

# MyBaxter Insights Portal

## Terms of Use

Last Updated: October 8, 2020

Welcome to the MyBaxter Insights Portal! Please carefully review this Terms of Use Agreement (the “**Agreement**” or the “**Terms**”) that governs your [“**User**,” “**you**” or “**your**”) access and use of the MyBaxter Insights Portal located at insights.baxter.com or available through the MyBaxter Customer Service Portal (the “**MyBaxter Insights Portal**”) provided by Baxter Healthcare Corporation, together with its affiliates and subsidiaries [“**Baxter**,” “**our**,” “**we**,” and “**us**”). By logging in, using, or otherwise accessing the MyBaxter Insights Portal, you acknowledge that you have read, understand, and agree to these Terms. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT ACCESS OR USE THE MYBAXTER INSIGHTS PORTAL.

### General Terms and Restrictions on Use

Subject to these Terms, Baxter grants you a limited, revocable, nonexclusive, nontransferable right to access and make use of the MyBaxter Insights Portal, and MyBaxter Insights Content made available or otherwise accessible through the MyBaxter Insights Portal, solely for the benefit of User and no other commercial purpose. All rights not otherwise expressly granted by these Terms are reserved by Baxter.

You agree not to [i] license, reproduce, duplicate, copy, distribute, transmit, sell, or resell any portion of the MyBaxter Insights Portal; or [ii] use the MyBaxter Insights Portal in outsourcing, time-sharing, or to otherwise commercially exploit or make available to any third party, any portion of the MyBaxter Insights Portal. We may discontinue or alter any aspect of the MyBaxter Insights Portal or remove content from the MyBaxter Insights Portal at any time without prior notice. You agree that we may, under certain circumstances, immediately suspend or terminate your access to or use of the MyBaxter Insights Portal or any part thereof. Such circumstances include [a] breaches or violations of these Terms; [b] discontinuance or material modification to the MyBaxter Insights Portal; [c] unexpected technical or security issues or problems; [d] extended periods of inactivity by a User; or [e] engagement by you in fraudulent or illegal activities. You further agree that such measures shall be taken in our sole discretion and without liability to you or any third party.

### Access

To access and use the MyBaxter Insights Portal, you will need to login using your username [typically your email address] and password for the MyBaxter Portal Center [an “**Account**”). You may also access the MyBaxter Insights Portal if you are logged into the MyBaxter Customer Service Portal by clicking “analytics and insights.”

You acknowledge and agree that you are responsible for maintaining the confidentiality of your username and password associated with your Account and are fully responsible for all activities that occur under your Account, including how you use the information obtained from the MyBaxter Insights Portal. You agree that you will logout of your Account at the end of each session. You are prohibited from sharing your Account with, or assigning your Account to, any other person without our prior authorization. Should you become aware of or suspect any unauthorized use of your Account or your

information changes, you must immediately notify us. You represent and warrant that your access and use of the MyBaxter Insights Portal does not violate or constitute a breach of any other agreement, contract, terms of use, or other legal obligation to which you are subject.

By accessing the MyBaxter Insights Portal, you understand and agree that you are solely responsible for acquiring and maintaining your own equipment and hardware necessary to access and use the MyBaxter Insights Portal, including internet access, and all costs or expenses associated with accessing and using the MyBaxter Insights Portal.

### **MyBaxter Insights Portal Reports**

The MyBaxter Insights Portal gives Users access to certain data and reports about your assigned clinic. Once logged in, you will have options to generate and download various reports including the Premium Service Charge Report, Premium Service Charge Summary, Product Summary Report, Patient Summary Report, No Order Report, and Device Serial Number Report. More information about each type of report is provided in the MyBaxter Insights Portal.

User shall be solely responsible for the creation and maintenance of any data extracted or report created through use of the MyBaxter Insights Portal. User acknowledges that by providing User the ability to create or generate custom reports, Baxter does not control, and is not responsible for, the data or information that you or other Users may input while using the MyBaxter Insights Portal. User represents that User has the necessary rights and permissions to access and use the data and reports available through MyBaxter Insights Portal.

### **Prohibited Uses**

You agree to use the MyBaxter Insights Portal only for lawful purposes and to follow all applicable laws and regulations of the United States and any state in which you reside when using the MyBaxter Insights Portal. Baxter reserves the right to revoke User's privilege to use the MyBaxter Insights Portal or take any appropriate measures to enforce the guidelines set forth herein, if violations are brought to its attention.

While using the MyBaxter Insights Portal, you agree that you shall not: [i] copy, modify, correct, adapt, alter, translate, enhance, or otherwise create derivative works or improvements of the MyBaxter Insights Portal, including any MyBaxter Insights Portal Content; [ii] reverse engineer, decompile, disassemble, or otherwise attempt to learn or gain access to the source code, structure, or ideas upon which the MyBaxter Insights Portal is based; [iii] promote illegal activities, fraudulent schemes, anything objectionable [as determined by us] or otherwise violate any applicable law; [iv] stalk, harass, threaten, or invade the privacy of or engage in predatory behavior towards another User or any other person; [v] post, upload or otherwise transmit any information that is unlawful, harmful, abusive, tortious, profane, indecent, sexually explicit, hateful, or racially, ethnically or otherwise objectionable or intended to offend any person or that is otherwise objectionable to Baxter, in its sole discretion; [vi] use the MyBaxter Insights Portal to post, use, upload, or disseminate content, files, graphics, software, or other material that infringes or misappropriates any trade secret or Intellectual Property Rights, rights of publicity, rights of privacy, or proprietary rights of any party; [vii] take any action to circumvent, compromise, or defeat any security measures implemented on the MyBaxter Insights Portal; [viii] use any manual or automated software, devices, or other processes to "crawl" or "spider" any web pages contained in the MyBaxter Insights Portal [including, without limitation, the use of

robots, bots, spiders, scrapers or any other means to extract data from the MyBaxter Insights Portal]; [ix] upload or otherwise transmit information that contains software viruses or any other malicious code, files, or programs designed to interrupt, disable, alter, harm, or limit the functionality of the MyBaxter Insights Portal or any software, firmware, data, hardware, or system; [x] frame or otherwise simulate the appearance or functions of the MyBaxter Insights Portal or any portion thereof; [xi] use the MyBaxter Insights Portal to gain competitive intelligence about us or develop a competing Product or service; [xii] harvest or otherwise collect, store or use information about other Users; or [xiii] impersonate any person or entity or otherwise misrepresent its affiliation with a person or entity. User further agrees that User shall not assist a third party to do any of the foregoing.

## Privacy

Your privacy and security of information is important to us. Please carefully review our Privacy Policy located at <https://www.baxter.com/policies-positions/global-privacy-policy> for information about how Baxter may collect, use, store, or share information from you. The terms of the Privacy Policy are hereby expressly incorporated into these Terms. You acknowledge and agree that when you use the MyBaxter Insights Portal, Baxter may have access to, or collect, store, or use certain data about you or your use of the MyBaxter Insights Portal in accordance with the privacy practices described in the applicable Baxter Privacy Policy.

## Children

The MyBaxter Insights Portal is not aimed or intended for children under the age of 13. If you are under the age of 13, please DO NOT USE the MyBaxter Insights Portal. By using the MyBaxter Insights Portal, you represent and certify that you are 18 years of age or older.

## Links and Third Party Content

Should the MyBaxter Insights Portal provide links to other websites or resources on the internet maintained by third parties, we encourage you to review any separate terms of use or privacy policy governing the use of those third party websites and resources. You agree that we have no control over and are not responsible for the content or availability of such websites or resources, or for any privacy or other practices of the third parties operating those websites or resources.

## Intellectual Property

All content, including text, graphics, logos, trademarks, button icons, images, video, sounds, software, illustrations, photographs, digital downloads, or other materials provided by Baxter or third parties [collectively, “**MyBaxter Insights Content**”] and all Intellectual Property Rights therein, are the property of Baxter or its third party licensors and protected by U.S. and international laws, unless otherwise expressly stated in these Terms. Except as expressly provided for herein, all MyBaxter Insights Content is the property of Baxter or its third party licensors, and no right, title, or interest in any MyBaxter Insights Portal Content or Intellectual Property Rights therein is transferred to you as a result of your use of the MyBaxter Insights Portal. Except as expressly permitted under these Terms, you may not reproduce, republish, upload, post, transmit, modify, create derivative works from, sell or distribute in any way the MyBaxter Insights Content or Intellectual Property Rights therein. “**Intellectual Property Rights**” mean any and all rights, title, and interest in and to (i) copyrights, derivative works and moral rights thereof; (ii) trademarks, service marks, logos, and trade dress, including all goodwill associated

therewith; (iii) trade secrets, know-how, compositions, techniques; and (iv) patents and inventions whether patentable or patentable, as they exist anywhere in the world.

## DISCLAIMERS

THE MYBAXTER INSIGHTS PORTAL IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. USE OF THE MYBAXTER INSIGHTS PORTAL IS AT USER’S SOLE RISK. BAXTER DOES NOT WARRANT THAT USER’S USE OF THE MYBAXTER INSIGHTS PORTAL WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES BAXTER MAKE ANY WARRANTY AS TO THE SUITABILITY OF THE MYBAXTER INSIGHTS PORTAL FOR ITS INTENDED USE. BAXTER, FOR ITSELF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION, ARISING BY VIRTUE OF CUSTOM OF TRADE OR COURSE OF DEALING, TITLE, NON-INFRINGEMENT, OR TIMELINESS, SUITABILITY, OR ACCURACY IN RELATION TO THE MYBAXTER INSIGHTS PORTAL. USER IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN IN RELIANCE ON THE MYBAXTER INSIGHTS PORTAL OR ANY INFORMATION THEREIN, INCLUDING, WITHOUT LIMITATION, INACCURATE OR INCOMPLETE INFORMATION.

THE MYBAXTER INSIGHTS PORTAL AND THE INFORMATION, DATA, REPORTS, MYBAXTER INSIGHTS CONTENT, OR OTHER CONTENT PROVIDED THROUGH THE MYBAXTER INSIGHTS PORTAL IS FOR INFORMATIONAL PURPOSES ONLY. BAXTER DISCLAIMS, AND YOU AGREE THAT YOU SHALL BE LIABLE FOR, ANY DAMAGES ARISING FROM OR RELATING TO ANY USE OF THE DATA OR REPORTS GENERATED BY YOUR USE OF THE MYBAXTER INSIGHTS PORTAL.

BAXTER USES REASONABLE EFFORTS TO MAINTAIN THE MYBAXTER INSIGHTS PORTAL BUT BAXTER IS NOT RESPONSIBLE FOR ANY DEFECTS OR FAILURES ASSOCIATED WITH THE MYBAXTER INSIGHTS PORTAL, OR ANY PART THEREOF, OR ANY DAMAGES (SUCH AS LOST PROFITS OR OTHER CONSEQUENTIAL DAMAGES) THAT MAY RESULT FROM ANY SUCH DEFECTS OR FAILURES. THE MYBAXTER INSIGHTS PORTAL MAY BE INACCESSIBLE OR INOPERABLE FOR ANY REASON, INCLUDING WITHOUT LIMITATION: (I) EQUIPMENT MALFUNCTIONS; (II) PERIODIC MAINTENANCE PROCEDURES OR REPAIRS; OR (III) CAUSES BEYOND THE CONTROL OF BAXTER OR WHICH ARE NOT FORESEEABLE BY BAXTER.

## Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU EXPRESSLY UNDERSTAND AND AGREE THAT IN NO EVENT WILL BAXTER, ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO USER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, ARISING FROM OR RELATING TO THIS AGREEMENT, THE MYBAXTER INSIGHTS PORTAL, OR USER’S ABILITY OR INABILITY TO USE THE MYBAXTER INSIGHTS PORTAL, ANY INACCURACY OR INCOMPLETENESS OF INFORMATION CONTAINED IN THE MYBAXTER INSIGHTS PORTAL, ANY DELAY OR FAILURE OR ALTERATION OF ANY TRANSMISSION OR DATA, EVEN IF BAXTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER BAXTER NOR ITS AFFILIATES’ OR SUBSIDIARIES’ TOTAL LIABILITY FOR ALL DAMAGES, CLAIMS, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE) EXCEED THE AMOUNT

PAID BY YOU, IF ANY, FOR ACCESSING OR USING THE MYBAXTER INSIGHTS PORTAL. USER AGREES THAT IF USER IS DISSATISFIED WITH THE MYBAXTER INSIGHTS PORTAL, USER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR USER TO DISCONTINUE USE OF THE MYBAXTER INSIGHTS PORTAL AND TERMINATE THIS AGREEMENT IN ACCORDANCE WITH THE TERMS HEREIN.

### Release and Indemnification

You agree to release Baxter, and its subsidiaries and affiliates and their respective officers, directors, and agents, from any and all liability and obligations whatsoever in connection with or arising out of your use of the MyBaxter Insights Portal. If, at any time, you are not satisfied with the MyBaxter Insights Portal, your sole remedy is cessation of use of the MyBaxter Insights Portal.

You agree to defend, indemnify, and hold harmless Baxter, its officers, directors, employees, agents, shareholders, licensors, and suppliers from and against any and all claims, actions, demands, obligations, losses, liabilities, expenses, and costs, including reasonable attorneys' fees arising from [i] your access or use of the MyBaxter Insights Portal; [ii] breach of these Terms; [iii] infringement or misappropriation of any intellectual property or other rights of Baxter or third parties by you; or [iv] any negligence or willful misconduct by you.

### Termination

These Terms are effective upon your acceptance during the login process and continue until terminated as set forth herein. You agree that Baxter may terminate your use of the MyBaxter Insights Portal, as previously described herein, or discontinuing providing any portion of the MyBaxter Insights Portal without notice. You may terminate these Terms at any time by discontinuing your use of the MyBaxter Insights Portal. Upon termination of these Terms, you must cease use of the MyBaxter Insights Portal and destroy all materials obtained via the MyBaxter Insights Portal.

### Dispute Resolution

**Arbitration Agreement.** THIS SECTION AFFECTS YOUR RIGHTS – PLEASE READ CAREFULLY BEFORE AGREEING TO THIS AGREEMENT.

- i. **Mandatory Arbitration.** The parties agree that any dispute, claim, controversy, action, or proceeding arising out of or relating to this Agreement [a “Dispute”] will be determined exclusively by binding arbitration in the State of Illinois before a single arbitrator. The International Institute for Conflict Prevention & Resolution [“CPR”] will administer the arbitration in accordance with the CPR rules. The claimant party filing a demand for arbitration with the administrator of CPR and serving the demand on the opposing party will initiate the arbitration. You and Baxter will select an arbitrator in accordance with the applicable CPR rules within thirty [30] calendar days of the date the demand for arbitration is filed. Except as otherwise required by law, neither you, Baxter, nor the arbitrator may disclose the existence, contents, or results of any arbitration under this Agreement without the prior written consent of you and Baxter. Any award of the arbitrator will be accompanied by a statement of the reasons upon which the award is based. Judgment on the arbitration award may be entered in any court having jurisdiction.

- ii. **No Class Action.** YOU AGREE THAT ANY CLAIM YOU MAY HAVE AGAINST US MAY ONLY BE BROUGHT INDIVIDUALLY AND YOU WILL NOT JOIN SUCH CLAIM WITH CLAIMS OF ANY OTHER PERSON OR ENTITY OR BRING, JOIN, OR PARTICIPATE IN A CLASS ACTION AGAINST US. BY ACCEPTING THESE TERMS, YOU AND BAXTER ARE EACH WAIVING THE RIGHT TO PARTICIPATE IN OR BRING A CLASS ACTION.
- iii. **Time to File.** ANY DISPUTE THAT YOU MAY HAVE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE DISPUTE ACCRUES, OTHERWISE, SUCH DISPUTE IS PERMANENTLY BARRED.
- iv. **Conflict.** If any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the code of procedure established by the CPR, the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein.

## Governing Law

You agree that this Agreement and any dispute arising out of or in connection with this Agreement or MyBaxter Insights Portal will be construed and governed by the laws of the State of Delaware, without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Both Baxter and User consent to the exclusive jurisdiction of the state and federal courts in Chicago, Illinois in connection with all actions arising out of or in connection with this Agreement, and User waives any objections that venue in Chicago, Illinois is an inconvenient forum. Notwithstanding the foregoing paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the Terms of use shall be governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16.

## Miscellaneous

**Entire Agreement.** These Terms constitute the entire agreement between Baxter and User hereto concerning the subject matter hereof and supersedes any prior or contemporaneous agreements concerning such subject matter.

**Amendment.** Baxter may amend or modify the terms of this Agreement at any time. Your acceptance of the modified terms or continued access or use of the MyBaxter Insights Portal after the terms of this Agreement are revised, constitutes your express consent to the modified Agreement. Notwithstanding the foregoing, no amendment, change, or extension to this Agreement is valid or binding, unless approved in writing by Baxter.

**Waiver.** No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement will be considered a waiver thereof or of such party’s right thereafter to exercise or enforce each and every right or provision of this Agreement.

**Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and the offending provision shall be deemed automatically modified by the minimum necessary to render it valid and enforceable under applicable law, with the nature and extent of the modifications to be determined by a court of competent jurisdiction.

**Equitable Relief.** Notwithstanding anything herein to the contrary, User acknowledges that any breach of the terms of this Agreement, including your use of the MyBaxter Insights Portal in violation of the rights granted herein or infringement upon or misappropriation of any Intellectual Property Rights of Baxter or its licensors, would cause irreparable harm and significant injury to Baxter and/or its licensors. As such, Baxter and User agree that Baxter has the right to enforce the terms of this Agreement by injunction [without necessity of posting bond], specific performance, or other equitable relief without prejudice and in addition to any other rights and remedies that may be available to Baxter.

**Export Control.** Unless otherwise specified, the MyBaxter Insights Portal, MyBaxter Insights Content, and other related materials for the MyBaxter Insights Portal are available in the United States. Baxter makes no representations or warranties that the MyBaxter Insights Portal, MyBaxter Insights Content, or other related material accessible via the MyBaxter Insights Portal is appropriate or available outside of the United States. User hereby agrees to comply with all applicable export and re-export control laws, restrictions, and regulations.

**Headings.** The headings used herein are for convenience only and will not limit the interpretation of any section hereof.

**Force Majeure.** Neither party to this Agreement shall be liable for failure to fulfill its obligations under this Agreement due to any major unforeseeable event beyond the control of, and not caused by the fault or negligence of, such party or its agents, including, without limitation, an act of God, fire, earthquake, flood, explosion, action of the elements, war, terrorism, insurrection, riot, mob violence, sabotage, inability to procure equipment, facilities, materials, or supplies in the open market, failure of power, failure of telecommunications systems or infrastructure, strike, lockout, action of labor unions, condemnation, requisition, law or order of government, civil or military authorities; provided that the party failing to perform in such event shall promptly resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

## **Contact Information**

Baxter Healthcare Corporation  
Attn: Global Chief Privacy Officer  
Global Privacy Office  
One Baxter Parkway  
Deerfield, Illinois 60015