

SureMed Software as a Service Terms of Use

Terms of Use

Version 2.0

Effective Date: August 25, 2018

Welcome to the SureMed Software as a Service made available by Omnicell, Inc. (the “Company”). Please read these Terms of Use (“Terms”) carefully.

BY ACCESSING OR USING SureMed Software as a SERVICE (THE “SERVICE”) IN ANY WAY, INCLUDING USING THE SERVICES, APIs AND RESOURCES AVAILABLE OR ENABLED VIA THE WEBSITE, CLICKING ON THE “I ACCEPT” BUTTON, OR COMPLETING THE REGISTRATION PROCESS, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE, AND (2) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS OF USE ON BEHALF OF THE ENTITY YOU HAVE NAMED AS THE USER, AND TO BIND THAT ENTITY TO THE TERMS OF USE. THE TERM “YOU” REFERS TO THE LEGAL ENTITY, IDENTIFIED AS THE USER WHEN YOU REGISTERED ON THE WEBSITE. **IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THIS WEBSITE OR THE SERVICES.**

IMPORTANT NOTICE: AT THE END OF YOUR INITIAL THREE MONTH SUBSCRIPTION TERM (“INITIAL TERM”), YOUR SUBSCRIPTION AND THESE TERMS WILL AUTOMATICALLY RENEW FOR ADDITIONAL PERIODS OF THREE MONTHS EACH AT COMPANY’S THEN-CURRENT FEES FOR SUCH SERVICES UNLESS YOU (OR COMPANY) PROVIDE NOTICE THAT YOU (OR COMPANY) ARE NOT RENEWING FOR ANY ADDITIONAL MONTHS IN ACCORDANCE WITH SECTION 7.1 BELOW.

PLEASE NOTE THAT THE TERMS ARE SUBJECT TO CHANGE BY THE COMPANY IN ITS SOLE DISCRETION AT ANY TIME, HOWEVER WE WILL NOT CHANGE OUR PRICES DURING THE INITIAL TERM. When changes are made, the Company will make a new copy of the Terms of Use available at the Website and if we make any material changes (including, for example, changes to pricing or payment terms), we will also communicate this to you via the Website pursuant to the Terms. Any changes to the Terms will be effective thirty (30) days after posting of notice of such changes on the Website, provided that any material changes shall be effective upon the earlier of thirty (30) days after posting of notice of such changes on the Website or thirty (30) days after dispatch of an email notice of such changes to Registered Users (defined in Section 1.1 below). The Company may require you to provide consent to the updated Terms in a specified manner before further use of the Services is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you may immediately terminate your subscription by providing notice to us in which case your right to use the Services will end. Otherwise, your continued use of the Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

1. Registration

1.1 Registering your Account. In order to access the Services you are required to become a Registered User. For purposes of the Terms, a “Registered User” is a User who has registered an account on the Website (“Account”). As the administrator of your Account, when registering, you may create subaccounts for your users that will be accessing the Services on your behalf, referred to as “Authorized Users.” You must ensure that all such Authorized Users are bound by and comply with the Terms.

1.2 Registration Data. In registering for the Services, you agree to (1) provide true, accurate, current and complete information about yourself as prompted by the Services’ registration form (the “Registration Data”); and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You are responsible for all activities that occur under your Account. You may not share your Account or password with anyone, and you agree to (a) notify Company immediately of any unauthorized use of your password or any other breach of security; and (b) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete or the Company has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the Company has the right to suspend or terminate your Account and refuse any and all current or future use of the Services (or any portion thereof).

1.3 Necessary Equipment and Software. You must provide all equipment and software necessary to connect to the Services. You are solely responsible for any fees, including Internet connection or mobile fees, that you incur when accessing the Services.

2. Use of the Services

2.1 Right to Access. Subject to the Terms and your payment of the applicable fees for the Services (“Subscription Service Fees”) in accordance with the payment and tax provisions stated in these Terms, all of the foregoing as identified on the Website, the Company grants you a non-transferable, nonexclusive, revocable, limited right to access and use the Services solely at the pharmacy site(s) identified in your registration

statement. Except as otherwise stated, and to the extent permitted by applicable law, all fees for the Services are non-refundable.

2.2. Updates. You understand that the Services are evolving. You acknowledge and agree that the Company may update the Services with or without notifying you. You may need to update third-party software from time to time in order to receive the Services or use the Services.

2.3 Certain Restrictions. The rights granted to you in the Terms are subject to the following restrictions: (a) you shall use the Services solely for your own internal business purposes in packaging medications for your end customers and not for access or use by any third party; (b) you shall not license, sell, rent, lease, transfer, assign, reproduce, or distribute the Services (or any content available via the Services without our prior written consent); (c) you shall not reproduce or otherwise use any content available via the Services or any confidential information disclosed by the Company to you in connection with the Services in order to build a similar or competitive service; and (d) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Services. Any future release, update or other addition to the Services shall be subject to the Terms. The Company, its suppliers and service providers reserve all rights not granted in the Terms. Any unauthorized use of the Services terminates the licenses granted by the Company pursuant to the Terms.

2.4 Information You Provide. Before providing or making accessible to the Company via the Services or any third party (for example a provider of clinical reporting services) any information or opinions about an identified individual or a reasonably identifiable individual which includes any sensitive personal information such as health information ("**Personal Information**"), you must ensure that the relevant individual has received all notifications and provided all consents required under applicable laws relating to privacy and health records ("**Privacy Laws**") which are required in order for you to disclose their Personal Information to the Company and its subcontractors or to such third party so that the Company and its subcontractors or such third party may lawfully collect, use, hold and disclose that information for the purposes of this Agreement in the case of the Company and its subcontractors or as otherwise agreed with the relevant third party.

You acknowledge that you are wholly responsible for ensuring such notifications are given to, and such consents are obtained from, patients, and that the Company is not liable for notifying or obtaining consents from your patients in relation to the Services or any third party disclosures or use. You acknowledge that Company has no obligation to review any information you provide to the Service ("**Content**"), although Company reserves the right in its sole discretion to refuse or remove any unauthorized or illegal Content. Company has no obligation to store any of your Content and has no responsibility or liability for the deletion or accuracy of any Content or the failure to store, transmit or receive transmission of Content. You are responsible for your use of the Services and compliance with all applicable laws and regulations relating to such use.

You must collect, use, hold and disclose any Personal Information only in accordance with your own privacy policy and for the purposes for which you have received consent from patients or as otherwise permitted by law. Other than what is available via the Service, the Company is not obliged to provide extracts or copies of data via any other means.

3. Ownership

3.1 Services. The Services, including the information and content available in the Services, are protected by copyright laws throughout the world. You agree that the Company and its suppliers own all rights, title and interest in the Services (including but not limited to, computer code, concepts, artwork, methods of operation, moral rights and documentation). You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.

3.2 Feedback and Ownership of Data. You agree that submission of any ideas, suggestions, documents, and/or proposals to the Company through its suggestion, feedback or similar pages ("**Feedback**") is at your own risk and that the Company has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to the Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, communicate and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the Services. The parties acknowledge that you own your data, however, Company reserves the right to use, in any manner and for any purpose, any information gained as a result of your use of the Services, including without limitation, all written and electronic reports, notes, correspondence, materials, data, benchmark, and other information relating to or arising out of your use of the Services. Data shall not include patient specific information, unless specifically de-identified.

4. Indemnification. You agree to indemnify, defend and hold the Company, its parents, subsidiaries, affiliates, successors, assigns, officers, employees, agents, partners and licensors (collectively the "**Company Parties**") harmless from any losses, costs, liabilities, expenses (including reasonable attorneys' fees) and claims,

including claims arising in contract or tort (including negligence) or claims for infringement, relating to or arising out of: (a) your breach of these Terms; and (b) any negligent or unlawful conduct by you or any personnel controlled by you (in connection with the use of the Services; and (c) any third party claim asserted against any of the Company Parties in connection with your infringement or violation of any third party rights. If you become aware of any actual or alleged infringement or violation of a third party's rights as a result of your use of the Services or any matter relating to these Terms, you must inform the Company in writing without delay. The Company reserves the right, at its own cost, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with the Company in asserting any available defences. You agree that the provisions in this section will survive any termination of your Account, the Terms, or your access to the Services.

5. Disclaimer of Warranties. YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO CLAUSE 6.1 BELOW: (A) YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK, AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS; (B) THE COMPANY PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; AND (C) THE COMPANY PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION ABOUT THE IMPACT OF YOUR USE OF THE SERVICES. THE USE OF THE SERVICES AND ANY CLINICAL INFORMATION CONTAINED THEREIN IS INTENDED TO SERVE AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PHYSICIANS, PHARMACISTS, OR OTHER HEALTHCARE PROFESSIONALS IN PATIENT CARE. THE ABSENCE OF A WARNING FOR A GIVEN DRUG OR DRUG COMBINATION SHOULD NOT BE CONSTRUED TO INDICATE THAT THE DRUG OR DRUG COMBINATION IS SAFE, APPROPRIATE OR EFFECTIVE IN ANY GIVEN PATIENT.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICES WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; OR (4) ANY ERRORS IN THE SERVICES WILL BE CORRECTED. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. THE COMPANY MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE COMPANY OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. Phone numbers and support hotline hours are located on Company's website.

6. Limitation of Liability

6.1 Non-Excludable Rights. Certain legislation, including the Australian Consumer Law, may confer rights and remedies on you which cannot be excluded, restricted or modified ("**Non-Excludable Rights**"). Nothing in these Terms is intended to exclude, restrict or modify your Non-Excludable Rights. To the extent to which the Company is entitled to do so, Company limits its liability to you in respect of any Non-Excludable Rights, at its option, to either: (A) in the case of goods, either or both of the following: (i) the replacement or repair of the goods or the supply of equivalent goods; or (ii) the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods; or (B) in the case of services, either one or both of the following: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.

6.2 Exclusions. YOU UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO CLAUSE 6.1 ABOVE: (A) IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF DATA, BUSINESS, GOODWILL, OPPORTUNITY OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; AND (B) IN NO EVENT SHALL THE COMPANY BE RESPONSIBLE FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE THE SERVICES; (2) UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY TRANSMISSIONS OR DATA; OR (3) ANY OTHER MATTER RELATED TO THE SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, EXCEPT TO THE EXTENT SUCH PERSONAL OR BODILY INJURY IS CAUSED BY THE COMPANY'S NEGLIGENCE, FRAUD OR WILFUL MISCONDUCT.

6.3 Liability Cap. EXCEPT IN RESPECT OF THE INDEMNITIES IN CLAUSE 4 ABOVE, THE LIABILITY (WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR OTHERWISE) OF EITHER PARTY

UNDER OR IN CONNECTION WITH THESE TERMS TO THE OTHER PARTY SHALL BE LIMITED IN THE AGGREGATE TO THE GREATER OF (i) THE AMOUNT RECEIVED BY THE COMPANY AS A RESULT OF YOUR USE OF THE SERVICES IN THE SUBSCRIPTION PERIOD DURING WHICH THE CLAIM IS FIRST ASSERTED, OR (ii) FIFTY DOLLARS (US\$50). THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE COMPANY AND YOU.

7. Term and Termination

7.1 Term. The Terms commence on the date when you accept them (as described in the preamble above) and remain in full force and effect for a period of three months (the “**Initial Term**”), unless terminated earlier in accordance with the Terms. At the end of such Initial Term, your subscription to the Services and the Terms will automatically renew for additional periods of three months each (“**Renewal Term**”), unless either party notifies the other in writing of its intent not to renew, provided that termination by you shall not entitle you to any refund of fees for the Initial Term or the then-current Renewal Term.

7.2 Termination of Services by Company. The Company has the right to suspend or terminate any Services provided to you if: (a) suspension or termination is required in order to comply with applicable laws, in which case suspension or termination will be effective immediately upon written notice to you via email; or (b) you materially breach these Terms or violate any applicable law and such breach or violation is either incapable of remedy or is not remedied within seven days of being requested to remedy the breach by the Company; or (c) you fail to pay the applicable Subscription Service Fees and fail to rectify such non-payment within seven days of being requested to do so by the Company. You agree that the Company shall not be liable to you or any third-party for any termination of your Account.

7.3 Termination of Services by You. You may terminate the Services for convenience at any time after the Initial Term, provided that no such termination shall entitle you to a refund of fees for the then-current Renewal Term.

7.4 Effect of Termination. Termination of any Service includes removal of access to such Service and, where termination is due to your breach of these Terms, barring of further use of the Service. Termination of all Services also includes deletion of your password and inactivation of access to all related Content and other information associated with or inside your Account (or any part thereof). All provisions of the Terms which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

8. Remedies. In the event that the Company determines, in its sole discretion and acting reasonably, that you have breached any portion of the Terms, or have otherwise demonstrated conduct inappropriate for the Services, the Company reserves the right to: (a) warn you via e-mail (to any e-mail address you have provided to the Company) that you have violated the Terms and request that you rectify the breach and/or discontinue the inappropriate conduct; (b) discontinue your subscription to any Services if you fail to comply with such notice within seven days; and/or (c) pursue any other action which the Company deems to be appropriate.

9. General Provisions

9.1 Electronic Communications. The communications between you and the Company use electronic means, whether you visit the Services or send Company e-mails, or whether the Company posts notices on the Services or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from the Company in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that the Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

9.2 Notices. Where Company requires that you provide an e-mail address, you are responsible for providing Company with your most current e-mail address. In the event that the last e-mail address you provided to Company is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Terms, Company’s dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Company at the following address: Omnicell, Inc., 590 E. Middlefield Road, Mountain View, California 94043 USA, Attn: Office of General Counsel, or via email to LegalRequests@omnicell.com. Such notice shall be deemed given when received by Company by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address or, in the case of email, when the email is received.

9.3 Assignment. The Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated, or otherwise transferred by you without the Company’s prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

9.4 Force Majeure. The Company shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

9.5 Disputes. Except as provided below, all disputes arising from or relating to the Terms shall be resolved as follows: the senior management of both parties shall promptly meet (in person or via telephone or other electronic means) to attempt to resolve such disputes. If such senior management cannot resolve the dispute within two business days (or other mutually acceptable time frame), either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute. Within ten business days after such written notification, the parties agree to meet for one day with an impartial mediator (mutually and reasonably agreeable by the parties) and consider in good faith dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within twenty business days after the written demand for formal dispute resolution, either party may begin litigation proceedings and the parties agree to the non-exclusive jurisdiction of the courts located in California for any such action or proceeding. This provision shall not preclude either party from seeking equitable relief to protect its interests, including but not limited to seeking preliminary and permanent injunctive relief, as well as money damages, in any dispute involving its confidential information or intellectual property rights.

9.6 Governing Law. The Terms shall be governed in accordance with the laws of the State of California, without reference to conflict of laws principles that would require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Terms.

9.7 Independent Contractors. The relationship of the Company and you established in the Terms is that of independent contractors, and nothing contained in the Terms shall imply a partnership, joint venture, principal and agent, or employer and employee relationship between the parties. Neither party shall have the right, power, or authority to create any obligation, expressed or implied, on behalf of the other party.

9.8 Waiver. Any waiver or failure to enforce any provision of the Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

9.9 Severability. If any provision of the Terms is, for any reason, held to be invalid or unenforceable, the other provisions of the Terms will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

9.10 Export Control. You may not use, export, import, or transfer the Services except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Services, and any other applicable laws. In particular, but without limitation, the Services may not be exported or re-exported (a) into any United States embargoed countries; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Services, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

9.11 Operations. You acknowledge and agree that it is your responsibility to ensure your operations comply with all applicable laws, including but not limited to, those related to 3rd party packing, supply and distribution of medications.

9.12 Entire Agreement. The Company intends to rely upon the written terms set out in this document. If you require any changes, you must ask for them to be put in writing. Unless such changes are agreed by us and put in writing, we will not consider them to form a part of our agreement.

End of Terms