

## **IXIARO® BOOSTER DOSE PROGRAM TERMS AND CONDITIONS OF USE**

Effective Date **10/14/2020**

Please read these Terms and Conditions of Use (“**Terms**”) carefully before accessing or using this web-based service for clinicians (the “**Clinician Portal**”) to submit a claim in connection with IXIARO® Booster Dose Program (the “**Program**”).

The Clinician Portal is made available to you by Valneva USA (“**Valneva**” or “**we**,” “**our**,” or “**us**”). By using or submitting claims through the Clinician Portal, each individual user agrees to be bound by these Terms on behalf of himself or herself and the legal entity they represent (collectively “**you**”), which Terms are a legal agreement between us and you.

THESE TERMS CONTAIN DISCLAIMERS OF WARRANTIES, DISCLAIMERS OF LIABILITY, AND A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS FOR RESOLVING ANY DISPUTE WITH EITHER OF US, AS WELL AS AN INDEMNIFICATION PROVISION THAT MAKES YOU RESPONSIBLE FOR CERTAIN LOSSES. PLEASE READ THEM CAREFULLY.

### **1. THESE TERMS**

- 1.1. By accessing or using the Clinician Portal, you represent and warrant that you have the legal right and ability to agree to these Terms and that you have read, understood, and agree to the Terms with the intent to be legally bound by them; and you further represents and warrants that you are an authorized representative of the legal entity and are binding the legal entity to these Terms. If you access the Clinician Portal from outside the United States, you do so at your own risk and are responsible for compliance with the laws of the jurisdiction where you access the Clinician Portal.
  
- 1.2. We reserve the right to make changes to these Terms at any time, in accordance with applicable law. If we make changes to these Terms, such amended Terms will be posted on the Clinician Portal or through some other reasonable method, and such amended Terms will take effect immediately when they are posted. If you do not accept a change, then you are free to stop using the Clinician Portal. Your use of the Clinician Portal following a change to these Terms shall constitute your acceptance of that change. Certain provisions of these Terms may be supplemented or superseded by expressly designated legal notices or terms located on particular pages within the Clinician Portal, and we will use reasonable efforts to make you aware of such legal notices and/or terms.

## 2. DETAILS AND OBLIGATIONS UNDER THE IXIARO BOOSTER DOSE PROGRAM

- 2.1. To use the Clinician Portal, you must complete a registration form or a similar form to create an account. You agree that any individual who creates an account for your practice, or otherwise accesses and/or submits claims through the Clinician Portal, is authorized to do so on your behalf. When you access your account you agree to provide true, accurate, current, and complete information as prompted by the registration form or otherwise requested during the term of these Terms, and to maintain and promptly update that information so as to keep that information true, accurate, current, and complete. Without limitation, you agree to provide true, accurate, current, and complete information about your usual and customary charge for a booster dose of IXIARO. You consent and authorize us to verify the information that you provide, although agree that we have no obligation to do so.
- 2.2. You agree to charge the patient your usual and customary charge for the IXIARO booster dose minus the value of the coupon provided to the patient in connection with the Program (the “**Patient Coupon**”). You agree not to inflate your usual and customary charge for the IXIARO booster dose to account for the value of the Patient Coupon. You agree to promptly notify Valneva if you increase your usual and customary charge for the IXIARO booster dose.
- 2.3. The Program begins on **10/14/2020**. You will not be reimbursed for any services provided before the date on which the Program begins or before you accept these Terms. You will not be reimbursed for any claims that are more than thirty (30) days old or for any claims for doses that will be administered on a future date. .
- 2.4. You will be reimbursed the value of the Patient Coupon plus a \$5.00 administrative fee for each claim of the IXIARO booster dose submitted through the Clinician Portal. You will be paid via direct deposit to the account provided through the Clinical Portal on a monthly basis. Reimbursement for any claim is conditioned on your compliance with these Terms.
- 2.5. Valneva will provide promotional material that you are authorized to use when communicating with your patients about the Patient Coupon. You agree not to make any edits or changes to the material without Valneva’s prior written authorization. You are prohibited from creating or using your own promotional materials to promote the Patient Coupon. You understand and agree that you will not receive any reimbursement for your communications with patients about the Patient Coupon.

- 2.6. You agree that you will not submit a claim for reimbursement under any federal, state, or other governmental program for any booster dose of IXIARO administered under the Program. You agree to instruct patients that they are similarly prohibited from submitting a claim for reimbursement under any federal, state, or other governmental program, for a booster dose of IXIARO if they have received the benefit of the Patient Coupon.
- 2.7. You agree that you will not submit a claim for reimbursement to any non-governmental insurer for the value of the Patient Coupon provided under the Program. You agree to instruct patients that they are similarly prohibited from submitting a claim for reimbursement to a non-governmental insurer for the value of the Patient Coupon provided under the IXIARO booster dose program.
- 2.8. You agree to collect and submit all patient-specific and other information requested by Valneva as a condition of submitting a claim for IXIARO under this Program (“**Submitted Data**”). With respect to any Submitted Data, you agree that your collection, use, submission, sharing, and any other operations performed on the Submitted Data in connection with the Program and any marketing or other activities you conduct related to the Program comply with all applicable federal and state laws and regulations and any privacy notices you have provided to patients. Without limitation, you (a) agree to furnish to patients a privacy notice that reasonably describes Valneva’s collection of the Submitted Data and the use, disclosure, and other handling of the Submitted Information in connection with the Program and as otherwise described in the Clinician Portal Privacy Policy; and (b) agree to procure any patient authorization or consent that is required by law or Valneva reasonably requires in connection with the Submitted Data.
- 2.9. You agree that Valneva and its designees have the right to audit, inspect, investigate, and evaluate all books, records, documents, and other evidence pertaining to your participation in the Program. You agree to retain all books, documents, records, and other information related to a claim for reimbursement through the Clinician Portal for a period of one (1) year following the submission of the claim for reimbursement through the Clinician Portal. This document retention obligation pertains to all records that are related to the claim, including those that had not previously been requested by or submitted through the Clinical Portal.

Valneva retains the right to seek repayment of funds and/or terminate your participation in the Program if it determines that you have violated these Terms.

- 2.10. You agree not to use the Clinician Portal to: (a) upload, post, email, transmit or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise illegal, tortious, or objectionable; (b) impersonate any person or entity, including, but not limited to, an employee of Valneva, or falsely state or otherwise misrepresent your affiliation with a person or entity; (c) transmit or otherwise make available any content that you do not have a right to make available, including any content that infringes another's intellectual property, privacy, or other rights, or that contains a software virus or any other computer code, file or program, which might interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Clinician Portal or any server or network connected to the Clinician Portal or take any action intended or reasonably expected to harm Valneva or any other entity; and/or (e) violate any applicable local, state, federal, or international law.
- 2.11. You are solely responsible for maintaining the confidentiality of your Clinician Portal account information and for restricting access to your devices. You accept responsibility for all activities that occur under all accounts or devices associated with your practice. You agree to immediately notify Valneva at the e-mail address provided below if you have reason to believe there has been any unauthorized use of your Clinician Portal account or password, or any other breach of security related to the Clinician Portal, and you acknowledge that we may not be able to mitigate such unauthorized access or other breach of security until you do so. We may revoke or deactivate your account at any time.
- 2.12. You consent to transact with us electronically and receive legal notices and other communications electronically, either by e-mail, text messaging, push notifications (in accordance with your device settings), or notices posted on the Clinician Portal. You agree that any requirement that a communication be sent to you in writing is satisfied by such electronic communication and that you are responsible for maintaining an Internet browser, mobile device, or computing equipment capable of accessing the Clinician Portal.

2.13. Valneva retains the right to terminate or modify the Program at any time.

### **3. LICENSE AND INTELLECTUAL PROPERTY**

3.1. As between you and us, we own the Clinician Portal, including, without limitation, all software, text, graphics, tools, links, recommendations, and other content or material provided in or through use of the Clinician Portal (all of which form part of and are collectively referred to as the “Clinician Portal” herein), and all worldwide intellectual property rights in the foregoing.

3.2. Valneva grants you a limited, personal, revocable, non-transferable, and non-exclusive right and license to access and use the Clinician Portal for your personal use in accordance with these Terms and solely for its intended use. Any software provided through or used to operate the Clinician Portal is licensed, not sold, to you by Valneva, and such license is limited to object code only. We may notify you, by notice within the software or otherwise, that the software contains software governed by the license of a third party, and you agree to abide by the terms and conditions of the same. Except as expressly permitted herein, you must not, nor enable any other person to, rent, lease, lend, sell, redistribute, sublicense, copy, reverse engineer, decompile, translate, modify, rent, use as a service bureau, lease, sublicense, distribute copies of, adapt, create derivative works based on, or otherwise use the Clinician Portal.

3.3. We, in our sole discretion, may make available updates, upgrades, and/or future versions of or to the Clinician Portal, and such updates, upgrades and/or future versions may not include all previous or existing features, functionality or components of the Clinician Portal. These Terms will govern the use of such updates, upgrades and future versions.

3.4. Any trademark, service mark, logo or trade name contained in the Clinician Portal, whether or not appearing in large print or with the trademark symbol, belongs exclusively to either of us or either of our licensors, and you may not use or display such trademarks without our permission. Nothing in these Terms grants you any right to use any trademark, service mark, logo or trade name of either of ours or any third party, except as reasonable and necessary for promotional materials related to the Program, as discussed in Section 2.5.

3.5. With respect to Submitted Data and any other data, information, files, and content you submit or make available through the Clinician Portal (collectively, “**User**

**Content”**), you grant Valneva and each partner authorized by Valneva to access the User Content a worldwide, perpetual, irrevocable, royalty-free, and non-exclusive license to use such User Content to manage, provide, monitor, repair, improve, analyze and operate the Clinician Portal and for other lawful purposes.

#### **4. WARRANTIES AND DISCLAIMER**

4.1. THE CLINICIAN PORTAL IS PROVIDED ON AN 'AS IS', 'AS AVAILABLE', AND 'WITH ALL FAULTS' BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, WE DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE DO NOT MAKE ANY REPRESENTATION OR WARRANTY THAT THE CLINICIAN PORTAL SHALL BE AVAILABLE AT ALL TIMES OR BE FREE OF ERROR. WE DO NOT MAKE ANY REPRESENTATION OR WARRANTY ABOUT THE SECURITY OF THE CLINICIAN PORTAL OR ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, CURRENTNESS, SUITABILITY, OR TIMELINESS OF INFORMATION AVAILABLE THROUGH THE CLINICIAN PORTAL. YOU ASSUME ALL RISK FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM OBTAINING THE CLINICIAN PORTAL, INCLUDING WITHOUT LIMITATION ANY DAMAGE RESULTING FROM ANY VIRUS.

THE CLINICIAN PORTAL MAY PROVIDE LINKS OR ACCESS TO THIRD-PARTY WEBSITES AND SERVICES, AND WE ARE NOT RESPONSIBLE FOR ANY CONTENT, PRACTICE, OR STANDARD OF ANY SUCH WEBSITE OR SERVICE.

4.2. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM THE CLINICIAN PORTAL SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS. THESE TERMS ARE WITHOUT PREJUDICE TO AND IN NO WAY LIMIT OR SUBSTITUTE ANY OBLIGATIONS THAT MAY BE OWED BY YOU AS A HEALTHCARE PROFESSIONAL UNDER YOUR LICENSE TO PRACTICE,

INCLUDING WITHOUT LIMITATION ANY OBLIGATION OF MEDICAL CONFIDENTIALITY OR UNDER APPLICABLE LAWS.

**5. LIMITATION OF LIABILITY**

5.1. Nothing in these Terms shall limit or exclude any liability that, under applicable law, cannot be limited or excluded.

5.2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND WILL NOT BE LIABLE FOR ANY DAMAGE (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, OR OTHER ECONOMIC ADVANTAGE)) ARISING OUT OF OR IN CONNECTION WITH (A) YOUR ENTRY OF USER CONTENT INTO THE CLINICIAN PORTAL, (B) ANY STATEMENT OR CONDUCT OF ANY THIRD PARTY ON THE CLINICIAN PORTAL, (C) STOPPAGE OF USE BY YOU DURING OR AFTER COMMENCEMENT OF USE OF THE CLINICIAN PORTAL, (D) THE USE OR INABILITY TO USE THE CLINICIAN PORTAL, (E) ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, EFFECT, DELAY OR DEFECT IN OPERATION OR TRANSMISSION, VIRUS, LINE SYSTEM FAILURE, OR LOSS OF USE RELATED TO THE CLINICIAN PORTAL, OR (F) OTHERWISE ARISING OUT OF OR RELATING TO THESE TERMS, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND EVEN IF VALNEVA HAS PREVIOUSLY BEEN ADVISED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE CLINICIAN PORTAL OR THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE CLINICIAN PORTAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR AGGREGATE LIABILITY UNDER THESE TERMS IS LIMITED TO \$100.

**6. INDEMNITY**

6.1. You promise to compensate Valneva fully against any claim or demand, including without limitation reasonable legal fees, made by any third party due to or arising out of your use of the Clinician Portal (including, but not limited to, claims arising out of or in connection with the provision of any healthcare service or related service to

any of your patients), your breach of these Terms, your violation of any applicable law, or your violation of any right of another person or entity.

## **7. TERMINATION AND SUSPENSION**

7.1. You may cease using the Clinician Portal at any time.

7.2. We may terminate these Terms, your access to the Clinician Portal, and/or your participation in the Program immediately for any reason, including without limitation where we have reasonable ground to do so based on: (i) your breach of these Terms; (ii) a request by law enforcement or other government agency; (iii) our discontinuation of or material modification to the Clinician Portal; (iv) an unexpected technical or security issue or problem; and (v) your inactivity. Termination of your account may include (i) removal of access to all offerings within the Clinician Portal, (ii) deletion of User Content associated with or inside your account, and (iii) barring of further use of the Clinician Portal. You agree that any such suspension, change, or termination by us may be made in our sole discretion and that, to the extent permitted by applicable law, neither of us shall be liable to you or any third party for any suspension, change or termination of your account or access to the Clinician Portal for any reason.

7.3. Sections 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 2.13, 3 (except for the first sentence of Section 3.2), 4, 5, 6, 7.2, 8, 9, and this Section 7.3 will survive any termination of these Terms.

## **8. GOVERNING LAW; MANDATORY ARBITRATION**

8.1. PLEASE READ THIS SECTION CAREFULLY BECAUSE IT AFFECTS YOUR RIGHTS. BY AGREEING TO MANDATORY, BINDING ARBITRATION, YOU WAIVE YOUR RIGHT TO LITIGATE DISPUTES THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE YOUR CASE.

8.2. These Terms shall be governed by, and construed in accordance with, the laws of the United States and the State of New York, without regard to the conflicts of law principles thereof. If any clause or provision of these Terms is found to be invalid by any court having competent jurisdiction, the invalidity of such clause or provision shall not affect the validity of the remaining clauses or provisions of these Terms, including but not limited to the class action waiver. You expressly agree that if you dispute the validity or enforceability of the individual arbitration provision and/or



class action waiver in these Terms, you shall bring such dispute in the courts of the State of New York , and you expressly consent and agree to submit to the exclusive personal jurisdiction and venue of such courts.

8.3. All claims arising in connection with your use of the Clinician Portal should be reported and brought to our attention as soon as possible in a written statement delivered to [IXIAROBoosterProgram@vaneva.com](mailto:IXIAROBoosterProgram@vaneva.com). To the maximum extent permitted by law, you permanently and irrevocably waive your rights to bring any claim in connection with your use of the Clinician Portal unless you bring it within one (1) year of the date of the event giving rise to such claim.

8.4. TO THE FULLEST EXTENT PERMITTED BY LAW, ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU, ON THE ONE HAND, AND ANY OF VALNEVA OR ANY OF THE RESPECTIVE AFFILIATES, LICENSORS, OR SUPPLIERS OF EITHER OF US, ON THE OTHER HAND, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY.

YOU AGREE THAT VALNEVA AND YOU ARE EACH WAIVING THE RIGHT TO TRIAL BY A JURY. YOU FURTHER AGREE THAT ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS ONLY AND THAT CLASS ARBITRATIONS, CLASS ACTIONS, AND OTHER REPRESENTATIVE ACTIONS ARE NOT PERMITTED. YOU HEREBY AGREE TO GIVE UP THE ABILITY TO BRING OR PARTICIPATE IN A CLASS ACTION OR OTHER REPRESENTATIVE ACTION IN COURT OR ARBITRATION.

8.5. The arbitration will be administered by the American Arbitration Association (the “**AAA**”) under the Commercial Arbitration Rules (the “**Rules**”) (available from the AAA at [www.adr.org](http://www.adr.org)), as amended by these Terms. The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held at a location that is reasonably convenient to the parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination will be made by the AAA or by the arbitrator. If you are able to demonstrate that the costs of arbitration will be prohibitive as

compared to the costs of litigation, we will, to the extent required to make this Section 8 enforceable, pay as much of your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. The arbitrator will be bound by these Terms, when not in conflict with applicable law, and the arbitrator's decision will be binding and final, subject only to limited right of judicial review provided under the Federal Arbitration Act. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of these Terms, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. If the arbitrator decides that either the substance of your claim or the remedy you asked for is frivolous or brought for an improper purpose, we may use the applicable Rules to determine whether you are responsible for the filing, administrative and arbitrator fees. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in these Terms will preclude you from bringing issues to the attention of federal, state or local government agencies or from seeking public injunctive relief in court where that right cannot be waived under applicable state law.

## 9. GENERAL

- 9.1. These Terms constitute the entire agreement between you and us relating to its subject matter and supersede all prior agreements, undertakings, representations, warranties and arrangements of any nature relating to the same. Each party acknowledges that it has not been induced to enter into these Terms by any representation or warranty other than those contained in these Terms.
- 9.2. You must not use, export or re-export the Clinician Portal contrary to any law of the UK, USA, or any other jurisdiction, including without limitation the Export Administration Regulations of the USA. You represent and warrant that (i) you are not located in a country that is subject to a US Government embargo or that has been designated by the US government as a "terrorist supporting" country; and (ii) you are not listed on any US government list of prohibited or restricted parties.
- 9.3. Each of us may assign these Terms, in whole or in part without notice to you or your consent. No person who is not a party to these Terms shall have any right under any law to enforce any term of these Terms, and no consent is required from any third party to change these Terms. Neither of us shall be in breach of these Terms

or otherwise liable to you as a result of any delay or failure in the performance of either of our obligations under these Terms to the extent that such delay or failure is caused by any occurrence beyond either of our reasonable control including, but not limited to, any act of God, strike, war or sabotage, and the time for performance of the relevant obligation shall be extended accordingly. No failure or delay by either of us to exercise or enforce any right or benefit under these Terms shall be deemed a waiver of such right or benefit nor operate to prevent or limit the future exercise or enforcement of that right or benefit. If any term or condition of these Terms is held invalid, void, or otherwise unenforceable by any court, governmental agency, or authority of competent jurisdiction, the remainder of these Terms shall remain valid and enforceable.

The parties are independent contractors and nothing in these Terms shall be deemed to create any joint venture or agency relationship among the parties, and no party shall have the right to enter into any contract on behalf of, to legally bind, to incur debt on behalf of, or to otherwise incur any liability or obligation on behalf of, the other party.

## 10. CONTACT

10.1. If you have an inquiry regarding the functionality of the Clinician Portal, you may contact Valneva as follows:

Email: [IXIAROBosterProgram@vaneva.com](mailto:IXIAROBosterProgram@vaneva.com)