



## TERMS OF USE: BETA FUNCTIONALITY

**Last Updated:** June 22, 2023

Omnicell, Inc. and its assigns and wholly owned subsidiaries (“**Omnicell**”) and Customer have an agreement in place (“**Underlying Agreement**”) for the provision or purchase of certain Delivered Products. From time to time, Omnicell may add or make available certain non-generally available features or functionality to the Delivered Products (individually and collectively, “**Beta Functionality**”). These terms of use (“**Beta TOU**”) govern Customer’s use of Beta Functionality. Any capitalized terms not defined in these Beta TOU will have the meaning set forth in the Underlying Agreement. Beta Functionality will be identified as such in (a) the release notes related to such functionality, (b) a Beta invitation/participation document, and/or (c) an amendment to the Underlying Agreement between Customer and Omnicell (individually and collectively, “**Beta Notice**”). It is Customer’s responsibility to review all such Beta Notices made available to Customer. By accessing or using Beta Functionality, Customer hereby accepts and agrees to be bound by these Beta TOU. Except as expressly amended or modified herein, and then only to the extent so modified as respects Beta Functionality, the terms of the Underlying Agreement remain in full force and effect. To the extent of any conflict between these Beta TOU and the Underlying Agreement, these Beta TOU will control with respect to Beta Functionality.

1. **EXCEPT AS SPECIFICALLY SET FORTH HEREIN, CUSTOMER’S USE OF THE BETA FUNCTIONALITY IS AT CUSTOMER’S OWN RISK. THE BETA FUNCTIONALITY IS PRE-RELEASE AND IN THE DEVELOPMENT PHASE. AS SUCH, THE BETA FUNCTIONALITY IS PROVIDED “AS IS” AND MAY NOT PROVIDE THE LEVEL OF PERFORMANCE OR COMPATIBILITY OF A FINAL, GENERALLY AVAILABLE DELIVERED PRODUCT. THE BETA FUNCTIONALITY MAY NOT OPERATE CORRECTLY AND MAY BE SUBSTANTIALLY MODIFIED AT ANY TIME BY OMNICELL IN ITS SOLE DISCRETION. OMNICELL MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OF ANY KIND WHATSOEVER WITH RESPECT TO THE BETA FUNCTIONALITY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY AS TO THE PERFORMANCE OF THE BETA FUNCTIONALITY, MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT THE BETA FUNCTIONALITY WILL OPERATE ERROR-FREE, UNINTERRUPTED OR BE FREE OF VIRUSES. TO THE EXTENT THAT OMNICELL CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW.**

2. **IN NO EVENT WILL OMNICELL BE LIABLE FOR ANY DAMAGES RESULTING FROM THE BETA FUNCTIONALITY (INCLUDING, WITHOUT LIMITATION, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE AND SPECIAL DAMAGES, PERSONAL INJURY/WRONGFUL DEATH, LOSS OF PROFITS, LOSS OF USE, ACCURACY OR COMPLETENESS OF INFORMATION INCLUDED IN THE BETA FUNCTIONALITY, OR DAMAGES RESULTING FROM DELAYS, LOST DATA OR BUSINESS INTERRUPTION), OR THE USE OF, MISUSE OF, INABILITY TO USE OR INTERPRETATION OF THE INFORMATION CONTAINED IN, THE BETA FUNCTIONALITY, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT OMNICELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OMNICELL WILL ONLY BE LIABLE TO THE EXTENT OF ACTUAL DAMAGES INCURRED BY CUSTOMER, AND SUCH LIABILITY WILL NOT EXCEED \$1,000.00. ANY CLAIMS ARISING IN CONNECTION WITH CUSTOMER’S USE OF THE BETA FUNCTIONALITY MUST BE BROUGHT WITHIN ONE (1) YEAR FROM THE EVENT GIVING RISE TO SUCH CLAIM. REMEDIES UNDER THESE BETA TOU ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY PROVIDED FOR IN THESE BETA TOU.**

3. Title to all product, services, feature developments, derivative works, and/or other intellectual



property resulting from the collaboration of Customer and Omnicell will vest exclusively in Omnicell at creation.

4. Where applicable, Customer will be solely responsible for obtaining (a) any approvals required to utilize the Beta Functionality and any patient consents or authorizations required with respect to the use of the Beta Functionality, and (b) the disclosure of any patient information in connection therewith. Any required authorization or patient consent document must include appropriate provisions, consistent with applicable local laws and regulations, and with data protection provisions included in the Underlying Agreement, including the data processing agreement as applicable.

5. Subject to these Beta TOU, Omnicell grants to Customer a limited, nonexclusive, non-transferable license to use the Beta Functionality for evaluation purposes at the designated Customer site(s) identified in the Underlying Agreement. Customer may not make Beta Functionality available to third parties without Omnicell's prior written consent in each instance. Customer will not and will not allow a third party to: (a) use the Beta Functionality other than in accordance with all instructions and Documentation provided to Customer by Omnicell; (b) copy the Beta Functionality; (c) disclose any information about the Beta Functionality to anyone without the prior written consent of Omnicell; or (d) decompile, disassemble, or reverse engineer the Beta Functionality.

6. Customer agrees to indemnify, defend, and hold harmless Omnicell and its officers, directors, employees, affiliates and agents from and against all claims, actions, liabilities, losses, expenses, damages, judgments, settlements and costs (including, without limitation, reasonable attorneys' fees) arising from or relating to: (i) any breach by Customer of these Beta TOU, the Beta Notice or any Documentation related to the Beta Functionality; and (ii) Customer's use of the Beta Functionality.

7. Omnicell has the right, in its sole discretion, without liability, or obligation of notice to or consent from Customer, to: (a) commercialize or not commercialize the Beta Functionality or any part thereof in any; and/or (b) change the design of, or discontinue further changes, or discontinue developing, producing, selling, licensing, or distributing the Beta Functionality or any part thereof. Customer should not rely on any developments relating to the Beta Functionality as a deliverable commitment from Omnicell. Omnicell may, at any time and in its sole discretion, terminate Customer's access to the Beta Functionality.

8. The Beta Functionality may be deployed in Customer's production environment. Customer is solely responsible for "backing up" and archiving its data and data generated by Customer's use of the Beta Functionality.

9. Omnicell may, in its sole discretion, make changes to these Beta TOU from time to time. When changes are made, Omnicell will make a new copy of these Beta TOU available at the URL set forth in the Underlying Agreement. Customer is responsible for checking this URL for the then-current terms relevant to Customer's use of the applicable Beta Functionality. Omnicell will also update the "Last Updated" date identified above. Any changes to these Beta TOU will be immediately effective for Beta Functionality utilized by Customer on or after the "Last Updated" date.