

## GYNESONICS GENERAL TERMS AND CONDITIONS

Gynesonics and Customer agree that the following General Terms and Conditions apply to Customer's purchase of or evaluation of any Gynesonics Products.

### 1. Definitions

a. "Gynesonics" is Gynesonics, Inc. with an address of 600 Chesapeake Drive, Redwood City, CA 94063.

b. "Customer" is a licensed healthcare facility intending to procure Products from Gynesonics.

c. "Agreement" is the applicable agreement signed by Customer and Gynesonics pursuant to which Customer has agreed to purchase or evaluate Gynesonics Products and which incorporates these General Terms and Conditions.

d. "Documentation" is operator's and other related manuals, labeling, instructions for use, notifications or other documentation

e. "Data" is System and Software data relating to the use of Gynesonics Products

f. "Disposables" means the RFA Handpiece and Dispersive Electrodes required for each clinical case in which the System is used.

g. "Maintenance" means the activities and other terms as described in Exhibit 1 to the Agreement.

h. "PO" means purchase order

i. "Probe" is the reusable "Intrauterine Ultrasound Probe"

j. "Products" means the System, the Probe, Disposable, and/or other associated accessories.

k. "Software" means the software elements of the Sonata® System

l. "System" means the Gynesonics Sonata® System comprised of an ultrasound tablet, RF generator and cart together with the embedded Software.

m. "System Acceptance" means Customer's acceptance of the System upon delivery to and installation at Customer's designated location and Customer's completion of Exhibit 2 to the Agreement.

n. "Warranty Period" for the System and Probes means 12 months from System Acceptance for the System and Probes and for the Disposable the expiration date identified on the packaging for the Disposable.

### 2. Ordering and Payment

a. **Purchase Orders.** For Product purchases, Customer will provide a PO for Products using Customer forms, which shall specify the quantity, the requested delivery date and any special delivery instructions, shipping instructions or invoicing information. Other than the foregoing information, the terms of a Customer PO will be of no effect and will not amend, modify, alter, change or supplement the terms of this Agreement. Customer may not cancel or modify any PO once Gynesonics ships the requested Products.

b. **Payment Terms.** Gynesonics will invoice Customer for Products delivered. Customer will pay the invoiced amount within thirty (30) days of the date of each invoice. Interest will accrue from the date on which payment is due, at an annual rate of twelve percent (12%) or the maximum rate permitted by applicable law, whichever is lower, from the date due until paid.

c. **Delivery.** Gynesonics will make deliveries on accepted POs based on the PO shipping instructions, using a carrier selected by Gynesonics. Title to and risk of loss and damage to Products will transfer to Customer upon delivery to the carrier. For Systems,

shipping costs will be estimated by Gynesonics and added to Customer's invoice. Gynesonics will pay standard shipping costs for Disposables. Expedited shipping will be charged to the Customer.

d. **Installation.** Gynesonics will use commercially reasonable efforts to deliver System within 10 days of receipt of purchase order. Customer will fully cooperate with Gynesonics to permit Gynesonics to install the System. Upon installation, the Customer will execute the System Acceptance form attached as Exhibit 2 to the Agreement, other than for single day evaluations initiated pursuant to a Field Inventory Transaction agreement.

e. **Taxes.** Customer will pay, or reimburse Gynesonics for the payment of all taxes, levies, withholdings, or similar governmental charges now in force or enacted in the future, and however designated, including related penalties and interest, imposed by any governmental authority on, or measured by, the activities described, except taxes for which Customer has provided a certificate of exemption acceptable to both Gynesonics and the appropriate taxing authority prior to delivery of the Products.

### 3. License, Use

a. **Use of Products.** Customer will ensure the proper use of the Products in accordance with the Documentation, and Customer will ensure the proper management and supervision of the Products including keeping and operating the System in a suitable environment as defined in the Documentation. Gynesonics will provide a copy of the Products' Documentation upon initial System shipment and will provide additional copies, free of charge, on Customer's written request. Customer will not, nor will Customer permit any third party to, modify, disassemble, reverse engineer, alter, or misuse the Products. Prohibited actions include, but are not be limited to: (1) altering the Products in any manner including by adding or subtracting any Customer or third party equipment, hardware, firmware, or software to or from the Products, (2) reconfiguring any of the Products or Software as originally provided to Customer, without Gynesonics' prior written permission, (3) use of any Product other than in conjunction with use of the System, or (4) repairing, refurbishing, modifying or reconditioning the System without Gynesonics' approval. Gynesonics shall not be responsible for any loss of or damage to the Products and/or Software arising out of or in connection with Customer's negligence, misuse or mishandling of the Products and/or Software, Customer's failure to use the Products in accordance with the Documentation, Customer's repair or alteration of the Product other than by Gynesonics' authorized personnel or otherwise caused by the Customer or its officers, employees, agents and contractors ("Misuse"). Misuse includes, but is not limited to: any installation, repair, adjustment, modification, disassembly, alteration, reconfiguration, addition to, subtraction from, or misuse of the System by Customer or any third party without the express written permission of Gynesonics; operation, repair, or maintenance of the System contrary to the Documentation or any written handling, maintenance, or operating instructions supplied by Gynesonics; or use of the System with surgical instruments or accessories that are not the Disposables or Probe. If Customer Misuses the System or if Customer uses the System with any surgical instrument or accessory not made or

approved by Gynesonics in writing, Gynesonics will repair the affected Product at Customer's expense and, in Gynesonics' discretion, may terminate this Agreement. and any such actions void any applicable warranties or extended maintenance services.

b. **License to and use of Software.** Gynesonics grants Customer a non-exclusive, non-transferable, fully paid, restricted license and/or sub-license to use the Software solely as incorporated in the System in machine-executable object code form and solely in connection with the operation of the System as described in the Documentation. Customer may not use, copy, modify, or transfer the Software or any copy thereof, in whole or in part. Additionally, Customer may not reverse engineer, decompile, disassemble, attempt to derive the source code, or otherwise manipulate the Software. The structure and organization of the Software are valuable trade secrets of Gynesonics, and Customer will protect the Software as Gynesonics' Proprietary Information (defined in Section 12). Gynesonics reserves all rights to the Software not expressly granted to Customer. If Customer fails to comply with the requirements of this Section 3(b), Gynesonics may terminate the supply of Disposables and any license granted under this Agreement, and any warranties applicable to the Software will become void.

c. **Acknowledgement of Ownership.** Customer acknowledges that Gynesonics and its third-party licensors shall retain ownership of the Software. Customer shall not do anything inconsistent with such ownership. Without limitation, Customer shall not attack the validity of the Software or the ownership rights of Gynesonics or its third-party licensors in and to the Software and any other rights related thereto.

d. **Customer's Obligations.** Customer shall: (i) Use the Products solely in connection with the treatment of Customer's patients and will not resell or transfer the Products to any third party; and (ii) Ensure the System is kept and operated in a suitable environment; used only for the purposes for which it is designed and operated in a proper manner (including compliance with all safety and usage instructions provided by Gynesonics) by trained competent staff in accordance with the Documentation.

4. **Training.** Gynesonics will provide training in the use of the Products as reasonably necessary for Customer's staff (physicians, nurses, and technicians) to use the Products in accordance with the Documentation. **Prior to their initial clinical application of the Equipment, all physicians are required to be trained on the proper use of the Sonata® system by Gynesonics staff.**

5. **Reprocessing.** Customer is responsible for its own process for cleaning, disinfection, and sterilization of the System's components, as may be required by the Documentation, applicable law and/or regulation.

6. **Maintenance Services.** During the Warranty Period, Gynesonics, directly or through designated service providers, will provide Maintenance for the System, as specified in Exhibit 1 at Gynesonics' cost. Effective as of the first anniversary of the System Acceptance, Gynesonics will provide Maintenance to the System at Customer's cost, pursuant to the terms of a separate Maintenance Agreement.

## 7. **Warranty and Disclaimer**

### a. **Products Warranty.**

i. Gynesonics warrants to Customer that during the Warranty Period the Products will be free from defects in material and workmanship and will conform in all material respects to the Documentation when used in accordance with the Documentation.

ii. Gynesonics' obligations under this Section 7(a) are limited to the repair (as further described in Exhibit 1 to the Agreement) or, at Gynesonics' option, replacement of all or part of the Product(s).

iii. This warranty is void with respect to any claims related to Misuse.

iv. All warranty claims shall be initiated by contacting Gynesonics' Customer Service Department within the applicable Warranty Period and within 30 days of discovery of the suspected non-conformity. Gynesonics must be given reasonable access to and an opportunity to inspect all Products subject to a warranty claim.

v. Gynesonics shall investigate all warranty claims and will make the determination, in its sole discretion, whether the claim is a valid warranty claim or as a result of Customer negligence, misuse or mishandling.

vi. The foregoing expresses Customer's sole and exclusive remedy, and Gynesonics' sole and exclusive liability, for any breach of warranty with respect to the Products by Gynesonics.

b. **No Other Warranties.** **Gynesonics MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THE PRODUCTS AND SERVICE PROVIDED HEREUNDER AND THIS TRANSACTION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES; THEREFORE, THE ABOVE LIMITATION WILL APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW AND SHALL NOT APPLY IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

## 8. **Indemnification.**

### a. **Gynesonics' Indemnification Obligations.**

i. **Gynesonics' Indemnification Obligations.** Gynesonics will indemnify Customer against all liabilities, expenses or damages (including attorneys' fees) actually suffered or borne as a direct consequence of: a) Gynesonics' breach of any provision of this Agreement; and b) any infringement of any third party's patent, trade secret, or copyright attributed to the Products and/or their proper use in accordance with the Documentation. If Customer is prevented from using the Products due to any third party infringement claim, Gynesonics will promptly, at its option and expense, either (1) substitute the Products or any part thereof with non-infringing material that will perform substantially in accordance with the Documentation; (2) obtain the right of Customer to continue to use the Products; or (3) remove the Products related to the third party claim and refund to Customer the purchase price of the Products less reasonable depreciation.

ii. **Indemnification Limitations.** Gynesonics has no obligation under this Section 8(a) to the extent any claim is based upon or arises out of the Customer's Misuse of the Products.

**iii. THE PROVISIONS OF THIS SECTION 8(a) STATE THE SOLE AND EXCLUSIVE OBLIGATIONS OF Gynesonics FOR ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.**

**b. Customer's Indemnification Obligations.** Customer will indemnify, defend and hold harmless Gynesonics against all losses, liabilities, claims (including but not limited to claims for personal injury or death), damages, costs (including attorneys' fees) and expenses of whatever nature arising out of or resulting from Customer's alleged or actual Misuse of the Products or failure to comply with the terms of this Agreement.

**c. Claim Notification Requirement.** A party's indemnification obligations under this Section 8 will not apply unless the indemnified party promptly notifies the indemnifying party of the claim. The indemnifying party will have the right to control the defense or settlement of any claim at its cost and with its choice of counsel provided that the indemnifying party shall not, without the indemnified party's written approval, enter into any settlement which requires the indemnified party to pay the claimant or to admit to any wrongdoing. The indemnified party will provide reasonable cooperation to assist the indemnifying party in the defense or settlement of the claim.

**9. Limitation of Liability.** Except for a breach of the obligations in Sections 2, 3, and 10 and the indemnification obligations of Section 8, and to the extent permitted by applicable law, each party's aggregate liability to the other for claims relating to this Agreement, whether for breach in contract or tort (including negligence), is limited to an amount equal to the amounts paid by Customer under this Agreement for the activity (such as procurement of the Products, Maintenance, or training) giving rise to the claim. Except for a breach of the obligations in Sections 3 and 10 or a party's negligence or willful misconduct, to the extent permitted by applicable law, neither party will be liable to the other for any indirect, punitive, special, incidental, or consequential damages in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data, or other economic advantage), even if that party has been advised of the possibility of such damages. The foregoing limitation of liability does not apply to the Customer with respect to an evaluation of the Products in the event the Customer damages the Products.

**10. Proprietary Information.** Proprietary information includes, but is not limited to, all non-public information (1) of the disclosing party that relates to past, present, or future research, development, or business activities or the results of those activities or (2) that the disclosing party has received from others and is obligated to treat as confidential and proprietary. In addition, Gynesonics' proprietary information includes all information derivable from the System but excluding information that can be learned simply through observation of the operation of the System, the Documentation, Data, and the terms and conditions of this Agreement. Proprietary information does not include information previously known by the receiving party as demonstrated by the receiving party's contemporaneous written records, or information publicly disclosed without breach of an obligation of confidentiality, either before or after the receiving party's receipt of the information. Each party will hold the other party's proprietary information in strict confidence and will not use the other party's proprietary information for any purpose other than in furtherance of the purpose of this Agreement and shall not disclose

such proprietary information to any third party except (1) as expressly authorized in this Agreement, and or (2) as required by law or by court order provided that the party requested to disclose such proprietary information first provides written notice to the other party to permit such party sufficient opportunity to attempt to limit or prevent the disclosure of its proprietary Information. Each party will use at least the same degree of care to protect the other party's proprietary information as such party uses to protect its own information of like kind, but not less than reasonable steps to maintain the confidentiality of the other party's proprietary information.

**11. Miscellaneous**

**a. Compliance with Laws.** The parties shall comply with all applicable laws in connection with this Agreement and the use of the Products, including, without limitation, the provisions of the federal anti-kickback statute, 42 U.S.C. 1320a-7b(b), and all applicable related regulations including those set forth in 42 CFR § 1001.952(h) to the extent Gynesonics provides any discounts as described in Section 11(b).

**b. Discounts.** Customer acknowledges that the Products offered pursuant to this Agreement may be subject to discount programs. The Customer acknowledges that, by law, it is required to disclose, in any cost reports or claims for reimbursement submitted to Medicare, Medicaid, or certain other health care programs, the cost (including, but not limited to, discounts or any other price reductions) of any Product or service purchased under this Agreement and, on request, provide to the U.S. Department of Health and Human Services and any state agencies, any invoices, coupons, statements, and other documentation reflecting such costs for Products. The Customer may be required to report as a discount, for cost reporting purposes, the value of any Product or service listed as \$0.00 on any Gynesonics invoice. Customer agrees, acknowledges and understands that it will not seek reimbursement from Medicare, Medicaid, or other federal or state health care programs for any Products or services it receives from Gynesonics for which Customer is not obligated to make payment to Gynesonics.

**c. Government Program Participation.** Each party represents that it has not been excluded from participating in any federal health care program, as defined in 42 U.S.C. § 1320a-7b(f), nor any other federal or state government payment program, and that it is eligible to participate in the foregoing programs. If either party is excluded or becomes otherwise ineligible to participate in any such program, such party will notify the other party of that event within thirty (30) days.

**d. Termination and Survival.** Section 8 (Indemnification), Section 9 (Limitation of Liability), Section 10 (Proprietary Information) and Section 11 (Miscellaneous), and any other provision which by its nature should survive, will remain in effect notwithstanding the expiration or termination of this Agreement.

**e. Assignment and Subcontractors.** This Agreement will be binding upon the permitted successors and assigns of the parties. Gynesonics may appoint sub-contractors for warranty or maintenance services without the Customer's prior written consent provided that Gynesonics shall be responsible for ensuring its subcontractors comply this Agreement. Neither party may assign this Agreement (including the Software license) without the prior written consent of the other party, except pursuant to a transfer of all or substantially all of a party's assets and business relating to the subject of this Agreement,

whether by merger, re-organization, sale of assets, sale of stock, or otherwise, or a transfer by Gynesonics to an affiliate that accepts all obligations under this Agreement. Any attempt by either party to assign this Agreement or any rights or duties hereunder contrary to the foregoing provision is void.

f. **Force Majeure.** Neither party will be liable for any loss, damage, detention, delay, or failure to perform in whole or in part resulting from causes beyond that party's control including, but not limited to, acts of terrorism, fire, flood, pandemic or other health crisis, earthquake, war, riots, labor disputes, shortage of components, or any governmental law, order, regulation, or ordinance.

g. **Notices.** Any notices given under this Agreement must be in writing and will be deemed given and received five (5) days after the date of mailing, one (1) day after dispatch by overnight courier service, or upon receipt if by hand delivery, or upon completion of confirmed transmission if by electronic mail. Any notices under this Agreement must be sent to Gynesonics or the Customer at the address shown in the preamble above, in both cases to the Chief Executive Officer.

h. **Relationship of the Parties.** The parties' relationship is one of contract, and they are not, and will not be construed as partners, joint venturers, or agent and principal. Neither party is authorized to act for, or on behalf of, the other party.

i. **Entire Agreement; Amendment; Waiver.** This Agreement, including the exhibits, is the entire agreement between Gynesonics and Customer and supersedes any prior agreements, understandings, promises, and representations made either orally or in writing by either party to the other party concerning the subject matter herein, pricing, and the applicable terms. This Agreement may be amended only in writing, signed by both parties. No waiver of any right by either

party under this Agreement will be of any effect unless the waiver is in writing and signed by the waiving party. Any purported waiver not consistent with the foregoing is void.

j. **Data Use.** Gynesonics does not collect any individually identifiable information including health information, protected health information, or any health information (as those terms are defined and used in 45 C.F.R. §164.502 or analogous foreign patient or other privacy laws or regulations, as may be amended from time to time). Customer agrees that Gynesonics may collect specific data relating to the use of Gynesonics Products. Such data may be used for a variety of purposes, including, but not limited to (1) providing support and preventative maintenance of Gynesonics Products, (2) improving Gynesonics Products or services, (3) ensuring compliance with applicable laws and regulations, and (4) providing a general resource for Gynesonics' research and business development. In the event any Data communicated to Gynesonics inadvertently identifies an entity or individual, Gynesonics will not share such Data with any third parties without the entity's or individual's consent, unless required by law or regulatory authorities. In such a case, it will be Customer's responsibility to adopt all the internal measures in order to comply with the relevant obligations set forth by applicable law. Gynesonics will return or destroy such information at Customer's request.

k. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of Delaware, without regard to its conflicts of law provisions which might otherwise direct the application of the laws of another jurisdiction. Each party waives any right to trial by jury in any action arising out of or relating to this Agreement to the fullest extent permitted by applicable law.