

**HEALTH INSURANCE PORTABILITY
AND ACCOUNTABILITY ACT**

BUSINESS ASSOCIATE AGREEMENT FOR SUB-BUSINESS ASSOCIATES

This Business Associate Agreement (“BAA”) is entered into as of _____ (“Effective Date”) between Omnicell, Inc. and its assigns and wholly owned subsidiaries (“Omnicell”) and _____ (“Sub-Business Associate”). Omnicell and Sub-Business Associate are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

1. DEFINITIONS

Unless otherwise provided, all capitalized terms in the BAA shall have the same meaning as provided under HIPAA (defined below).

1.1 “Breach Notification Rule” means the Breach Notification for Unsecured Protected Health Information Final Rule in HIPAA.

1.2 “Covered Entity” shall have the same meaning as the term “covered entity” in 45 CFR §160.103 in HIPAA.

1.3 “Customer” means the entity and its affiliates that have entered into an Underlying Agreement with Business Associate.

1.4 “HIPAA” collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act of 1996, its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including the Health Information Technology for Economic and Clinical Health (“HITECH”) Act and the Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under the HITECH Act and Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.

1.5 Protected Health Information. As set forth in 45 C.F.R. § 164.501, as such provision is currently drafted and as it subsequently updated, amended or revised, Protected Health Information means individually identifiable health information that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium that is provided by, or created or received by, Sub-Business Associate from or on behalf of Omnicell.

1.6 Security Incident. Security Incident shall have the meaning set forth at 45 C.F.R. § 164.304, as such provision is currently drafted and as it is subsequently updated, amended or revised, Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operation in an information system as it relates to Protected Health Information.

1.7 “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information in HIPAA.

1.8 “Sub-Business Associate” shall have the same meaning as the term “Business Associate” in 45 CFR §160.103 in HIPAA.

1.9 “Underlying Agreement” means a written agreement(s) executed by and between Covered Entity and Sub-Business Associate pursuant to which PHI is created, received, maintained, or transmitted on behalf of Covered Entity by Sub-Business Associate.

1.10 Terms used but not otherwise defined in this BAA shall have the same meaning as those terms in the HIPAA Rules, as they are currently drafted and as they are subsequently updated, amended, or revised.

2. **RECITALS**

Omnicell is a Business Associate to its Covered Entity Customers or [is a Covered Entity over Omnicell's health plan]. Omnicell wishes to disclose certain information to its Sub-Business Associate, some of which may constitute "Protected Health Information." Both Parties are committed to complying with HIPAA, the "Privacy Rule", the "Security Rule" and the "Breach Notification Rule"), as well as related state laws and/or regulations (collectively, "HIPAA Rules").

3. **PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION**

3.1 **Services.** Sub-Business Associate provides services ("**Services**") for Omnicell that may involve the use and disclosure of Protected Health Information. Except as otherwise specified herein, Sub-Business Associate may make any and all uses of Protected Health Information necessary to perform its obligations under the Agreement, provided that such use would not violate the HIPAA Rules if done by Omnicell or such use is expressly permitted by this BAA. Moreover, Sub-Business Associate may disclose Protected Health Information for the purposes authorized by this BAA only, (i) to its employees, Sub-Business Associates and agents, in accordance with Section 3(g), (ii) as directed by Omnicell in accordance with this BAA, or (iii) as otherwise permitted by the terms of this BAA including, but not limited to, Section 2.2 below. Any other use and/or disclosure not permitted or required by this BAA or Required by Law ("**Unauthorized Use and/or Disclosure**") is prohibited.

3.2 **Business Activities of Sub-Business Associate.** Sub-Business Associate may use and disclose Protected Health Information if necessary for the proper management and administration of Sub-Business Associate or to meet its legal responsibilities; provided, however, that such Protected Health Information may be disclosed to third parties for such purposes only if the disclosures are Required by Law or Sub-Business Associate obtains assurances from the person to whom the information is disclosed that:

- a. the information will remain confidential;
- b. the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and
- c. the person will notify Sub-Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Under no circumstances may Sub-Business Associate disclose Omnicell's Protected Health Information to a third party pursuant to this Section 2.2 absent Omnicell's explicit written authorization.

4. **RESPONSIBILITIES OF SUB-BUSINESS ASSOCIATE WITH RESPECT TO PROTECTED HEALTH INFORMATION**

Sub-Business Associate agrees to the following:

- a. **Compliance with Laws.** to adhere to all laws, regulations and guidelines of the United States, or of any of the individual states within the United States, relating to the privacy or security of health information about individuals, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, and train all employees regarding the requirements of such laws, regulations, and guidelines.
- b. **HIPAA Compliance.** To the extent that Sub-Business Associate is to carry out one or more of Omnicell's obligation(s) under Subpart E of 45 C.F.R. Part 164, Sub-Business Associate will comply with the requirements of Subpart E of 45 C.F.R. Part 164 that apply to Omnicell in the performance of such obligation(s).
- c. **Use and Disclosure.** Business use and/or disclose the Protected Health Information only as permitted or required by this BAA or as otherwise Required by Law.

- d. Required by Law Disclosures. Sub-Business Associate shall not, without the prior written consent of Omnicell, disclose any Protected Health Information on the basis that such disclosure is Required by Law without first notifying Omnicell so that Omnicell shall have an opportunity to object to the disclosure and to seek appropriate relief. If Omnicell objects to such disclosure, Sub-Business Associate shall refrain from disclosing the Protected Health Information until Omnicell has exhausted all alternatives for relief. Sub-Business Associate shall require reasonable assurances from third parties receiving Protected Health Information in accordance with Section 2.2 hereof that such third parties will provide Omnicell with similar notice and opportunity to object before disclosing Protected Health Information on the basis that such disclosure is Required by Law.
- e. Minimum Necessary. Sub-Business Associate will make reasonable efforts to limit use and disclosure of Protected Health Information to the minimum necessary to accomplish the intended purposes, consistent with Omnicell's policies and procedures.
- f. Safeguards. Sub-Business Associate will use commercially reasonable efforts to safeguard the Protected Health Information and to prevent Unauthorized Use and/or Disclosure of such Protected Health Information or Breach of Unsecure PHI. Sub-Business Associate will maintain through Sub-Business Associate a comprehensive written information privacy and security program, with appropriate policies, procedures and plans that includes administrative, technical and physical safeguards appropriate to the size and complexity of Sub-Business Associate's operations and the nature and scope of its activities to reasonably and appropriately protect the privacy, confidentiality, integrity and availability of Protected Health Information. In addition to any safeguards set forth in this BAA, or Breach of Unsecure PHI Sub-Business Associate shall use any and all appropriate safeguards to prevent Unauthorized Use or Disclosure of Omnicell's Protected Health Information.
- g. Reporting. Sub-Business Associate will report to PrivacyNotice@Omnicell.com, in writing, any Unauthorized Use and/or Disclosure of PHI or Breach of Unsecure PHI which Sub-Business Associate becomes aware within two (2) calendar days of Sub-Business Associate's Discovery of such Unauthorized Use and/or Disclosure. Sub-Business Associate will report to the Privacy@Omnicell.com, in writing, any Security Incident occurring on or after the compliance date of the Security Regulation of which it becomes aware within two (2) calendar days of Sub-Business Associate's Discovery of such Security Incident, provided that this Section constitutes notice by Sub-Business Associate to Omnicell of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents. "Unsuccessful Security Incidents" include, but are not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, Use, or Disclosure of PHI; and (b) any Breach of Unsecured PHI that Sub-Business Associate Discovers in accordance with the Breach Notification Rule.
- h. Mitigate. Sub-Business Associate will mitigate, to the greatest extent possible, any deleterious effects from any Unauthorized Use and/or Disclosure of Protected Health Information, Breach of Unsecure PHI or Successful Security Incident upon Sub-Business Associate's Discovery.
- i. Notify. Sub-Business Associate will notify Omnicell in writing and obtain the prior written consent of Omnicell, which consent may be withheld in Omnicell's sole discretion, prior to allowing any downstream sub-Business Associate or agent to receive or use, or have access to, Protected Health Information.
- j. Downstream sub-Business Associates. Sub-Business Associate shall require all of its downstream sub-Business Associates, representatives and agents that receive or use, or have access to, Protected Health Information to agree, in writing, to adhere to the same restrictions, conditions and obligations concerning Protected Health Information that apply to Sub-Business Associate pursuant to this BAA.

- k. De-Identification and Aggregation Prohibited. Sub-Business Associate will NOT aggregate and de-identify PHI or create a Limited Data Set, without prior written consent of Omnicell which consent may be withheld in Omnicell's sole discretion.
- l. Disclosures to the Secretary. Sub-Business Associate will make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the U.S. Department of Health and Human Services ("HHS") (or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority) for purposes of determining Omnicell's compliance with the HIPAA Rules after the compliance dates, respectively, of those regulations, subject to attorney-client and other applicable legal privileges. Sub-Business Associate shall immediately notify Omnicell upon receipt by Sub-Business Associate of any request for access by the Secretary of HHS and shall provide Omnicell with a copy thereof as well as a copy of all materials disclosed pursuant thereto.
- m. Produce. Sub-Business Associate will upon Omnicell's reasonable prior written notice, make available during normal business hours at Sub-Business Associate's offices or electronically all records, books, agreements, assessments, trainings, policies, procedures and plans, relating to the use and/or disclosure of, and privacy and security of, Protected Health Information to Omnicell for purposes of enabling Omnicell or an appropriate Covered Entity (as such term is defined by HIPAA) to determine Sub-Business Associate's compliance with the terms of this BAA.
- n. Individual Rights. Sub-Business Associate will comply with individual rights as follows:
- 1) Accounting. document such disclosures of Protected Health Information as necessary to enable Omnicell to respond to an individual's request for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. Specifically, Sub-Business Associate shall maintain a record of all disclosures of Protected Health Information, including the date of the disclosure, the name and, if known, the address of the recipient of the Protected Health Information, a brief description of the Protected Health Information disclosed, and the purpose of the disclosure (including an explanation of the basis for such disclosure).
 - 2) within ten (10) calendar days of receiving a written request from Omnicell, provide to Omnicell such information as is requested by Omnicell to permit Omnicell to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528. In the event that an individual requests an accounting of disclosures directly from Sub-Business Associate or its agents or Sub-Business Associates, Sub-Business Associate must notify Omnicell in writing within five days of the request; Omnicell shall be responsible for preparing and delivering to the individual any such accounting requested.
 - 3) Access. within ten (10) calendar days of receiving a written request from Omnicell, provide to Omnicell such information as is requested by Omnicell to permit Omnicell to respond to a request by an individual for access to his or her Protected Health Information in accordance with 45 C.F.R. § 164.524. In the event that an individual requests access to his or her Protected Health Information directly from Sub-Business Associate or its agents or Sub-Business Associates, Sub-Business Associate must notify Omnicell in writing within five days of the request; Omnicell shall be responsible for preparing and delivering to the individual any such information requested.
 - 4) Amendment. within ten (10) days of receiving a written request from Omnicell, provide to Omnicell such information as is requested by Omnicell to permit Omnicell to respond to a request by an individual for an amendment of his or her Protected Health Information in accordance with 45 C.F.R. § 164.526. In the event that an individual requests an amendment of his or her Protected Health Information directly from Sub-Business Associate or its agents or Sub-Business Associates, Sub-Business Associate must notify Omnicell in writing within five days of the request;

Omnicell shall be responsible for preparing and delivering to the individual any such information requested.

- o. Return or Destroy. Sub-Business Associate will subject to Section 5.3 below, return to Omnicell or destroy, within thirty (30) calendar days of the termination of this BAA and/or the Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this BAA shall include, without limitation, destruction of all backup tapes).
- p. Offshoring Prohibited. Sub-Business Associate will only use, disclose, maintain, store, access or give provision of access to PHI to authorized workforce members, Sub-Business Associates or agents, within the United States of America or its territories. Offshoring of PHI is strictly prohibited, without prior written consent of Omnicell.
- q. Artificial Intelligence. To the extent that any of the services in the Underlying Agreement(s) hereunder includes, incorporates, or otherwise involves artificial intelligence, Consultant will comply with Omnicell's Artificial Intelligence Terms and Conditions for Vendors which may be updated by Omnicell from time to time, are located at <https://www.omnicell.com/vendor-ai-terms-and-conditions/> and which are hereby incorporated into this Agreement and all relevant SOWs by reference in the performance of the services hereunder and thereunder.
- r. Insurance. Sub-Business Associate during the term of this BAA and the Underlying Agreement(s) will maintain policies of general and cyber liability each in the amount of Five Million Dollars (\$5,000,000.00) per claim or per occurrence and Ten Million Dollars (\$10,000,000.00) in the annual aggregate from an A+ rated or better insurance carrier meeting industry standards to insure it, and its employees, directors, officers and agents, against claims arising out of or relating to any services provided by Sub-Business Associate, and include Omnicell as a named insured named or "as required by contract" upon such general liability policies. In the event of a more restrictive term in the Underlying Agreement(s), the Underlying Agreement with the more restrictive term will control.
- s. Legal Proceeding. Sub-Business Associate agrees that any legal action or proceeding arising out of or in relation to this BAA may be brought in the courts of the State of Texas or in the United States District Court for the Northern District of Texas ("Designated Courts") or civil District Courts of Tarrant County, Texas and that such Designated Courts shall have sole and exclusive jurisdiction with respect to any such legal action or proceeding;
- t. Jurisdiction. Sub-Business Associate will submit to the personal jurisdiction of, and venue in, any of the Designated Courts for the purposes of any such legal action or proceeding, and expressly waive any claim of lack of jurisdiction, improper venue, or that any such venue constitutes an inconvenient forum;
- u. Process. Sub-Business Associate consents to the service of process of any of the Designated Courts in any such legal action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the address of the Sub-Business Associate, such service to become effective ten (10) calendar days after receipt;
- v. Judgment. Sub-Business Associate agrees that (i) any final judgment or order, and any binding preliminary or temporary order, obtained or issued against the Sub-Business Associate shall be conclusive and binding upon it, and enforceable against it; (ii) Omnicell may take any and all necessary or appropriate action to cause the recognition and enforcement of any such judgment and/or order in any court located in the United States or elsewhere in the World which may have competent jurisdiction over Sub-Business Associate; and (iii) Sub-Business Associate shall not argue or raise a defense or counterclaim against or otherwise challenge, or claim the benefit of any treaty, compact or law that has the effect of hindering or

preventing the recognition or enforcement of any such judgment or order in any other forum, judicial or otherwise, wherever located;

- w. 3rd Party Beneficiary. Sub-Business Associate agrees that Omnicell shall be a third-party beneficiary of any written agreement between Sub-Business Associate and a downstream sub-Business Associate;

5. REPRESENTATIONS AND WARRANTIES OF SUB-BUSINESS ASSOCIATE

Sub-Business Associate represents and warrants to Omnicell that all of its employees, agents, representatives, Sub-Business Associates and members of its workforce, whose services may be used to fulfill obligations under this BAA are or shall be appropriately informed of the terms of this BAA and are periodically trained on Sub-Business Associate's HIPAA policies and procedures.

6. TERM AND TERMINATION

6.1 Term. This BAA shall become effective on the Effective Date and shall continue in effect until discontinuation of the Services provided by Sub-Business Associate to Omnicell that require the Use or Disclosure of Protected Health Information, subject to the provisions of Section 7.1, unless terminated as provided in this Section 5.

6.2 Termination by Omnicell. As provided under 45 C.F.R. § 164.504(e) (2) (iii), Omnicell may immediately terminate this BAA if Omnicell knows of a pattern of activity or practice of Sub-Business Associate that constitutes a material breach or violation of Sub-Business Associate's obligations under the provisions of this BAA. Alternatively, if Omnicell has determined that Sub-Business Associate has breached a material term of this BAA and does not immediately terminate this BAA, then Omnicell shall: (i) provide Sub-Business Associate written notice of the existence of an alleged material breach; and (ii) afford Sub-Business Associate an opportunity to cure the alleged material breach within fifteen (15) calendar days. In the event that Sub-Business Associate does not cure the breach within fifteen (15) calendar days, Omnicell may terminate, the Agreement, if feasible (as determined by Omnicell in its sole discretion), or if termination is not feasible, report the Sub-Business Associate to the Secretary of HHS.

6.3 Effect of Termination. Upon termination of this BAA pursuant to this Section 5, Sub-Business Associate shall at Omnicell's election return or destroy all Protected Health Information that Sub-Business Associate and its agents and Sub-Business Associates still maintain in any form. If such return or destruction is not feasible, then Sub-Business Associate will so notify Omnicell in writing. Sub-Business Associate shall (a) extend any and all protections, limitations and restrictions contained in this BAA to Protected Health Information retained by Sub-Business Associate, its agents and its Sub-Business Associates after the termination of the Agreement and this BAA, and (b) limit any further uses and/or disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

7. INDEMNIFICATION

Sub-Business Associate agrees to indemnify, defend and hold harmless Omnicell and its affiliated corporations and entities and their officers, agents and employees (collectively, Omnicell's "**Indemnitees**") against all losses, liabilities, damages, claims, demands, actions, investigations, settlements, judgments, and costs or expenses (including without limitation, reasonable attorney's fees, cost of notifying affected Individuals, and identity theft related prevention or monitoring costs) resulting from, arising from, or in connection with any breach of this BAA or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the HIPAA Rules, by Sub-Business Associate or its employees, directors, officers, Sub-Business Associates, agents or other members of its workforce. To the extent that an agreement between the Parties contains a provision that limits Sub-Business Associate's liability under such agreement, Sub-Business Associate's obligation to indemnify Omnicell and its Indemnitees under this Section 6 shall be excluded

from such limitation of liability. Sub-Business Associate's obligation to indemnify Omnicell and its Indemnitees shall survive the expiration or termination of this BAA for any reason.

MISCELLANEOUS

7.1 Survival. The respective rights and obligations of Sub-Business Associate and Omnicell under the provisions of Sections 3(h), 3(j), 5.3, 6, 7.5, 7.8 and 7.10, and Section 3 (except Sections 3(h) and 3(j)), solely with respect to Protected Health Information Sub-Business Associate retains in accordance with Section 5.3 because it is not feasible to return or destroy such Protected Health Information, shall survive termination of this BAA indefinitely.

7.2 Amendments; Waiver. This BAA may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

7.3 No Third-Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

7.4 Notices. Any notices to be given under this BAA to a Party shall be made via U.S. Mail or express courier to such Party's address set forth below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Omnicell, to:	If to Sub-Business Associate, to:
<p>Omnicell, Inc. 500 Cranberry Woods Drive Cranberry Township, PA 16066</p> <p>Attn: Office of the General Counsel</p> <p>With courtesy copy via electronic mail to PrivacyNotice@Omnicell.com</p>	<p>Sub BAA Name: Address:</p> <p>Attn:</p> <p>Courtesy Email:</p>

Each Party may change its address and that of its representative for notice by giving notice thereof in the manner provided above in this Section 7.4.

7.5 Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Digital signature, electronic distribution or facsimile copies hereof shall be deemed to be originals.

7.6 Effect of Agreement. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in full force and effect.

7.7 Interpretation. The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this BAA. The Parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules.

7.8 Governing Law. This BAA shall be governed by and construed in accordance with the laws of the State of California, without application of principles of conflicts of laws.

7.9 Amendment to Comply with Law. The Parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this BAA may be required to provide for procedures to ensure compliance with such developments. The Parties agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules, and other applicable laws relating to the security or confidentiality of Protected Health Information. The Parties further agree that if current or future federal or state laws, rules, or regulations adversely impact a Party's performance under the Agreement or this BAA, the Parties will negotiate in good faith to amend the Agreement and/or this BAA, as necessary, to be consistent with the requirements of the HIPAA Rules, or other applicable laws, as the same may be amended from time to time. Omnicell may terminate this BAA in the event that the Parties are unable to modify this BAA to remain in full compliance with the HIPAA Rules or other applicable law.

7.10 Injunctions. Omnicell and Sub-Business Associate agree that any violation of the provisions of this BAA may cause irreparable harm to Omnicell. Accordingly, in addition to any other remedies available to Omnicell at law, in equity, or under this BAA, in the event of any violation by Sub-Business Associate of any of the provisions of this BAA, or any explicit threat thereof, Omnicell shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf.

OMNICELL, INC.

[SUB-BUSINESS ASSOCIATE]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____