



## TRANSCCEPTA TERMS OF SERVICE

Transcepta = Transcepta LLC

You = The customer that signed the Transcepta Agreement

1. **Agreement.** Your use of Transcepta's products and services (the "Service") is governed by these Terms of Service (these "Terms") and the mutually approved Statement(s) of Work that you and Transcepta sign (each, a "SOW" and collectively with these Terms, the "Agreement"). By signing a SOW, you are agreeing to these Terms.
2. **Use of the Service.** Upon executing a SOW with Transcepta, Transcepta grants you a license to use the Service in accordance with the applicable SOWs and these Terms.
3. **Ownership.** As between the parties, (i) Transcepta owns the Service, its software, and Transcepta's marks and logos, including any derivatives (and they are protected by copyrights, trademarks, service marks, patents, trade secret or other proprietary rights and laws) and (ii) you own any lists of your suppliers that you provide to Transcepta, and your marks and logos that may be used by Transcepta and the Service with your permission to outreach to your suppliers.
4. **Confidential Information.** Each party agrees to maintain in strict confidence and to use and disclose only to its third party providers in order to perform the Service (which for Transcepta may include tracking the performance of and participation in the Service, improving the Service or related services, and communicating with your suppliers relating to the Service), or as otherwise authorized by the other party, all information that it receives under this Agreement which is of a confidential nature either before or after the date of this Agreement, concerning the other party's business operations, employees, suppliers or customers ("Confidential Information"). Information shall not be deemed Confidential Information if it is or becomes generally available to the public without breach of this Agreement or is independently developed by the non-disclosing party or its personnel without reliance in any way on Confidential Information of the disclosing party. Notwithstanding the above, Transcepta may use and disclose aggregated information relating to usage of the Service that does not identify you or any particular supplier.
5. **GDPR.** If you subscribe to use the Service in the European Union, additional terms to address any data submitted to the Service from the European Union on your behalf that constitutes Personal Data under the General Data Protection Regulation 2016/679 ("GDPR") will apply. See [Transcepta's GDPR Addendum](#).
6. **Limited Warranty.** The Service will be performed in a professional manner conforming to generally accepted standards and practices in Transcepta's industry. Your exclusive remedy and Transcepta's sole liability for a breach of this warranty is for Transcepta to re-perform the Service so that it conforms to this warranty. Transcepta disclaims all other warranties, including any warranty of merchantability or fitness for a particular purpose.
7. **Limitation on Liability.** EXCEPT FOR TRANSCCEPTA'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 FOR INTELLECTUAL PROPERTY INFRINGEMENT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TRANSCCEPTA'S AND ITS LICENSORS' ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY, FOR ANY CLAIM RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, TORT, OR ANY OTHER LEGAL THEORY, IS LIMITED TO THE TOTAL AMOUNT YOU PAID TO TRANSCCEPTA DURING THE TWELVE (12) MONTHS PRIOR TO THE CLAIM. TRANSCCEPTA WILL NOT BE LIABLE FOR ANY (i) INTERRUPTION OF BUSINESS, (ii) ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THE SERVICE, (iii) YOUR AGREEMENTS WITH YOUR SUPPLIERS OR THE ACTIONS OR INACTIONS OF YOUR SUPPLIERS, OR (iv) EVENTS BEYOND TRANSCCEPTA'S REASONABLE CONTROL.
8. **No Consequential Damages.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL YOU OR TRANSCCEPTA OR TRANSCCEPTA'S LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, OR FOR LOST PROFITS, LOST REVENUE, OR FAILURE TO REALIZE EXPECTED SAVINGS, ARISING UNDER THIS AGREEMENT OR RELATING TO THE SERVICE, EVEN IF A PARTY HAS BEEN ADVISED OF OR COULD HAVE REASONABLY FORESEEN THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS AGREEMENT SHALL APPLY EVEN IF A REMEDY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
9. **Indemnification by Transcepta.** If a third party makes a claim against you that the Service infringes their registered United States patent, copyright or trademark, or that Transcepta committed gross

negligence or willful misconduct or that Transcepta breached its confidentiality obligations in Section 4, Transcepta agrees to indemnify, defend and hold you harmless from such claim and all liabilities, losses, damages, and expenses, including without limitation reasonable attorneys' fees, incurred by or asserted against you in connection with such action provided that you give Transcepta prompt written notice of such claim, reasonable assistance and sole authority to defend and settle such claim. In the defense or settlement of an infringement claim hereunder (or if Transcepta reasonably believes the Service or any portion of the Service does or may infringe the rights of a third party), Transcepta shall have the option at its own expense to (i) modify the Service to become non-infringing, or (ii) obtain for you the right to continue using the Service, or if Transcepta determines in its discretion that (i) or (ii) is not reasonably commercially available, then (iii) terminate this Agreement and provide you a prorated refund of fees previously received by Transcepta hereunder corresponding to any period after the effective date of such termination. Notwithstanding the above, Transcepta shall have no liability or obligation to indemnify you for any claim of infringement based upon the combination, operation, or use of the Service with components, hardware or software not furnished by Transcepta, if such infringement would have been avoided by the use of the Service without such other components, hardware or software, or to refund any fees if Transcepta terminates this Agreement due to the same.

**10. Miscellaneous.** The Agreement constitutes the entire agreement between Transcepta and you with respect to the subject matter hereof and supersedes any previous and contemporaneous agreements and understandings with respect to the subject matter hereof. Notices sent to either party shall be given in writing and shall be deemed effective on the business day following the date of such notification. You may not assign this Agreement without the prior written consent of Transcepta. This Agreement is for the sole benefit of the parties hereto and does not create any third party beneficiaries, whether intended or incidental. The failure of a party to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. This Agreement is governed by the laws of the state where you are headquartered. The prevailing party in any action to interpret or enforce this Agreement shall be entitled to its reasonable attorneys' fees as well as all other remedies available to it. If any provision of the Agreement is found to be legally unenforceable, that provision shall be enforced to the maximum extent possible and any such unenforceability shall not prevent enforcement of any other provision of this Agreement. Sections 3 through 10 survive any termination of the Agreement.