

## **PROFESSIONAL SERVICES/CONSULTING AGREEMENT**

**Company:** Baxter Healthcare Pty Limited of 1 Baxter Drive, Old Toongabbie NSW 3246, ABN 43 000 392 781 (“**Baxter**”)

**Contractor:** [REDACTED], trading as [REDACTED] of [insert address] (“**Contractor**”)

**Contracting Service Term:** [REDACTED]

**Effective Date:** [REDACTED]

**Baxter and the Contractor agree to enter into this Agreement on the terms contained below:**

1. **Term**

This Agreement commences on the Effective Date and will continue for a period of [REDACTED] year unless terminated earlier in accordance with clause 11 of this Agreement.

2. **Scope of Work**

As Baxter reasonably directs, the Contractor agrees to perform the Services, including achieving the Deliverables and the Milestones, as described in Schedule 1.

This Agreement creates the framework within which the Parties will work together in relation to ongoing requests for and provision of Services.

All Schedules and annexures attached form part of this Agreement.

3. **Compensation**

Baxter will pay the Contractor the fees and expenses, if any, in the amount and on the terms and conditions described Schedule 1.

The Contractor will contribute to or supply any documentation reasonably required by Baxter to record the type and scope of Services provided by the Contractor under this Agreement.

4. **Manner of Performance**

The Contractor and its employees and agents have the requisite expertise, ability, and legal right to render the Services and will perform the Services in an efficient manner.

All obligations imposed on the Contractor under this Agreement shall also apply to its employees and agents involved in the provision of the Services. The Contractor warrants that it will be responsible for the conduct of its employees and agents and will obtain from its employees and agents any contracts which are needed to enforce its obligation under this Agreement.

The Contractor will abide by all laws, rules and regulations that apply to the performance of the Services. The Contractor will comply with all of Baxter's relevant policies in providing the Services, including but not limited to Baxter's Ethics and Compliance Standards for Suppliers attached as Schedule 2, a copy of which the Contractor acknowledges having received, read and understood.

## 5. **Confidentiality**

In the course of performing the Services, the Contractor may receive confidential or proprietary Baxter information, the disclosure of which would not be in Baxter's best interests. The Contractor will keep this information confidential, together with any other information that the Contractor may acquire with respect to Baxter's business, including, but not limited to:

- Information developed by the Contractor for Baxter; and
- Information relating to new products, customers, pricing, know-how, process and practices;

until such time as such knowledge and information otherwise becomes generally available to the public through no fault of the Contractor.

The Contractor will not disclose to others, without Baxter's consent, the fact that it is providing the Services to Baxter, and will not publish any details on the subject of this consulting relationship, without obtaining prior written approval from Baxter. This undertaking to keep information confidential will survive the termination of this agreement.

At the termination of this agreement, the Contractor will return all provided property and information to Baxter.

## 6. **Conflicts of Interest**

The Contractor shall notify Baxter of any interest the Contractor has with any business operating in the Healthcare/Medical Industry in Australia and/or New Zealand, or which may otherwise conflict with the interests of Baxter, immediately upon the Contractor becoming aware thereof.

During the term of this Agreement, the Contractor, whether on his own account or jointly, or as a consultant to or as a partner, agent, trustee, employee, shareholder, member or director, shall not be directly or indirectly interested, engaged or concerned in, or assist financially or any other way, any business which is a direct competitor to Baxter. For the avoidance of doubt, Baxter's direct competitors at the time of entry into this Agreement include legal entities trading under the brand or business names of Abbott, Bayer, Biomed, B Braun,

CareFusion, Covidien, Fresenius Kabi, Fresenius Medical Care, Hospira, Johnson and Johnson Medical, Pfizer, and any related companies, to the extent that these businesses operate in the Healthcare/Medical Industry in Australia and/or New Zealand (together “the **Competitors of Baxter**”).

Should the Contractor commence any relationship with a Competitor of Baxter during the term of this Contract, the Contractor will advise Baxter of any such relationships that arise during the term of this agreement. Baxter will then have the option to terminate this agreement without further liability to the Contractor, except to pay for Services actually rendered.

During the term of this Agreement and for one year after its termination date, the Contractor will not directly or indirectly perform consulting services in the specific area in which the Contractor actually has consulted under this Agreement, for any Competitor of Baxter without obtaining Baxter’s prior written consent.

## 7. **Independent Contractor**

The Contractor is an independent contractor. The Contractor is not an employee of Baxter. The manner in which the Contractor renders the Services will be within the Contractor’s sole control and discretion.

Baxter will not be responsible for the Contractor’s acts, while performing the Services, whether on Baxter’s premises or elsewhere. The Contractor will not have authority to speak for, represent, or obligate Baxter in any way.

The Contractor acknowledges and agrees that it will be responsible for any claim made by its employee and agents under the *Workers Compensation Act 1987 (NSW)*, the *Safety, Rehabilitation and Compensation Act, 1988 (Cth)* or any other relevant Act of the Commonwealth of Australia or of any State or Territory in relation to the performance of Services under this Agreement. The Contractor agrees to indemnify Baxter with respect to any claim that may be made for death, loss, damage or suffering relating to the Contractor’s employees or agents in relation to the performance of Services under this Agreement.

## 8. **Ownership of Developments**

All written materials and other works which may be subject to copyright and all patentable inventions, discoveries, and ideas (included but not limited to any computer software) which are made, conceived or written by the Contractor during the term of this Agreement, and for 90 days after it expires, and which are based upon the Services performed by the Contractor for Baxter (“Developments”) shall become Baxter’s property.

The Contractor agrees to hold all developments confidential in accordance with clause 5 of this Agreement.

9. **Disclosure and Transfer of Developments**

The Contractor will disclose promptly to Baxter each development and, upon Baxter's request and at Baxter's expense, the Contractor will assist Baxter, or anyone it designates, in filing patent or copyright applications in any country in the world. Each copyrightable work, to the extent permitted by law, will be considered a work made for hire and the authorship and copyright of the work shall be in Baxter's name.

The Contractor will execute all papers and do all things, which may be necessary or advisable, in the opinion of Baxter, to prosecute such applications and to vest in Baxter, or its designee, all the right, title and interest in and to the developments. If for any reason the Contractor is unable to effectuate a full assignment of any development, the Contractor will transfer to Baxter, or its designee, its transferable rights, whether they be exclusive or non-exclusive, or as a joint inventor or partial owner of the development.

10. **Disclosures to Baxter**

If during the term of this Agreement, the Contractor discloses any copyrightable works, inventions, discoveries or ideas to Baxter which were conceived or written prior to this Agreement or which are not based upon the Services performed by the Contractor for Baxter under this agreement, Baxter will have no liability to the Contractor because of its use of such works, inventions, discoveries or ideas, except liability for infringement of any valid copyright or patent now or hereafter issued thereon.

11. **Contract Termination**

Baxter may immediately terminate this Agreement by notice in writing if the Contractor:

- (a) Breaches any provision of this Agreement;
- (b) Wilfully fails to discharge its duties or responsibilities under this Agreement;
- (c) Becomes bankrupt or makes arrangement or composition with creditors.

If Baxter terminates this Agreement under one of the above terms, it will only pay the Consultant Fees for provision of Services up to the effective date of termination.

Either Party may terminate this Agreement by giving one months' written notice, provided that in the case of termination by the Contractor, the Contractor shall continue to provide Services in accordance with this Agreement on all existing Projects where the Contractor has already commenced provision of Services,

or where the Parties have already agreed in writing on the terms and budget for the Project.

## 12. **Indemnities**

The Contractor shall indemnify, defend and hold harmless Baxter, its successors, affiliates and assigns from any claims, losses, liabilities, damages or expenses (including without limitation reasonable attorney's fees), whether of a direct, indirect or consequential nature, arising out of or in connection with any negligent or wrongful act or omission or any breach or default by the Contractor under this Agreement, except to the extent that any claim, loss, liability, damage or expense is attributable to act or omission or negligence of Baxter, its successors, affiliates or assigns.

The Contractor shall indemnify, defend and hold harmless Baxter, its successors, affiliates, assigns, and customers harmless from and against any and all claims, liabilities, expenses, losses, judgments, verdicts, court orders or settlements (including costs and expenses of litigation and reasonable attorneys' fees) resulting from any third party allegation that the any deliverables provided under this Agreement infringe such third-party's patent, or any copyright, trademark or trade secret. In addition to the above indemnity, if such a claim threatens Baxter's continued use of such deliverables, materials or Services performed by the Contractor, the Contractor shall at no cost to Baxter either (i) procure for the Baxter the right to continue to use the work performed by the Contractor; (ii) replace or modify the work performed by the Contractor to make its use non-infringing while yielding substantially equivalent results; or (iii) require that Baxter discontinue the use of the infringing work and refund to the Baxter all amounts paid to the Contractor for such infringing work. Baxter reserves any other legal or equitable rights or remedies it may have except to the extent that the claim, liability, expense, loss, judgment, verdict, court order or settlement is based on or relates to Baxter's materials incorporated into deliverables under this Agreement.

## 13. **Insurance**

The Contractor must secure and maintain throughout the performance of the Services and for a period of one year after the Term, appropriate and adequate insurance for:

- (a) public and product liability covering a sum of not less than \$[10] million for each insured event; and
- (b) workers compensation in respect of its employees engaged in performing its obligations under this Agreement to cover its potential liability at common law and pursuant to all applicable workers compensation legislation in New South Wales; and
- (c) professional indemnity with a total aggregate cover of not less than \$[5] million.

The Contractor must provide a copy of a certificate of currency in respect of the above insurance at the commencement of this Agreement and at any other time during the term when reasonably requested by Baxter. The Contractor

shall notify Baxter in writing at least thirty days prior to any cancellation, non-renewal or material change to insurance coverage.

#### 14. **Diversity and Sustainability**

For the purposes of this clause 14, the following definitions apply:

- (a) “**Diverse Activities**” means recruiting, hiring, training, promoting and retaining persons of diverse backgrounds;
- (b) “**Sustainability Activities**” means the use or identification of products and/or services which have a lower impact on the environment or support corporate social responsibility while maintaining quality, functionality and cost competitiveness;
- (c) “**Sustainability Report**” means a report which sets out goals, targets and actions in relation to Sustainability Activities which may include:
  - (i) reducing hazardous materials in products and services;
  - (ii) providing a safe workplace for employees;
  - (iii) reducing waste; and
  - (iv) promoting a diverse and inclusive workplace.

The Contractor agrees to use commercially reasonable efforts to undertake Diverse Activities within its own organisation and in connection with this Agreement and comply with all applicable affirmative action laws.

The Contractor warrants that it prohibits any form of unlawful discrimination in supplying services of the kind contemplated by this Agreement.

The Contractor agrees to support Baxter’s reasonable sustainability initiatives by undertaking Sustainability Activities.

The Contractor must provide Baxter with a written Sustainability Report for each quarter during the Term, identifying all Diverse Activities and Sustainability Activities in which the Contractor participates and in particular which relate to this Agreement during the relevant quarter.

#### 15. **General**

Baxter may assign its rights or obligations under this Agreement, without the Contractor’s prior written consent, to any Baxter affiliate or to a successor to the business or operation of Baxter or any affiliate. Baxter may assign its rights or obligations under this Agreement to any other party which agrees to be bound by all terms and conditions of this Agreement, provided that Baxter obtains the Contractor’s prior written consent, such consent not to be reasonably withheld. The Contractor may not assign its obligations under this Agreement without Baxter’s prior written consent.

This Agreement is the entire agreement between the Parties and supersedes any prior agreement and understandings between the Parties in relation to the subject matter of this Agreement. This Agreement may only be amended by agreement of both Parties in writing. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a

federal state or local government having jurisdiction over this Agreement, the validity of the remaining portion or portions shall not be affected thereby.

The waiver of a breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in not event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

Any dispute that arises under this Agreement shall be dealt with in accordance with the law of New South Wales, and any claim or dispute arising hereunder shall be subject to the jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

**EXECUTED** as an agreement

**EXECUTED** by **BAXTER  
HEALTHCARE PTY LIMITED:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of HR/Procurement Manager

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **CONSULTANT:** (insert  
appropriate execution format)

**SCHEDULE 1 – STATEMENT OF WORK**

<b>Services:</b>	<b>[Specify:]</b>
<b>If applicable, identify by name specific employees of the Contractor to provide the Services.</b>	<b>[Specify:]</b>
<b>Deliverables, if any (including a process for measuring , accepting and time periods for achievement) :</b>	<b>[Specify:]</b>
<b>Specific Tasks/Milestones with scheduled completion dates:</b>	<b>[Specify:]</b>
<b>Hours of work:</b>	<b>[Specify:]</b>
<b>Fees:</b>	<b>[Specify:]</b>

	<p>Hourly rate (if applicable):</p> <p>Fixed fee (if applicable):</p> <p>Payment Schedule:]</p>
<b>Expenses:</b>	<p>[Specify agreed out-of pocket expenses which will be paid at cost, without mark-up:]</p>
<b>Conditions of payment of Fees by Baxter:</b>	<p>Baxter will pay the Contractor within 30 days of the month of invoice, upon receipt, review and approval of the Contractor's invoice which must detail the Services rendered, time spent and fees.</p>

## **SCHEDULE 2- ETHICS & COMPLIANCE STANDARDS FOR BAXTER SUPPLIERS**

These standards apply to individuals/organizations that provide services, raw material, active ingredients, components, finished goods, or other products ("Suppliers"). Where they exist, the Supplier's own written ethics and compliance standards may replace these Standards if they are consistent with these standards and are incorporated into a written agreement between Baxter and Supplier.

### **ADHERANCE TO APPLICABLE LAWS & REGULATIONS**

- Suppliers must comply with the applicable laws, rules, regulations, and ethical standards of the country in which they operate, applicable U.S. laws, as well as these Standards.

### **PROHIBITION OF BRIBES, KICKBACKS, UNLAWFUL PAYMENTS, AND OTHER CORRUPT PRACTICES**

- Suppliers are prohibited from directly or indirectly paying anything of value to a government official in order to:
  - Win or retain business or to improperly influence the act or decision of any government official, political party, candidate for political office, or official of a public international organization;
  - Gain an improper advantage; or
  - Illegally influence the action of any individual, customer, company, or company representative.
- Suppliers are required to keep accurate and transparent records that reflect actual transactions and payments.
- While Baxter observes local business customs and market practices, neither Baxter nor any Supplier shall participate in any corrupt, unethical or illegal practices.

### **ACCURACY OF BUSINESS RECORDS**

- All financial books and records must conform to generally accepted accounting principles.
- Supplier records must be accurate in all material respects.
  - Records must be legible, transparent, and reflect actual transactions and payments.
  - Do not hide, fail to record, or make false entries.

### **INTERACTIONS WITH HEALTHCARE PROFESSIONALS**

- When engaged with healthcare professionals or patients on behalf of Baxter, all suppliers, dealers, distributors, agents and other third parties are must adhere to any industry standard of conduct that apply to them (such as AdvaMed and EFPIA Code of Practice.)
- Any payment or benefit provided to a healthcare professional on behalf of Baxter must comply with the policy for the country or region in which the healthcare professional resides and/or practices medicine.

### **FAIR COMPETITION AND ANTITRUST**

- Suppliers must comply with all applicable laws and regulations regarding fair competition and antitrust.

### **INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION**

- All Suppliers requiring the exchange of confidential information with Baxter are required to execute a confidentiality agreement with Baxter in advance.

- Exchange of confidential information is limited to that required to fulfill contracted performance requirements.
- Suppliers shall not share Baxter's intellectual property or confidential information or any other information that they acquire with respect to Baxter's business (including information developed by Suppliers and information relating to products, customers, suppliers, pricing, costs, know-how, strategies, programs, processes, and practices).
- Suppliers must immediately report unauthorized disclosure of Baxter's confidential information, whether inadvertent or not, through the Ethics & Compliance Helpline at [www.baxter.com/compliance](http://www.baxter.com/compliance).

### **DATA PRIVACY**

- Supplier must abide by applicable data privacy laws and regulations when handling personal information.
- Suppliers must immediately report unauthorized use, disclosure, or loss of Baxter related personal information through the Ethics & Compliance Helpline at [www.baxter.com/compliance](http://www.baxter.com/compliance).

### **EMPLOYMENT PRACTICES GUIDELINES**

- Suppliers must treat Baxter employees with dignity and respect.
- Suppliers must comply with all applicable Employment laws and regulation including statutes prohibiting discrimination in the workplace.
- Suppliers shall not possess, use or sell illegal drugs on Baxter property or perform their work under the influence of alcohol or illegal drugs.
- Suppliers will not produce or manufacture goods or services using forced or indentured child labor. Regular full-time employees are to be at least 18 years of age. Suppliers must disclose the existence of part-time work, summer jobs, or apprenticeship programs for individuals under the age of 18 to Baxter's management.
- Baxter does not permit intimidation or hostility and will not tolerate any behavior from a supplier that might harass, disrupt or interfere with another person's ability to work.

### **CONFLICTS OF INTEREST**

- A conflict of interest arises when personal interests or activities influence, or appear to influence, the ability to act in the best interests of Baxter. Some situations that could cause a conflict of interest include:
  - Having a significant financial investment in any company that competes, does business, or seeks to do business with Baxter. A significant financial interest includes voting control, or an ownership of more than 1% of the outstanding capital of a business, or an investment that represents more than 5% of the investor's total assets.

- Providing similar services for direct competitors of Baxter, with access to confidential or competitive information.
- When family members (or domestic partners, or those personally close to you) work for Baxter, another Baxter supplier, Baxter customer or Baxter competitor.
- Suppliers must disclose any apparent or actual conflicts of interest to Baxter's management. If Baxter management approves an apparent or actual conflict, the approval decision must be documented.

#### **MOBILE DEVICES, ELECTRONIC MEDIA, INTERNET AND E-MAIL USE**

In those circumstances where Suppliers have access to Baxter's electronic environment (Intranet, e-mail, voicemail or other), Suppliers shall:

- Protect Baxter's confidential information and electronic media;
- Encrypt or password protect data;
- Keep mobile devices with you or locked while traveling;
- Comply with local data protection laws;
- Use these tools for Baxter business purposes only; and
- Use these tools consistent with Baxter's Global Acceptable Use of Information and Technology Policy including:
  - Do not knowingly download, view or forward materials of a discriminatory, harassing, threatening, sexual, pornographic, racist, sexist, defamatory or otherwise offensive nature. Electronic media must be primarily used for business purposes.
  - Do not communicate protected information (personal or trade secret) in a way that recognizes the sensitivity of the information, possibility of unauthorized access, and compliance to local data protection laws. Suppliers will be responsible for keeping Baxter-given password(s) secret.
  - Realize that documents, software, e-mails and other web pages could bring damaging computer viruses into Baxter's network. Do not knowingly detach, decompress, run/launch or install any files or programs on Baxter's systems or open attachments that have damaging computer viruses. Do not download or disseminate any material from the Internet unless the copyright owner has provided consent.
  - Adhere to the timing and methods for retention and elimination of Baxter company data stored on electronic media.

#### **TRADE COMPLIANCE**

- Suppliers must comply with the letter and spirit of all applicable import and export controls, sanctions, and other trade compliance laws of the United States and the laws of the applicable country(ies) where the transaction(s) occur(s).

#### **ENVIRONMENT, HEALTH & SAFETY**

- Suppliers are expected to comply with all applicable laws and regulations regarding environment, health and safety.
- Suppliers working with Baxter or onsite at a Baxter location must work in a way that assures their own safety

and the safety of others and in compliance with applicable Baxter and governmental environmental, health and safety requirements. Any emergencies that may impact Baxter must be reported promptly.

#### **GIFTS & ENTERTAINMENT**

Gifts and entertainment are not needed in order to conduct business with Baxter and are highly discouraged.

- The following situations are always inappropriate and are expressly prohibited:
  - Giving a gift, entertainment, or preferred treatment with the intention of trying to influence the decision-making objectivity of a Baxter employee.
  - Offering any gift, entertainment, or preferred treatment while involved in a current purchasing or contracting decision process. (RFI, RFQ, RFP).
  - Any gift of currency including "gift cards".
  - Offering entertainment where the Supplier will not be present/represented (e.g., sports/event tickets).
  - Offering extravagant recreational outings, travel, or lodgings at supplier sponsored events.
- On a rare and infrequent basis Baxter employees may accept very modest gifts, entertainment, or other business courtesies if it helps improve the business relationship and they would be able to reciprocate in equal value.
- Baxter employees are not permitted to solicit suppliers for gifts including gifts to support charitable causes.
- Suppliers shall not offer an opportunity to purchase products, services, or a financial interest to any Baxter employees under terms not available to all Baxter employees.

#### **RESOURCES**

- If you need additional information or guidance on these standards, or wish to report a potential violation, contact Baxter's Ethics & Compliance Helpline [www.baxter.com/compliance](http://www.baxter.com/compliance).
- Additional supplier information can be found at [Baxter.com](http://Baxter.com)

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