

## INCYTES™ LICENSE TERMS AND CONDITIONS

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### TABLE OF CONTENTS

|   |   |
|---|---|
| 1. DOCUMENTS INCORPORATED BY REFERENCE .....      | 3 |
| 2. LIMITED LICENSE .....                          | 3 |
| 2.1. GRANT OF LICENSE.....                        | 3 |
| 2.2. RESPONSIBILITY FOR LOG-IN CREDENTIALS .....  | 3 |
| 2.3. AMENDMENT OF LICENSE AGREEMENT.....          | 3 |
| 2.4. MODIFICATION OF INCYTES™ FUNCTIONALITY ..... | 4 |
| 2.5. LIMITATIONS OF LICENSE .....                 | 4 |
| 2.6. TERMINATION OF LICENSE .....                 | 5 |
| 3. USE OF INCYTES™ .....                          | 5 |
| 3.1. LICENSEE REGISTRATION DATA.....              | 5 |
| 3.2. LICENSEE CUSTOM INFORMATION .....            | 5 |
| 3.3. PROHIBITED ACTIVITIES ON INCYTES™.....       | 6 |
| 4. GDPR-SPECIFIC PROVISIONS .....                 | 7 |

- 4.1. DATA PROCESSOR AND DATA CONTROLLER .....7
- 4.2. DATA SUB-PROCESSOR.....7
- 4.3. PERSONAL DATA.....7
- 4.4. SECURITY, CONFIDENTIALITY AND AUDIT.....8
- 5. HIPAA-SPECIFIC PROVISIONS.....8
  - 5.1. GENERAL.....8
- 6. DISCLAIMERS AND LIMITATION OF LIABILITY .....10
  - 6.1. DISCLAIMERS .....10
  - 6.2. LIMITATION OF LIABILITY .....10
  - 6.3. INDEMNIFICATION.....11
- 7. DATA OWNERSHIP.....11
  - 7.1. PERSONAL DATA.....11
  - 7.2. CLIENT CIRCLE DATA.....11
- 8. MISCELLANEOUS.....12
  - 8.1. ENTIRE AGREEMENT.....12
  - 8.2. DISPUTES .....12
  - 8.3. NOTICES.....12
  - 8.4. OTHER .....12

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## 1. DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated into and deemed a part of this Agreement.

- a. Standard Legal Definitions.
- b. Privacy Policy.

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### 2.1. Grant of License

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- 3.1.2. Licensee is solely responsible for maintaining the confidentiality of its Log-In Credentials, and for any and all statements made and acts or omissions that occur through the use of such Log-In Credentials.
- 3.1.3. Licensor will never ask Licensee for Licensee's password, or disclose it to any third party. Licensor reserves the right immediately and without notice to terminate Licensee's Account if it appears to be accessed by a Person other than Licensee.

### 3.2. Licensee Custom Information

- 3.2.1. Licensee may request Licensor from time to time to include Customization Information as part of Licensee's Account, or otherwise in connection with

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3.2.2. In all events, Licensee warrants and represents to Licensor with respect to such Customization Information that:

3.2.2.1. Licensee owns or has legal rights to use it, and that it grants Licensor a royalty-free, non-exclusive license to use it in connection with Licensee's Account and use of inCytes™;

3.2.2.2. it is accurate to the best of Licensee's knowledge and professional judgment; and

3.2.2.3. Licensee will indemnify and hold Licensor and its Affiliates harmless from any and all claims, including legal costs, arising from the incorrectness of either of the foregoing two subparagraphs.

### **3.3. Prohibited Activities on inCytes™**

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3.3.1.2. infringe on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;

3.3.1.3. constitute unauthorized or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;

3.3.1.4. contain software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party;

3.3.1.5. impersonates the Licensor, or any other Person not legally associated with Licensee; or

3.3.1.6. represent an attempt to copy, decompile, reverse engineer, sell, rent, sub-license or otherwise utilize or appropriate any portion of

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### 4.1. Data Processor and Data Controller

- 4.1.1. Licensor is a Data Processor and a Sponsor and certain other Licensees are Data Controllers as defined in and for purposes of the GDPR.
- 4.1.2. Licensee instructs Licensor to process Personal Data as specified in this License Agreement, and Licensor agrees to follow such instructions and not otherwise to handle or use such Personal Data. Licensor further agrees to comply with any written instructions provided to it by an authorized Licensee with respect to Personal Data.
- 4.1.3. Licensor's Data Protection Officer is Nicolas R. Tierney, who may be contacted at [ntierney@rgnmed.com](mailto:ntierney@rgnmed.com).

### 4.2. Data Sub-Processor

- 4.2.1. Licensor may use as a sub-processor Amazon Web Services ("AWS"), the GDPR-compliant policies of which can be found [here](#).
- 4.2.2. Licensor may in its discretion utilize another sub-processor implementing similar security and other GDPR-compliant measures.
- 4.2.3. The Licensee acknowledges that AWS has put appropriate safeguards in place to protect Personal Data in the event of international transfers of such data. If the Licensee feels at any time that such safeguards are inadequate, its sole remedy is to immediately notify Licensor and to cancel this License.

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- 4.3.1. The inCytes™ platform is so designed that it is not possible for Licensor or any sub-processor to view or access Personal Data. Licensor will never seek access to Personal Data which may be collected by Licensee utilizing inCytes™, nor will Licensor ever ask Licensee or any third party for Personal Data.

- 4.3.2. Licensee agrees never to communicate Personal Data to Licensor at any time for any purpose.
- 4.3.3. In the event Licensor comes into possession of any Personal Data, it has the right immediately to delete it. Pending such deletion, Licensor agrees to take appropriate organizational and technical measure to assist Licensee in responding to requests from individuals to exercise their rights under the GDPR, and to follow any other reasonable instructions from the Licensee.
- 4.3.4. In the event Licensor has in its possession Personal Data at the termination of the License Agreement, it will immediately return it to the Licensee, or delete such information in a secure manner.

#### **4.4. Security, Confidentiality and Audit**

- 4.4.1. Licensor agrees to maintain:
  - 4.4.1.1. measures necessary to meet GDPR requirements regarding the security of processing Personal Data, including technical and organizational procedures such as encryption and pseudonymization;
  - 4.4.1.2. ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - 4.4.1.3. processes for regularly testing and assessing the effectiveness of such measures;
  - 4.4.1.4. the ability to provide Licensee with information demonstrating that Licensor's GDPR obligations are being satisfied; and
  - 4.4.1.5. the ability to allow for audits and inspections carried out by the Licensee, or an auditor appointed by the Licensee.

### **5. HIPAA-SPECIFIC PROVISIONS**

#### **5.1. General**

- 5.1.1. Personal Data includes Protected Health Information as defined by HIPAA. Licensor is the Business Associate and a Sponsor or certain other Licensees are Covered Entities.



- 5.1.2. All of the provisions of this License Agreement, including the GDPR-Specific Provisions provided in the previous section, are incorporated in this section by reference.
- 5.1.3. Licensor agrees to:
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  - 5.1.3.2. Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.
  - 5.1.3.3. Report to Licensee any use or disclosure of Personal Data not provided for by the Agreement of which it becomes aware, including breaches of unsecured Personal Data as required at 45 CFR 164.410, and any security incident of which it becomes aware.
  - 5.1.3.4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Personal Data on behalf of Licensor agree to the same restrictions, conditions, and requirements that apply to Licensor with respect to such information.
  - 5.1.3.5. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
- 5.1.4. Licensee may terminate its License if it determines Licensor has breached a material term of the License Agreement, and has not cured the breach within thirty days of being notified of it by the Licensee.
- 5.1.5. The obligations of Licensor under this Section shall survive the termination of this Agreement.

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### **6.3. Indemnification**

- 6.3.1. Licensors agree to defend, indemnify, and hold Licensee harmless from all liabilities, claims, and expenses, including attorney's fees, that arise from Licensors' material breach of this Agreement. Licensors have the right to assume the exclusive defense and control of any matter subject to indemnification of Licensee, in which event Licensee will cooperate with Licensors in asserting any available defenses.
- 6.3.2. Licensee agrees to defend, indemnify, and hold Licensors and its Affiliates harmless from all liabilities, claims, and expenses, including attorney's fees, that arise from Licensee's material breach of this Agreement. Licensee has the right to assume the exclusive defense and control of any matter subject to indemnification of Licensors, in which event Licensors will cooperate with Licensee in asserting any available defenses.

## **7. DATA OWNERSHIP**

### **7.1. Personal Data**

- 7.1.1. Ownership of Personal Data is specified and governed by law applicable to the Patient and, in some cases, Licensee, provided that under no circumstances shall Licensors have any right or access to, or ownership of, any Personal Data.

### **7.2. Client Circle Data**

- 7.2.1. Licensors shall co-own all Client Circle Data in the absence of specific writing, including an applicable Master Services Agreement, between the Company and the Licensee to the contrary.

## 8. MISCELLANEOUS

### 8.1. Entire Agreement

- 8.1.1. This License Agreement constitutes the entire agreement between Licensor and Licensee and its Affiliates, and supersedes all prior agreements, written or oral, with respect to the subject matter of this License Agreement.
- 8.1.2. The License Agreement may not be amended without the written consent of the Licensor.

### 8.2. Disputes

- 8.2.1. Any disputes relating to matters covered by this License Agreement shall be resolved through binding arbitration pursuant to the rules of the International Centre for Dispute Resolution.
- 8.2.2. This License Agreement shall be governed by the laws of the State of Delaware, United States of America.

### 8.3. Notices

- 8.3.1. All notices to Licensor shall be made to [inCytes@rgnmed.com](mailto:inCytes@rgnmed.com). Notices by Licensor to Licensee shall be made to one or more of the e-mail addresses utilized by Licensee in connection with its Account. Notices relating to GDPR or HIPAA issues shall be made to Licensor's Data Protection Officer, Nicolas R. Tierney, [ntierney@rgnmed.com](mailto:ntierney@rgnmed.com).

### 8.4. Other

- 8.4.1. Any failure by Licensor to enforce or exercise any provision of this License Agreement or related rights shall not constitute a waiver of that right or provision.
- 8.4.2. If any part of this License Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.