claim alleges Hyr Medical made a misrepresentation in clause (c) of §5.2, Hyr Medical shall have the right to terminate the Software License as to that portion, or those portions, of the Software Product contemplated in such Provider Claim and (a) procure for the Provider the right to use that portion, or those portions, of the Software Product contemplated in such Provider Claim and/or (b) provide a non-infringing substitute that would not give rise to an Provider Claim, provided, however, that any exercise of such right may not be deemed to limit the applicability of any other limitation on liability set forth in these Terms and Conditions.

8.2 The Provider shall notify Hyr Medical of each Provider Claim as soon as the Provider is aware of its existence and deliver to Hyr Medical any and all documents in the possession of, or otherwise known to, the Provider and related to the Provider Claim. Hyr Medical may control the defense and/or settlement of any Provider Claim, provided that, if applicable, Hyr Medical may not settle any such Provider Claim without the obtaining a release of the Provider from such Provider Claim. If the defense and/or settlement of any Provider Claim is compromised by the failure of the Provider to comply with the provisions of this §8.2, the Provider shall be liable, to the extent of such failure, for the expenses, costs and/or damages incurred by the Provider.

8.3 Notwithstanding that set forth in §8.2, neither the Provider nor any third party may seek indemnification from Hyr Medical for any Provider Claim that asserts the Software Product infringes upon the intellectual property rights of a third party if (a) the Provider and/or any third party acting on behalf of either of the same failed to install or apply, or failed to have installed or applied, any Update or Upgrade and such assertion of infringement would be, or would have been, invalidated or could not have been brought, or would not have been successful, if such Update or Upgrade was installed or applied, (b) the Provider and/or any third party acting on behalf of either of the same used or uses the Software Product in a manner (1) inconsistent with the

provisions of these Terms and Conditions and/or (2) contrary to its intended use and or purpose and/or (c) such assertion of infringement relates solely to information provided by the Provider to Hyr Medical.

## **9. Indemnification by the Provider.**

9.1 Provider shall indemnify, defend and hold harmless Hyr Medical from and against any liabilities, costs, fees and/or damages that arise out of any Hyr Medical Claim.

9.2 Hyr Medical shall notify Provider of each Hyr Medical Claim as soon as Hyr Medical is aware of its existence.

## **10. Limitations on Liability; Remedies.**

10.1 THE SOFTWARE PRODUCT IS PROVIDED BY HYR MEDICAL ON AN "AS-IS" BASIS. ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED OR CONTRACTUAL OR STATUTORY, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITATION, HYR MEDICAL NEITHER REPRESENTS AND WARRANTS, NOR COVENANTS, THAT (a) THE OPERATION AND/OR USE OF THE SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, (b) THE SOFTWARE PRODUCT WILL PERFORM IN EVERY OPERATING ENVIRONMENT, (c) ALL DEFICIENCIES OR ERRORS IN THE SOFTWARE PRODUCT ARE CAPABLE OF CORRECTION OR (d) THE SOFTWARE PRODUCT MEETS THE REQUIREMENTS OF ANY PARTY WHATSOEVER. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED.

10.2 HYR MEDICAL AND ITS AFFILIATES DO NOT GUARANTEE THE AVAILABILITY OR UPTIME OF THE HYR MEDICAL SERVICES OR SOFTWARE PRODUCT. THE PROVIDER ACKNOWLEDGES THAT THE SOFTWARE PRODUCT MAY BE UNAVAILABLE AT ANY TIME AND FOR ANY REASON, THAT THE SOFTWARE PRODUCT MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND THAT HYR MEDICAL IS NOT, AND MAY NOT BE HELD, RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES, LIABILITIES OR LOSSES RESULTING FROM SUCH PROBLEMS.

10.3 IN NO EVENT MAY HYR MEDICAL'S AGGREGATE LIABILITY TO THE PROVIDER FOR ANY CLAIM ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE SOFTWARE FEES WITHHELD BY HYR MEDICAL FROM THE SERVICE FEES TO BE REMITTED TO THE PROVIDER IN THE CALENDAR YEAR IN WHICH ANY SUCH CLAIM IS, OR ALL SUCH CLAIMS ARE, BROUGHT. HYR MEDICAL MAY BE LIABLE FOR DAMAGES ONLY IF IT FAILS TO EXERCISE ORDINARY CARE AND IT SHALL BE DEEMED TO HAVE EXERCISED ORDINARY CARE IF ITS ACTION OMISSION IS IN CONFORMITY WITH COMMERCIALY REASONABLE PRACTICES.

10.4 HYR MEDICAL MAY NOT BE HELD LIABLE TO THE PROVIDER OR TO ANY THIRD-PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING

LOST OR ANTICIPATED REVENUES OR PROFITS) ARISING FROM ANY CLAIM RELATING DIRECTLY OR INDIRECTLY TO THE AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT OR TORT (WHETHER UNDER A THEORY OF NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), EVEN IF AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY IS ADVISED OF THE LIKELIHOOD OR POSSIBILITY THEREOF.

10.5 EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY HAS RELIED UPON THE LIMITATIONS ON LIABILITY SET FORTH IN THIS §10 AND, BUT FOR THEIR INCLUSION HEREIN, WOULD NOT HAVE ENTERED INTO THE AGREEMENT.

## **11. Confidentiality.**

11.1 Each Party acknowledges that it may have access to, or may be exposed to, directly or indirectly, Confidential Information.

11.2 Each Party acknowledges that (a) all Confidential Information shall remain the exclusive property of the Party disclosing it, (b) it may not use Confidential Information of the other Party for any purpose except in furtherance of performing according to these Terms and Conditions, (c) it may not disclose Confidential Information of the other Party to any third party, except as may be necessary to perform according to these Terms and Conditions and (d) it shall return or destroy all Confidential Information of the Party disclosing it upon the termination of these Terms and Conditions or at the request of the other party (subject to applicable law and, with respect to Hyr Medical, its internal record-keeping requirements).

11.3 Notwithstanding that set forth above in this §11, Confidential Information may not be deemed to include any information to the extent it (a) is or becomes part of the public domain through no act or omission on the part of the Party receiving it, (b) was possessed by the Party receiving it prior to the Acceptance Date without an obligation of keeping it confidential, (c) is disclosed to the Party receiving it by a third party having no obligation of confidentiality with respect thereto or (d) is required to be disclosed pursuant to law, court order, subpoena or governmental authority, provided the Party receiving it notifies the Party disclosing it thereof and provides the Party disclosing it a reasonable opportunity to contest or limit such disclosure.

## **12. Privacy Policy.**

12.1 Subject to applicable law, Hyr Medical may, but may not be required by the Provider to, provide to Medical Facilities, insurance companies, governmental authorities and/or regulatory agencies information (including personal information (e.g., information obtained about the Provider through any background check) and any Hyr Medical Data) about the Provider or the Provider's provision of services on behalf of a Medical Facility: (a) if there is a complaint, dispute or conflict, between the Provider and a Medical Facility, (b) to enforce the terms of these Terms and Conditions, (c) if doing so is required in Hyr Medical's sole discretion or by applicable law or regulatory requirements, (d) if doing so is necessary in Hyr Medical's sole discretion to (1) protect the safety, rights, property or security of Hyr Medical or any third party, (2) to protect the safety of the public for any reason, including the facilitation of insurance claims, (3) to detect, prevent or otherwise address fraud, security or technical issues, (4) to prevent or stop activity that, Hyr Medical, in its sole discretion, may consider to be, or to pose a risk of being, illegal, unethical or legally actionable or (e) if doing

so is required or necessary, in Hyr Medical's sole discretion, for insurance or other purposes related to the Provider's ability to qualify, or remain qualified, to use the Software Product.

12.2 The Provider acknowledges that Hyr Medical may retain the Provider's personal data for legal, regulatory, safety and/or other purposes after these Terms and Conditions are terminated. Hyr Medical collect the Provider's personal data during the course of the Provider's application for, and use of, the Software Product or may obtain information about the Provider from third parties. Such information may be stored, processed, transferred, and accessed by Hyr Medical, third parties and service providers for business purposes, including for marketing, lead generation, service development and improvement, analytics, industry and market research, and such other purposes consistent with Hyr Medical's legitimate business needs. By using the Software Product, the Provider expressly consents to such use of such data.

12.3 Hyr Medical reserves the right to share shift completion milestones achieved by one Provider on the platform with another Provider on the platform if and only if the Provider made a referral that led to the Provider joining Hyr Medical and then completing shifts. The reason for sharing this information is for management of Hyr Medical's various current and planned referral programs.

### **13. Rights in the Software Product.**

13.1 The Provider shall (a) use the Software Product in accordance with these Terms and Conditions, (b) promptly report to Hyr Medical any flaws, errors, bugs, defects or other problems in or with the Software Product that it identifies, (c) notify Hyr Medical of any change to the Provider's Contact Information and (d) comply with the provisions of Hyr Medical's privacy policy.

13.2 All right, title and interest in and to each of the following is, shall be and at all times shall remain the exclusive property of Hyr Medical and any third-parties whose software programs may have been, or may be, incorporated into the Software Product: (a) the Software Product, (b) any software, software modifications, derivative works, processes, and other intellectual property rights relating to data processing and information technology developed or held by either Party from its use of the Software Product and (c) all copyright, trademark, patent, trade secret and intellectual property rights in the Software Product. Hyr Medical, on behalf of itself and any third parties with software that may have been, or may be, incorporated into the Software Product, reserves all of its, and all of such third parties', rights in the same.

### **14. Term & Termination.**

14.1 These Terms and Conditions shall remain in full force and effect during unless and until it is terminated according to this §14.

14.2 Either Party may terminate these Terms and Conditions at any time by providing the other Party notice of such termination no sooner than 7 days prior to the effective date of such termination.



14.3 Immediately upon the termination of these Terms and Conditions, the Provider may have no further right, title or interest in the Software Product or any part thereof, including any license in either of the same. No termination of these Terms and Conditions may have any effect on the Provider's appointment, according to §2.3, of Hyr Medical as the Provider's limited payment collection, Hyr Medical's right, according to §2.4, to deduct the Software Fee from the Service Fee or Hyr Medical's obligation, according to §2.5, to remit, or cause to be remitted, the Service Fee less the Software Fee.

14.4 The provisions of §§4.3, 6, 7, 8, 9, 10, 11, 12, 13 and 14.3, the provisions of this §14.4 and, as and where applicable, the provisions of §§15 and 16 shall survive any termination of these Terms and Conditions.

## 15. Defined Terms.

"Acceptance Date" means the date as of which the Provider clicked "SUBMIT" to accept these Terms and Conditions.

"Agreement" means the Provider Agreement entered into by and between Hyr Medical and the Provider.

"Confidential Information" means Hyr Medical Confidential Information and Provider Confidential Information.

"Contact Information" means (a) with respect to the Provider, the email address the Provider provided to Hyr Medical, and (b) with respect to Hyr Medical, info@hyrmed.com.

"Hyr Medical" means Hyr Medical Inc., a Delaware corporation.

"Hyr Medical Claim" means a claim for damages resulting from any material inaccuracy or breach of the representations and warranties made by the Provider in §5.1, any breach of a covenant made by the Provider in these Terms and Conditions and/or any failure by the Provider to perform, or comply with, the Provider's obligations according to these Terms and Conditions.

"Hyr Medical Confidential Information" means (a) information relating to these Terms and Conditions that is not generally known to the public or that constitutes a trade secret, (b) information that is owned, developed or otherwise acquired by Hyr Medical, including Hyr Medical's financial data, business plans, customer information, software, programming, systems and use documentation, technical information, technology, designs, ideas, inventions, data, data formats and files, and all copies and tangible embodiments thereof, (c) the Software Product, (d) Hyr Medical Data, (e) the Provider Login and (f) any software, software modifications, derivative works, processes, configurations, system referenced data, procedures and other intellectual property rights relating to data processing and information technology developed or held by Hyr Medical in the performance of its obligations according to these Terms and Conditions.

"Hyr Medical Data" means all data related to the Provider's access and use of the Software Product, including all data related to the Provider's provision of services on behalf of a Medical Facility.

"Medical Facility" means a facility that provides medical services to the public.

"Party" means either Hyr Medical or the Provider.

"Provider" means the individual accepting these Terms and Conditions by clicking "I AGREE".

"Provider Claim" means a claim for damages resulting from any material inaccuracy or breach of the representations and warranties made by Hyr Medical in §5.2, any breach of a covenant made by Hyr Medical



in these Terms and Conditions and/or any failure by Hyr Medical to perform, or comply with, Hyr Medical's obligations according to these Terms and Conditions.

"Provider Confidential Information" means (a) information relating to these Terms and Conditions that is not generally known to the public or that constitutes a trade secret and (b) information that is owned, developed or acquired by the Provider, including the Provider's financial data, business plans, customer information, software, programming, systems and use documentation, technical information, technology, designs, ideas, inventions, data, data formats and files, and all copies and tangible embodiments thereof.

"Provider Login" means the identification and password that enables the Provider to use and access the Software Product.

"Provider Fee" means the amount the Hyr Medical is obligated to pay the Provider based upon agreed upon cost per hour, day or consult, plus, any pager and call-back rates.

"Service Fee" means the amount the Medical Practice is obligated to pay Hyr Medical based upon agreed upon cost per hour, day or consult, plus, any pager and call-back rates. Medical Practice shall pay Hyr Medical the Provider Fees plus a 20% markup on the Provider Fees.

"Software License" means a limited, nonexclusive and nontransferable license for the Provider to use the Software Product in accordance with these Terms and Conditions.

"Software Product" means the Hyr Medical software-based marketplace that allows Providers to identify, and to be engaged as independent contractors by, one or more Medical Facilities, including all Updates and all Upgrades.

"Time Sheet" means a record of the services provided by the Provider on behalf of a Medical Facility delivered by the Provider to Hyr Medical according to the method required by Hyr Medical.

"Travel Lump Sum" means lump sum allowance paid to the Provider and based on the distance between the Provider's residential zip code and the Medical Facility's zip code.

"Update" means any update, feature release (e.g., 2.0 to 2.1), patch release (e.g., 2.0.1 to 2.0.2), maintenance release, bug fix or modified form of the Software Product that performs comparable or improved functionality and which is not an Upgrade.

"Upgrade" means any new version or major release (e.g., 2.0 to 3.0) of the Software Product, including any changes to the Software Product that (a) substantially increase the speed, efficiency or ease of use of the Software Product or (b) add additional capabilities to, or otherwise improve the functions of, the Software Product.

## **16. General Provisions.**

16.1 Each Party shall comply in all material respects with all applicable laws in performing its obligations according to these Terms and Conditions.

16.2 Any notice required or permitted to be delivered to either of the Parties according to these Terms and Conditions shall be delivered according to such Party's Contact Information and deemed effective upon delivery. Notice of any change to the Contact Information shall be given according to this §16.2.

16.3 These Terms and Conditions constitute the entire agreement between the Parties as to the subject matter hereof and supersedes all prior documents, negotiations and drafts of such parties with respect to such subject matter, whether written or verbal. No provision of these Terms and Conditions may be construed against either Party by reason of the drafting or preparation thereof.

16.4 Any term of these Terms and Conditions may be amended, waived, terminated or discharged by Hyr Medical at any time provided that Hyr Medical notifies the Provider of any such amendment before such amendment takes effect. The failure of either Party to insist upon the performance of any of the terms or conditions contained in these Terms and Conditions, and the failure of either Party, to exercise any right hereunder, may not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such rights.

16.5 If any provision of these Terms and Conditions is held to be unenforceable, the Parties shall renegotiate each such provision in good faith in order to maintain the economic position enjoyed by each Party prior to such holding with respect to each such provision rendered unenforceable. If the Parties cannot agree upon an enforceable replacement for such provision, then (a) such provision shall be excluded from these Terms and Conditions, (b) the balance of these Terms and Conditions shall be interpreted as if such provision were so excluded and (c) thereafter, these Terms and Conditions shall be enforceable in accordance with its terms.

16.6 Neither Party may assign its rights or obligations according these Terms and Conditions, in whole or in part, by operation of law or otherwise, without the other Party's consent, such consent to not be unreasonably withheld, provided, however, that Hyr Medical may assign its rights and/or obligations according to these Terms and Conditions without the Provider's consent if such assignment is made as part of the purchase of all or substantially all of that Party's business or as part of a merger, consolidation or reorganization there. Any attempt to assign any right or obligation according to these Terms and Conditions other than in accordance with this §16.6 shall be null and void and of no legal force or effect. These Terms and Conditions shall be binding upon and shall inure to the benefit of the parties successors and permitted assigns.

16.7 Neither Party may be held liable for its failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including governmental requirements, inability to obtain required export licenses, work stoppages, fire, civil disobedience, embargo, war, terrorism, riots, rebellions, earthquakes, strikes, floods, water and the elements, inability to secure equipment, raw materials or transport or similar occurrences.

16.8 Unless the context clearly requires otherwise, (a) the singular shall be deemed to include the plural and vice versa, (b) reference to any agreement, document or instrument shall be deemed to refer to such agreement, document or instrument as may be amended or modified and in effect from time to time, (c) "hereunder," "hereof," "hereto" and words similar thereto shall be deemed references to these Terms and Conditions as a whole and not to any particular provision hereof, (d) the words "include" and "including" shall

be deemed to mean “without limitation” and shall be interpreted not to limit the generality of any description preceding such term, (e) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding” and (f) any reference to a “§” or “§§” in these Terms and Conditions shall be construed as a reference to a section of these Terms and Conditions.

16.9 Neither these Terms and Conditions nor any provision contained herein may be construed as creating or constituting a partnership, joint venture or agency relationship between the Parties. The relationship created hereby is strictly that of licensor and licensee. For the avoidance of doubt, neither Party has the power or authority to, and no Party may, assume or create any obligation or responsibility on behalf of the other.

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