

Tebra Terms of Service

PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE USING THIS SERVICE. KAREO AND PATIENTPOP HAVE JOINED FORCES AS TEBRA TO UNLOCK BETTER HEALTHCARE WITH AN OPERATING SYSTEM FOR THE CONNECTED PRACTICE OF THE FUTURE. AS PART OF THIS EXCITING TRANSITION, WE ARE UNIFYING OUR TERMS OF SERVICE TO IMPROVE OUR USER EXPERIENCE AND CLEARLY CONVEY YOUR AND OUR RIGHTS AND RESPONSIBILITIES. EFFECTIVE JUNE 1, 2023, THE TEBRA TERMS OF SERVICE SET FORTH BELOW WILL SUPERSEDE AND REPLACE THE CURRENT KAREO TERMS OF SERVICE AND THE PATIENTPOP TERMS OF SERVICE. THESE TERMS OF SERVICE ARE BY AND BETWEEN TEBRA TECHNOLOGIES, INC., INCLUDING ITS SUBSIDIARY, PATIENTPOP, INC. (TEBRA) AND THE INDIVIDUAL(S) OR ENTITY(IES) NAMED ON ONE OR MORE ORDER FORMS OR SUBSCRIPTION AGREEMENTS WITH TEBRA (THE CUSTOMER). BY USING THE SERVICES DESCRIBED BELOW, CLICKING A BOX INDICATING ACCEPTANCE, OR EXECUTING AN ORDER FORM OR SUBSCRIPTION AGREEMENT REFERENCING THESE TERMS OF SERVICE, CUSTOMER IS AGREEING TO BE BOUND BY THESE TERMS OF SERVICE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, DO NOT SUBSCRIBE TO, ACCESS, OR USE THE SERVICE.

1) TEBRA SOFTWARE SERVICES

- These Terms of Service provide the Customer with access and use of Tebra's services, as specified on the applicable order form or subscription agreement between the parties. These Terms of Service, along with the applicable order form or subscription agreement, are referred to herein collectively as the **Customer Agreement**. Customer may purchase services across Tebra's solutions offerings, which are collectively referred to as the **Service**.
- **Policies.** Customer understands that use of the Service is also governed by our [Privacy Policy](#), [Pricing Policy](#), [Business Associate Agreement](#), [Support Policy](#), and [Security Notice](#), as they each may be modified over time.

2) RESPONSIBILITIES

a) Tebra Support Responsibilities

i) Support

Tebra will provide customer support for the Service as further detailed in the [Support Policy](#).

b) Customer Responsibilities

i) Access by Employees and Contractors

- Customer may not make the Service available to anyone other than its employees and contractors and will do so solely to access the Service for the benefit of Customer in compliance with the terms of these Terms of Service.
- Customer is responsible for the compliance with these Terms of Service by its employees and contractors.

ii) Restrictions

Customer may not:

- sell, resell, rent, or lease the Service, or use the Service beyond its internal operations;
- use the Service to store or transmit unsolicited marketing emails or infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights);
- interfere with or disrupt the integrity or performance of the Service;
- attempt to gain unauthorized access to the Service or its related systems or networks;
- modify, copy the Service, or create derivative works based on the Service or any part, feature, function, or user interface;
- except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Service or remove or modify any proprietary marking or restrictive legends in the Service;
- use the Service in violation of any law; or
- access the Service to build a competitive service or offering.

c) Customer Information

i) Customer Information

All data, information, images, documentation, and files entered or uploaded by Customer to the Service remains the property of Customer, as between Tebra and Customer (Customer Information), subject to the other terms of these Terms of Service.

ii) License to Use Customer Information

Customer grants Tebra a non-exclusive, royalty-free, license to modify, store, transmit, and otherwise use the Customer Information for purposes of Tebra performing under these Terms of Service.

iii) Responsibility for Customer Information

Customer is solely responsible for Customer Information including, must use commercially reasonable efforts to prevent unauthorized access to the Service, must notify Tebra promptly of any known unauthorized access, and may use the Service only in accordance with its intended purposes and applicable law.

iv) Accuracy of Customer Information

Customer represents and warrants to Tebra that all Customer Information, and any other material provided under Customer's account, by Customer or on its behalf, is true, correct, and accurate. If Customer learns that any Customer Information provided to Tebra as part of the Service is not true, correct or accurate, Customer must immediately notify Tebra by phone and in writing of this fact, and provide the true, correct and accurate information to Tebra. Tebra relies on Customer representations regarding the truth, accuracy and compliance with laws concerning Customer Information. **TEBRA IS NOT LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY CUSTOMER'S FAILURE TO COMPLY WITH THIS PARAGRAPH, IRRESPECTIVE OF ANY ACT OR OMISSION ON THE PART OF TEBRA.**

d) 'Tebra Clinical' Service Offering – Additional Terms.

i) Electronic Prescriptions for Controlled Substances

If Customer uses the Services for Electronic Prescriptions for Controlled Substances (**EPCS**), the following applies:

(1) Tokens

- a. Each Electronic Prescription account is assigned to a specific provider (**Prescribing Provider**) authorized by Customer.
- b. Each Prescribing Provider will be provided with a complimentary Identity-Proof Hard Token (**Hard Token**) and confirmation letter.
- c. If the Hard Token is lost, damaged, or becomes inoperable, there will be an additional fee for a new Hard Token or confirmation letter.
- d. If Prescribing Provider secures and elects to use a Soft Token (**Soft Token**) provided by a third-party, the Soft Token *must be downloaded and stored on a separate device* from the computer or device on which the Prescribing Provider gains access to the EPCS feature and transmits prescriptions.

The Hard Tokens and Soft Tokens are referred to generally as Tokens.

(2) Customer Responsibilities

Customer and each Prescribing Provider agrees:

- a. that each Prescribing Provider retains sole possession of the Hard Token and not to share the login passphrase with any other person;
- b. that each Prescribing Provider may not allow any other person to use the Token or enter the login passphrase in order to sign controlled substance prescriptions;
- c. that failure to secure the Token, login passphrase, or any biometric information may provide a basis for revocation or suspension of the EPCS account;
- d. to notify Tebra within one (1) business day of discovery if:
 - i. Customer or a Prescribing Provider is contacted by a pharmacy because one or more controlled substance prescriptions are displaying the incorrect United States Drug Enforcement Administration (**DEA**) number;
 - ii. if Customer or a Prescribing Provider discovers that one or more controlled substance prescriptions issued using a Prescribing Provider DEA number were not consistent with the prescriptions actually signed, or were not signed at all; or
 - iii. if a Prescribing Provider's Token has been lost or stolen, or the authentication protocol has been compromised in any way;
- e. that the Prescribing Provider is responsible for any controlled substance prescriptions written using its two-factor authentication credential;
- f. that Prescribing Providers have the same responsibilities when issuing electronic prescriptions for controlled substances as when issuing paper or oral prescriptions;
- g. to prescribe controlled substances only for legitimate medical purposes;
- h. to review security logs on a daily basis for any security incidents, and to report to the DEA any security incident and provide Tebra with a copy of such report; and
- i. to keep all security incident reports on file for a period of two (2) years.

(3) EPCS and Prescription Drug Monitoring Program (PDMP)

Access and use of EPCS with PDMP add-on service by Customer is subject to and governed by the third party terms here: <https://drfirst.com/epcs-pdmp-terms-of-use/>.

(4) Electronic Prescriptions Excluding Prescriptions for Controlled Substances (Non-EPCS Electronic Prescriptions)

If Customer uses the Service for Non-EPCS Electronic Prescriptions, the Customer and each Prescribing Provider agrees:

- a. to only prescribe on their own behalf and not give away password or credentials to another person to prescribe for them; and
- b. to take the same responsibility as Customer would take when transmuting paper or phone prescriptions.

(5) Meaningful Use

Customer and providers intending to attest for Meaningful Use agree to follow the processes and procedures recommended in Tebra's Meaningful Use training such that Tebra's tracking and reports function appropriately.

(6) Tebra Billing for Mac

Access and use of Tebra Billing by Customer by means of a Mac device is subject to and governed by the third party terms here: <https://www.parallels.com/about/legal/eula/>.

e) 'Provider Website' 'Practice Growth and 'Engagement Software' Offerings – Additional Terms.

In connection with its Practice Growth and other patient engagement offerings, Tebra may design and develop a cloud-based provider website (Provider Website), and provide cloud-based tools and services (for example, online booking tool, call tracking, reputation management, profile syndication and management, analytics dashboard, and general online local marketing services) (collectively, the Practice Growth and Engagement Software).

The Service includes any required, usual, appropriate, or acceptable methods to perform activities related to the Service, for example:

- conducting analytics and other product improvement activities;
- carrying out the Service or the business of which the Service is a part;
- carrying out any benefits, rights, and obligations related to the Service;
- maintaining records relating to the Service; and
- complying with any legal or self-regulatory obligations related to the Service.

i) Provider Website

1. Provider Website will integrate elements of the Practice Growth Software, including but not limited to the Tebra online booking tool.
2. Customer may, but is not required to, submit Content for inclusion on such Provider Website.

ii) Content Rights

1. Customer may upload or submit content, files, and information to the Service for a Provider Website or other use with the Practice Growth and Engagement Software

(Content). Customer retains copyright and any other proprietary rights that Customer may hold in the Content that Customer provides to Tebra; for clarity, all other elements of the Provider Website, Practice Growth and Engagement Software and Content provided by Tebra, apart from any Content provided by Customer, are owned solely by Tebra, and will not be retained by Customer upon suspension, expiration or termination of this agreement.

2. Customer is solely responsible for any Content that Customer provides or any custom tracking technology used on a Provider Website, and for the consequences of posting or publishing such Content or tracking technology.
3. Customer hereby grants Tebra a non-exclusive irrevocable, perpetual, royalty-free license to display, store, distribute, share, modify, and otherwise use such Content for purposes providing the Service under this agreement (including, without limitation, a license to syndicate the Content to third party publisher sites as required to provide Customer the applicable Service (e.g., Tebra Engage)).

iii) Content Warranties

Customer represents and warrants to Tebra that:

1. Any Content submitted to the Service does not violate any copyright, trade secret, privacy or other third party right;
2. It will not submit any Content that is untrue, defamatory, harmful to any person, or violates HIPAA Privacy Rules, state or federal laws on patient privacy; and
3. All patient testimonials submitted by Customer are accurate, have the patient's consent, and comply with ethical guidelines of professional medical associations as well as state and local medical and private practice boards and governing bodies.

iv) Practice Growth and Engagement Software

1. Where applicable, Tebra will make the dashboard element of the Practice Growth Platform (Dashboard) available to Customer in accordance with these Terms of Service and any other Tebra rules and policies then in effect.
2. The Dashboard allows Customer to set up an account and password to access the Dashboard and set up users (Users).

v) Domain Name Upon Termination

Customer will have the following rights to the Provider Website domain name upon termination or expiration of the Customer Agreement:

1. If the domain name was purchased and registered by Tebra, then Tebra will take reasonable measures to assign its rights in the domain name to Customer; or
2. If rights to the domain name were provided by Customer, then Customer will retain such rights to the domain name.

vi) Reviews & Opinions

1. Tebra does not endorse, validate as accurate, or necessarily agree with any of the reviews, links, and user-generated content from users or Customers on the Service.
2. Tebra reserves the right to refuse to publish any patient review provided by Customer.
3. The Service may attempt to send automated or human-based alerts when reviews are provided on third party websites, but Tebra does not guarantee the accuracy, completeness, or timeliness of such alerts.
4. By using Tebra's Practice Growth reputation features, Customer represents and warrants that Customer will not:
 - pay, induce, or offer incentives of any kind, such as discounts, freebies, refunds, gift cards, contest entries, offers, or deals for the posting or removal of reviews of Customer's practice, or to prevent reviews;
 - edit reviews;
 - write reviews for Customer's practice or those of Customer's competitors;
 - use any automated means or form of scraping or data extraction to access, query or otherwise collect Tebra data, content and/or reviews from the Practice Growth website or Tebra Care Connect, except as expressly permitted by Tebra; or
 - selectively display or withhold reviews or otherwise treat reviews differently based on their content, except in the limited circumstances as outlined below.
5. Customer may only withhold review or testimonial content from public display on a Provider Site if such content contains:
 - Personal and confidential information, including phone numbers, addresses, and health information;
 - Vulgar content, including offensive, derogatory, obscene, profane, or inflammatory language or content;
 - Threats or personal attacks on others;
 - Discriminatory content or hate speech, including content that advocates against groups of people based on their race, ethnic origin, religion, disability, gender, gender identity, sexual orientation, age, or veteran status;
 - Misrepresentations, including content submitted fraudulently on behalf of others or that misrepresents the review's identity or connection with the Customer's practice;
 - Non-applicable content, including posts that are not specific to the Customer;

- Advertising or solicitations;
 - Illegal content; or
 - References to or information about ongoing legal matters or proceedings.
6. Customer further agrees to remove any patient review or testimonial upon request from the patient who originally posted it.

vii) Advertisements

1. Tebra reserves the right to place advertisements or messages from third parties on free claimed listings web pages as well as free versions of the Service.
2. Such advertisements or messages from third parties may be visible to users as well as Customer.

f) 'Tebra Telehealth' Service Offering – Additional Terms.

i) Telehealth Medical Services

1. Tebra Telehealth is designed to facilitate Customer's delivery of Telehealth Medical Services.
2. Telehealth Medical Services means the delivery of medical care by Customer to a patient physically located at another site through the use of advanced telecommunications technology that allows providers to remotely see and hear the patient in real time.

ii) Customer's Responsibilities

Customer is solely responsible for:

1. the provision of Telehealth Medical Services and all other professional medical services and aspects relating to Customer's practice of medicine (for the avoidance of doubt, Telehealth Medical Services are performed by Customer for appropriate visits as determined in Customer's, or its provider's, as applicable, sole professional judgment);
2. documenting the Telehealth Medical Services in Customer's clinical records;
3. billing and collecting for Telehealth Medical Services;
4. providing notice to and/or obtaining consent from any third parties relating to the provision of Telehealth Medical Services through Tebra Telehealth;
5. ensuring Tebra Telehealth is used in accordance with applicable instructions, training materials and other online material that may be made available by Tebra from time to time;

6. obtaining and maintaining both the functionality and security of all information technology software solutions and related services necessary to connect to, access or otherwise use Tebra Telehealth; and
7. complying with applicable laws and standards imposed by government health care programs and other payors, licensing agencies and applicable accreditation bodies, including, without limitation, with respect to the provision of Telehealth Medical Services.

g) 'Tebra Payment Processing Service' Offering – Additional Terms

If Customer contracts for Payment Processing Services, the Payment Processing Services will be governed by [Tebra Payment Processing Terms](#). If there is a conflict between the Payment Processing Terms and any other terms in the Customer Agreement, the Payment Processing Terms will control for purposes of the Payment Processing Services.

3) PAYMENT TERMS

a) Payment

- i. Customer must pay all fees as specified on the order and related services as incurred as specified on the [Pricing Policy](#) page.
- ii. Unless otherwise stated, invoiced charges are due upon receipt.
- iii. Customer is responsible for providing complete and accurate billing and contact information to Tebra and notifying Tebra of any changes to such information.

b) Credit Card and ACH

- i. Customer must pay all fees (in US dollars) with a credit card or via ACH upon receipt of an invoice from Tebra.
- ii. If the credit card or ACH is not valid or the payment is not otherwise made, Customer must pay the amount owed upon receipt of an invoice.
- iii. Customer hereby authorizes Tebra to charge such credit card or withdraw from Customer's bank account via ACH for all purchased Services and related services, and any renewals.
- iv. **Individual large credit card payments are subject to a processing fee as detailed in the Pricing Policy.**

c) Taxes

- i. Except for certain state sales taxes as noted on Customer invoices, Tebra's fees do not include any taxes, levies, or other similar governmental assessments (**Taxes**).
- ii. Except as otherwise stated herein, Customer is responsible for the payment of all Taxes associated with its purchases under the Customer Agreement.

- iii. Tebra is solely responsible for taxes assessable against Tebra based on its income, property, and employees.

d) Suspension of Service for Non- Payment

- i. Tebra may suspend or terminate Customer's access to the Service, or both, if Customer has not paid amounts owed to Tebra when due.
- ii. In advance of any suspension or termination, Tebra will make commercially reasonable efforts to send a minimum of five (5) days' advance electronic notice of payment default to the email address in Customer's account within the Service.
- iii. **Tebra reserves the right to assess a reactivation fee, as detailed in the Tebra Pricing Policy to Customers whose accounts are suspended based on late payments received more than fifteen (15) days following the payment due date.**

e) Fee Changes

- i. For Customers with month-to-month agreements, all fees may be changed with sixty (60) days' notice to Customer.
- ii. For all Customers, Tebra reserves the right to increase its prices by no greater than 4.9% at any one time, no more frequently than once per twelve- (12-) month period, upon thirty (30) days' notice to the Customer.
- iii. For all Customers, Tebra may increase fees to cover the cost of postage rate increases as well as regulatory, compliance, and other cost increases imposed by changes to applicable federal and state rules. Tebra will automatically apply the rate increase to all services impacted by the change with thirty (30) days' notice to the Customer.

f) Timing of Payment

Fees, as identified on the order form or subscription agreement, are due as indicated. Tebra will have the right to charge the Customer's card or debit from Customer's account through ACH for fees in accordance with the agreement. By providing Tebra with payment information, Customer agrees that Tebra is authorized, to the extent permitted by applicable law, to immediately charge such payment method for all fees and charges due and payable to Tebra hereunder and that, except as required by applicable law, no additional notice or consent is required. Customer agrees to immediately notify Tebra of any change in the payment information used for payment hereunder. Customer understands and acknowledges that all amounts owed must be paid in advance and that if timely payment is not received, in addition to being in breach of Customer's contractual obligations, the Service may be paused or terminated. Any amounts not paid by the Customer when due may bear interest at the rate of 1.5% per month (or the highest rate permitted by law). Customer agrees to pay all costs of collection, including attorney's fees and costs and all other legal and collection

expenses incurred by Tebra in connection with its enforcement of its rights under the agreement.

4) REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

a) Availability

Tebra will make commercially reasonable efforts to maintain uptime of 99% excluding any scheduled downtime, force majeure issues and third party services (see [Support Policy](#) for additional details).

b) Mutual Representations and Warranties

Each party represents and warrants to the other that:

- i. the Customer Agreement has been duly entered into and constitutes a valid and binding agreement enforceable against such party in accordance with its terms;
- ii. no authorization or approval from any third party is required in connection with such party's entering into or performance of the Customer Agreement; and
- iii. the entering into and performance of the Customer Agreement does not and will not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

c) DISCLAIMERS

- **TEBRA DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.**
- **WHILE TEBRA TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, TEBRA DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. TEBRA DISCLAIMS ANY WARRANTY REGARDING ANY PERCENTAGE OF COLLECTION OF CLAIMS FOR CUSTOMER.**
- FROM TIME TO TIME, CUSTOMER MAY REQUEST THE ADDITION OF CERTAIN CODE AND/OR FUNCTIONALITIES TO BE ADDED TO CUSTOMER'S WEBSITE OR OTHER PLATFORM. TEBRA SHALL NOT BE RESPONSIBLE FOR ENSURING THAT THE REQUESTED CODE AND/OR FUNCTIONALITIES COMPLY(IES) WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS PERTAINING TO CUSTOMER'S BUSINESS. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT CUSTOMER ALONE SHALL BE RESPONSIBLE FOR ENSURING THAT CUSTOMER'S WEBSITE AND SERVICE OFFERINGS, EVEN IF SUPPORTED BY TEBRA, COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

5) COMPLIANCE

a) No Medical Advice Provided by Tebra

- i. Tebra does not provide medical advice, provide medical or diagnostic services, or prescribe medication.
- ii. Use of the Service is not a substitute for the professional judgment of health care providers in diagnosing and treating patients.
- iii. Customer agrees that it is solely responsible for verifying the accuracy of patient information (*including, without limitation, obtaining all applicable patients' medical and medication history and allergies*), *obtaining patient's consent to use the Service (including, without limitation, the Patient Portal)*, and for all of its decisions or actions with respect to the medical care, treatment, and well-being of its patients, including without limitation, all of Customer's acts or omissions.
- iv. Any use or reliance by Customer upon the Service will not diminish that responsibility.
- v. Customer assumes all risks associated with Customer's clinical use of the Service for the treatment of patients.
- vi. NEITHER TEBRA NOR ITS LICENSORS ASSUME ANY LIABILITY OR RESPONSIBILITY FOR DAMAGE OR INJURY (INCLUDING DEATH) TO CUSTOMER, A PATIENT, OTHER PERSONS, OR TANGIBLE PROPERTY ARISING FROM ANY USE OF THE SERVICE.

b) Customer's Compliance with Medical Retention Laws and Patient Records Access

- i. Customer is responsible for understanding and complying with all state and federal laws related to retention of medical records, patient access to information, and patient authorization to release data.
- ii. Customer must obtain any necessary patient consent prior to using the Service (*including, without limitation, the Patient Portal*) and will apply settings to exclude information from availability in the Patient Portal as necessary to comply with state or federal law.

c) HIPAA

- i. As part of the Service, Tebra may perform or assist in performing a function or activity on Customer's behalf that involves the use and disclosure of Protected Health Information (as defined in 45 C.F.R. 164.501; **PHI**).
- ii. The parties may use or disclose such PHI as required by the Health Insurance Portability and Accountability Act of 1996 (**HIPAA**), the Standards for Privacy of Individually Identifiable Health Information (**Privacy Rule**) and the Standards for Security of Electronic Protected Health Information (**Security Rule**) promulgated thereunder, and the Health Information

Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) (**HITECH Act**).

- iii. Capitalized terms used but not otherwise defined have the same meaning given to such terms in HIPAA, the HITECH Act, or any implementing regulations promulgated thereunder, including but not limited to the Privacy Rule and the Security Rule.
- iv. In connection with and by agreeing to the Customer Agreement, you and Tebra agree to be bound by the terms of a [Business Associate Agreement](#) which is incorporated herein by reference. You (the “**Covered Entity**,” as referred to in the Business Associate Agreement) hereby agree that you have read and agree to be bound by the terms of the Business Associate Agreement.

d) CCPA

- i. **Definitions.**
 1. **CCPA** means the California Consumer Privacy Act of 2018, as amended (Cal. Civ. Code §§ 1798.100 to 1798.199.95), the CCPA Regulations (Cal. Code Regs. tit. 11, §§ 7000 to 7102), and any related regulations or guidance provided by the California Attorney General. For the purposes of this Section, terms defined in the CCPA, including personal information and business purposes, carry the same meaning.
 2. For purposes of this Section, “**Customer Personal Information**” means any “personal information” contained within the data that Tebra “processes” (as defined in the CCPA) in connection with performing the Service.
- ii. This Section applies solely to the extent that:
 - Tebra’s provision of the Service is not exempt from the CCPA under California Civil Code sections 1798.145(c)(1)(A) and (c)(1)(B) pertaining to medical information, PHI, providers of health care, and covered entities;
 - Customer is a “business” within the meaning of the CCPA; and
 - Tebra is processing the personal information of California residents.
- iii. Tebra is a service provider. Tebra will not collect, retain, use, disclose or otherwise process Customer Personal Information for any purpose other than for performing the Service, or as otherwise permitted by the CCPA.
- iv. Tebra will limit Customer Personal Information collection, use, retention, and disclosure to activities reasonably necessary and proportionate to provide the Service or to achieve another compatible operational purpose.
- v. Tebra will not collect, use, retain, disclose, sell, or otherwise make Customer Personal Information available for Tebra’s own commercial purposes or in a way that does not comply with the CCPA. Tebra may, however, create and derive from its provision of the Service anonymized and/or aggregated data that does not identify Customer or any consumer or household, and use, publicize, or share with third parties such data to improve Tebra’s products and services and for Tebra’s other lawful business purposes.

- vi. Notwithstanding the foregoing, with Customer's consent, Tebra may share Customer contact information with certain partners we may work with.
- vii. Tebra must promptly comply with any Customer request or instruction requiring Tebra to provide, amend, transfer, or delete Customer Personal Information, or to stop, mitigate, or remedy any unauthorized processing unless otherwise permitted by the CCPA.
- viii. Notwithstanding anything in the agreement entered, Customer and Tebra acknowledge and agree that Tebra's access to Customer Personal Information is not part of the consideration exchanged by the parties in respect of the Agreement.
- ix. Tebra certifies that it understands its obligations under this Section and must comply with them.
- x. If a law requires Tebra to disclose Customer Personal Information for a purpose unrelated to the Service, Tebra must first inform Customer of the legal requirement and give Customer an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- xi. Tebra may use a subcontractor to provide or support the provision of the Service. Any subcontractor used must qualify as a service provider under the CCPA and Tebra will not make any disclosures to the subcontractor that the CCPA would treat as a sale.
- xii. Customer is solely responsible for:
 - identifying whether the CCPA applies to Customer;
 - providing any notices of your privacy practices that may be required by CCPA; and
 - identifying and responding to verifiable consumer requests to exercise CCPA rights to access, delete, or opt out of the sale of personal information (**CCPA Requests**), including for verifying the identity of consumers submitting CCPA Requests and for evaluating the scope and legality of CCPA Requests.
- xiii. Tebra will provide reasonable assistance to Customer in responding to such CCPA Requests, which may include assistance by way of providing self-service functionality. Tebra will treat any CCPA Requests that Customer submits to Tebra as presumptively valid under the CCPA. With respect to CCPA Requests for which Customer requires Tebra to provide assistance, Customer must:
 - notify Tebra within five (5) days of its receipt of the CCPA Request by emailing privacy@tebra.com; and
 - provide Tebra with the consumer's email address or such other information that would permit Tebra to honor the request.

Customer is solely responsible and liable for responding to the individual's CCPA Request, including without limitation the content and timing of the response, in compliance with the CCPA.

- xiv. In response to a verifiable CCPA Request for access to Customer Personal Information that Customer submits to Tebra, within ten (10) business days of Tebra's receipt of such

request from Customer, Tebra will provide Customer with a file that contains the Customer Personal Information that Tebra maintains about the individual via a secure method of transfer. Tebra may withhold from such file any Customer Personal Information that the CCPA does not require to be provided in response to a CCPA Request.

- xv. In response to a verifiable CCPA Request for the deletion of Customer Personal Information that Customer submits to Tebra, except as otherwise required by applicable law or permitted by the CCPA, within ten (10) business days of Tebra's receipt of such request from Customer, Tebra will delete the Customer Personal Information, to the extent Tebra maintains such Customer Personal Information about the individual.
- xvi. Tebra may delete such Customer Personal Information by anonymizing and/or aggregating the information such that the information does not identify, and is not reasonably capable of identifying, the individual.
- xvii. Customer may not direct or otherwise cause Tebra to share any Customer Personal Information with any third party in a manner that may constitute a "sale" as such term is defined in the CCPA.

e) TCPA

- i. This Section concerns compliance with the Telephone Consumer Protection Act of 1991, located at 47 U.S.C. §§ 227 et seq., including the implementing regulations therefor located at 47 C.F.R. 64.1200 et seq. (**TCPA**) and the Telemarketing Sales Rule authorized by the Telemarketing and Consumer Fraud and Abuse Prevention Act, located at 15 U.S.C. §§ 6101-6108 (**TSR**) and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, located at 15 U.S.C §§ 7701-7713 (**CAN SPAM Act**).
- ii. As between Customer and Tebra, Customer must comply and be solely responsible for complying with all laws governing any messages sent or received in connection with its access or use the Service, *including without limitation, the TCPA, TSR, and CAN SPAM Act*.
- iii. Customer is responsible for, without limitation, obtaining any legally required consents from all third parties (including its patients or customers) to send and receive any text message and/or emails using the Service and honoring any requests revoking such consent or otherwise "opting-out" of receiving any such messages and/or emails.
- iv. Customer is solely liable for, and must indemnify, defend and hold harmless Tebra from and against any and all damages, liabilities, judgments, fees, fines, costs and expenses (including reasonable attorneys' fees) incurred by Tebra arising from any claims, demands or legal actions made against Tebra resulting from Customer's failure to comply with this Section.

f) Anti-Discrimination Policy

- i. At Tebra, we strive to create an environment where people are equally valued and where we and our Customers work together to do our part to help end discrimination.
- ii. As a result, Tebra has adopted an anti-discrimination policy that includes our Customers.
- iii. Tebra will not tolerate Customers who engage in extreme examples of blatant discrimination or verbal aggression in their interactions with Tebra employees or publicly on social channels.
- iv. This includes discrimination against or verbal aggression towards any race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person.
- v. Customer agrees and understands that violation of this policy by Customer qualifies as a Material Breach of the Customer Agreement pursuant to **Section 8 (TERM, TERMINATION, AND RETURN OF DATA)**.

g) Definition of Confidential Information

- i. Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**).
- ii. Tebra's Confidential Information includes, without limitation, the non-public portions of the Service and Customer's Confidential Information includes, without limitation, Customer Information.

h) Protection of Confidential Information

- i. Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of the Customer Agreement.
- ii. Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees, contractors, and clients (as the case may be) who need such access for purposes consistent with the Customer Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of the Customer Agreement.
- iii. Recipient may disclose Confidential Information (1) to the extent required by law or legal process; (2) to its legal or financial advisors, provided that such advisors are bound by a duty of confidentiality that includes use and disclosure restrictions; and (3) as required under applicable securities regulations.

- iv. Each party may disclose the terms and conditions of the Customer Agreement on a confidential basis to current and prospective investors, acquirers, lenders, and their respective legal and financial advisors in connection with due diligence activities.

i) Exclusions

Confidential Information excludes information that (1) is or becomes generally known to the public without breach of any obligation owed to Discloser; (2) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (3) is received from a third party without breach of any obligation owed to Discloser; or (4) was independently developed by the Recipient without use or access to the Confidential Information.

6) PROPRIETARY RIGHTS

a) Reservation of Rights by Tebra

- i. The software, workflow processes, user interface, designs, know-how, and other technologies provided by Tebra as part of the Service, and all updates and enhancements, are the proprietary property of Tebra and its [licensors](#), and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with Tebra.
- ii. Tebra reserves all rights unless expressly granted in the Customer Agreement.

b) AMA Content

Any content of the American Medical Association (**AMA**) is subject to the terms in the [AMA End User License Agreement](#).

c) Aggregation Services and De-identified Data

- i. Tebra may use PHI to provide Customer with data aggregation services (as that term is defined by HIPAA) and to create de-identified data in accordance with 45 CFR 164.514(a)-(c).
- ii. Tebra solely owns all right, title, and interest, in any de-identified data it creates from PHI.
- iii. Tebra and its affiliates may use and disclose, during and after the Customer Agreement, all aggregate, anonymized information and de-identified data for purposes of enhancing the Service, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.

7) LIMITS ON LIABILITY

a) NO INDIRECT DAMAGE

TEBRA WILL NOT BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, COST OF COVER, LOSS OF DATA, INTERRUPTION OF BUSINESS OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, EVEN IF CUSTOMER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

b) LIMIT

- i. TEBRA'S TOTAL LIABILITY FOR ALL DAMAGES ARISING UNDER OR RELATED TO THE CUSTOMER AGREEMENT (IN CONTRACT, TORT, OR OTHERWISE) WILL NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER WITHIN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM.
- ii. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- iii. ANY CLAIM BY CUSTOMER AGAINST TEBRA MUST BE BROUGHT WITHIN SIX (6) MONTHS OF THE EVENT WHICH GAVE RISE TO THE CLAIM, AND IF IT IS NOT BROUGHT WITHIN SUCH TIME PERIOD THEN SUCH CLAIM IS EXPRESSLY WAIVED BY CUSTOMER.

8) TERM, TERMINATION, AND RETURN OF DATA

a) Term

- i. The applicable Services will continue for the duration specified in the applicable Customer Agreement (**Initial Term**). Following the end date of the Initial Term, the Customer Agreement will be automatically extended for additional consecutive terms of equal duration to the Initial Term (**Renewal Term**) unless either party provides notice of non-renewal in accordance with the Section entitled "Notice of Non-Renewal" below. The Initial Term and any subsequent Renewal Term(s) may be collectively referred to as the "**Term**".
- ii. These Terms of Service continue in effect until all order forms and/or subscription agreements and all Services are terminated.

b) Notice of Non-Renewal

To prevent renewal of a Customer Agreement, either party must give written notice of non-renewal and this written notice must be received no more than ninety (90) days but no less than sixty (60) days in advance of the end of the Customer Agreement then in effect. If Customer decides not to renew, Customer must send the notice of non-renewal by contacting

the assigned Account Manager directly or via the communications methods in Tebra's [Support Policy](#). Any notice received with less than sixty (60) days' notice will result in auto-renewal of the Customer Agreement for an additional Renewal Term.

c) Downgrades

Customers with Billing, Clinical, Engage, and/or Telehealth modules must provide notice in writing at least thirty (30) days prior to removing a license or canceling a module. Notice should be made to the assigned Account Manager directly or via the communications methods in Tebra's Support Policy.

d) Termination for Material Breach

- i. Either party may terminate the Customer Agreement if the other party material breaches any term of the Customer Agreement and does not cure the breach within thirty (30) days of receipt of written or electronic notice of breach.
- ii. Additional terms are in the [Term, Termination and Return of Data Policy FAQ page](#).

e) No Early Termination; No Refunds

Absent termination pursuant to the Sections entitled "Notice of Non-Renewal" and "Termination for Material Breach", Customer cannot cancel the Customer Agreement during the Term in effect. Tebra does not provide refunds if Customer decides to stop using the Service before the end of the Term.

f) Return of Data

- i. As Customer has access to the Customer Information during the term of an order, Tebra has no obligation to provide Customer Information to Customer upon termination of the Customer Agreement.
- ii. Notwithstanding the foregoing, Tebra retains Customer Information for sixty (60) days from such termination and Tebra may provide Customer access to such information upon Customer's request.
- iii. Additional information is located at [Term, Termination and Return of Data Policy FAQ page](#).
- iv. If Customer's account is suspended for any reason, Tebra will provide *offline access* to Customer Information via the communications methods detailed in the [Support Policy](#).

g) Customer Actions upon Termination

- i. Upon termination, Customer must pay any unpaid fees and destroy all Tebra property in Customer's possession.
- ii. Customer, upon Tebra's request, will confirm in writing or electronically that it has complied with this requirement.

h) Suspension or Termination of Service for Violation of Law or the Agreement

- i. Tebra may immediately suspend or terminate the Service and remove applicable Customer Information if it in good faith believes that, as part of using the Service, Customer may have violated any applicable law or any term of the Customer Agreement.
- ii. Tebra may use reasonable efforts to try to contact Customer in advance, but it is not required to do so.

9) INDEMNITY

a) Customer Indemnity

To the maximum extent allowed by law, Customer must indemnify, defend (at Tebra's option), and hold harmless Tebra, including its officers, directors, employees, agents, successors, and assigns against all third-party claims (including, without limitation, by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to:

- i. the use of the Service by Customer;
- ii. Customer's breach of any term in the Customer Agreement;
- iii. Customer Information;
- iv. any unauthorized use, access, or distribution of the Service by Customer; or
- v. violation of any individual's privacy rights related to information submitted under Customer's account, or fraudulent, invalid, duplicate, incomplete, unauthorized, or misleading information submitted under Customer's account or by Customer.

b) Tebra Indemnity

Tebra shall indemnify, defend, and hold harmless Customer from and against any and all losses incurred by Customer resulting from any action by a third party (other than an a person or entity that directly or indirectly controls, is controlled by, or is under common control with Customer) against Customer alleging use of the Service in accordance with this Customer Agreement infringes or misappropriates such third party's US Intellectual Property Rights.

The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- i. Customer Information or Customer provided Content;
- ii. access to or use of the Service in combination with any hardware, system, software, network, or other materials or service not provided by Tebra or specified for Customer's use, unless otherwise expressly permitted by Tebra in writing;

- iii. modification of the Service other than:
 - 1. by or on behalf of Tebra; or
 - 2. with Tebra's written approval in accordance with Tebra's written specification;
- iv. failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Tebra.

10) DISPUTE RESOLUTION

a) Governing Law

- i. The Customer Agreement and any Dispute (as defined below) will be governed exclusively by the laws of the State of California, without regard to its conflicts of laws principles. The Federal District Court for the Central District of California or Orange County Superior court will be the exclusive venue for any resolution of any Dispute. The parties hereby submit to and consent irrevocably to the jurisdiction of such courts for these purposes.
- ii. ***The parties hereby irrevocably waive any and all right to trial by jury in any legal proceeding arising out of any Dispute.***

b) General Mediation Process

- i. The parties shall submit any and all disputes, claims, or controversies arising out of or relating to the Customer Agreement including any conduct related to or arising out of the Customer Agreement following termination hereof (each a "**Dispute**") as follows:
 - 1. the parties will submit the dispute to non-binding mediation in Orange County under the mediation rules of the American Arbitration Association (**AAA**); and
 - 2. if no settlement is reached within sixty (60) days of the start of mediation, either party may seek legal redress in a forum of competent jurisdiction.
- ii. Either party may commence mediation by providing to AAA and the other party a written request for mediation, which must set forth the subject of the Dispute, the relief requested, and the factual and legal bases for such relief. The parties shall cooperate with AAA and with one another in selecting a mediator from the AAA panel of neutrals and in scheduling the mediation proceedings. The parties shall participate in the mediation in good faith and equally share the costs of the mediation.
- iii. If the Dispute is not resolved through mediation, the party seeking relief may pursue all remedies available at law, subject to the terms of this Agreement.
- iv. Notwithstanding this Section, either party may (1) terminate this Agreement according to its terms, or (2) seek injunctive or equitable relief.

c) PROHIBITION OF CLASS AND REPRESENTATIVE ACTIONS

- i. EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL PARTY BASIS, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING.
- ii. THE MEDIATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, CLASS OR REPRESENTATIVE PROCEEDING.

11) OTHER TERMS

a) Consent to Electronic Notice, Communications and Transactions

- i. By using the Service, Customer agrees to conduct business electronically and acknowledges that Customer has read the Consumer Disclosure Regarding Electronic Business Transactions, Receiving Electronic Notices and Disclosures, and Signing Documents Electronically, located at <https://www.tebra.com/consumer-disclosure/>.
- ii. For purposes of messages and notices about the Service (including, without limitation, collections and payments issues), Tebra may send email notices to the email address associated with Customer's account or provide in service notifications.
- iii. For certain notices (e.g., notices regarding termination or material breaches), Tebra may send notices to the postal address provided by Customer.
- iv. Customer is solely responsible for keeping an updated email address within its account for notice purposes.
- v. TEBRA HAS NO LIABILITY ASSOCIATED WITH CUSTOMER'S FAILURE TO MAINTAIN ACCURATE CONTACT INFORMATION WITHIN THE SERVICE OR ITS FAILURE TO REVIEW ANY EMAILS OR IN-SERVICE NOTICES.
- vi. Customer has the ability to enter into agreements, authorizations, consents, and applications; make referrals; order lab tests; prescribe medications; or engage in other transactions electronically.
- vii. ELECTRONIC SUBMISSIONS THROUGH THE SERVICE IN CONNECTION WITH SUCH ACTIVITIES CONSTITUTE CUSTOMER'S CONSENT TO BE BOUND BY SUCH AGREEMENTS AND TRANSACTIONS AND APPLIES TO ALL RECORDS RELATING TO SUCH TRANSACTIONS.
- viii. Customer represents and warrants that it has the authority to take such actions.
- ix. Customer agrees that by registering for the Service (including without limitation, any request forms or use of communications features), constitutes a request for Tebra to send email, fax, phone call, or SMS communications related to the Service, (including, but not limited to, upcoming appointments, special offers, billing, and upcoming events).
- x. Tebra is not responsible for any text messaging or data transmission fees.

- xi. If Customer provides a cellular phone number and agrees to receive communications from Tebra, Customer specifically authorizes Tebra to send text messages or calls to such number.
- xii. Customer represents and warrants it has the authority to grant such authorization.
- xiii. Customer is not required to consent to receive text messages or calls as a condition of using the Service and may opt out of such messages through the Services.

b) Entire Agreement

- i. The Customer Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter.
- ii. Customer is not relying on any representation concerning this subject matter, oral or written, not included in the Customer Agreement.
- iii. No representation, promise, or inducement not included in the Customer Agreement is binding.
- iv. No modification or waiver of any term of the Customer Agreement is effective unless signed by both parties.
- v. Notwithstanding the foregoing, Tebra may modify or replace the Customer Agreement as detailed in the paragraph entitled “Changes”, below.
- vi. The Convention on Contracts for the International Sale of Goods does not apply.
- vii. If there is a conflict between the Terms of Service and the order form or subscription agreement, the order form or subscription agreement prevails.

c) Changes

Notwithstanding anything to the contrary herein, these Terms of Service are subject to change by Tebra on a going-forward basis in its sole discretion at any time. When changes are made to these Terms of Service, Tebra will make a new copy of the modified Terms available on the Services and will also update the “Last Updated” date at the bottom of the Terms of Service. Any changes to the Terms of Service will be effective immediately for new Customers and will be effective for continuing Customers upon the earlier of: (i) thirty (30) days after posting notice of such changes on the Services for existing Customers; (ii) thirty (30) days after dispatch of an e-mail notice of such changes to you; or (iii) you providing consent to the updated Terms in a specified manner, as applicable. Unless otherwise stated, your continued use of the Services constitutes your acceptance of such change(s). If you do not agree to any change(s) after receiving a notice of such change(s), then, notwithstanding anything to the contrary herein, your sole recourse is to terminate the Agreement, effective as of the end of the then current Initial Term or Renewal Term, by providing Tebra written notice of termination prior to your continued use of the Services. Please regularly check the Services to view the then-current Terms.

d) Feedback

If Customer provides feedback or suggestions about the Service, then Tebra (and those it allows to use its technology) may use such information without obligation to Customer.

e) Beta Features

- i. If Customer is invited to access any beta features of the Service or a Customer accesses any beta features of the Service, Customer agrees that:
 - such features have not been made commercially available by Tebra;
 - such features may not operate properly, be in final form, or be fully functional;
 - such features may contain errors, design flaws, or other problems;
 - it may not be possible to make such features fully functional; use of such features may result in unexpected results, corruption or loss of data, or other unpredictable damage or loss;
 - such features may change and may not become generally available; and
 - Tebra is not obligated in any way to continue to provide or maintain such features for any purpose in providing the ongoing Service.
- ii. These beta features are provided **AS IS, with all faults. Customer assumes all risk arising from use of such features, including, without limitation, the risk of damage to Customer's computer system or the corruption or loss of data.**

f) No Assignment

- i. Tebra may assign or transfer the Customer Agreement (or its rights and/or obligations) to any third party without Customer's consent.
- ii. Customer may not assign or transfer the Customer Agreement to a third party without the prior written consent of Tebra, except that the Customer Agreement may be assigned (without Tebra's consent but with notice) as part of a merger, or sale of all or substantially all of the business or assets, of Customer.
- iii. The Customer Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

g) Independent Contractors and Enforceability

- i. The parties are independent contractors with respect to each other.
- ii. If any term of the Customer Agreement is invalid or unenforceable, the other terms remain in effect.

h) Survival of Terms

All terms survive termination of the Customer Agreement that by their nature survive for a party to assert its rights and receive the protections of the Customer Agreement.

i) Customer Name

Tebra may use Customer's name and logo in customer lists and related promotional materials describing Customer as a customer of Tebra, which use must be in accordance with Customer's trademark guidelines and policies, if any, provided to Tebra. Customer may opt out of this provision by sending written notice to legal@tebra.com.

j) Force Majeure

Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under the Customer Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party:

- i. gives the other party prompt notice of such cause, and
- ii. uses its reasonable commercial efforts to correct promptly such failure or delay in performance.

k) Notice

- i. Except as otherwise provided herein, any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid to the address for the applicable party as furnished in writing by either party hereto to the other. Tebra's address for notice is: 1111 Bayside Drive, Corona Del Mar, CA 92625, Attn: General Counsel, and by email to: legal@tebra.com.
- ii. Such notice will be deemed to have been given as of the date it is delivered, mailed or sent, whichever is earlier.

Updated effective 12/1/2023