

TERMS AND CONDITIONS (Free, Starter Plan)

Last Modified: August 25, 2022

1. PLEASE READ THESE TERMS AND CONDITIONS (SAAS) (“**TERMS**”) CAREFULLY BEFORE USING THE PLATFORM OFFERED BY NOTEABLE, INC. (“**NOTEABLE**”). BY ACCEPTING THESE TERMS, YOU (“**CUSTOMER**”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH THE COPYRIGHT DISPUTE POLICY, DATA PROCESSING ADDENDUM AND PRIVACY POLICY, THE “**AGREEMENT**”) TO THE EXCLUSION OF ALL OTHER TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS. **Definitions.** Certain definitions used in this Agreement are set forth below, other capitalized terms used herein shall have the respective meanings set forth elsewhere in this Agreement.

1.1. “**Copyright Dispute Policy**” means Noteable’s Copyright Dispute Policy available at <https://www.noteable.io/legal/copyright-dispute-policy>.

1.2. “**Data Processing Addendum**” means Noteable’s Data Processing Addendum available at <https://www.noteable.io/legal/data-processing-addendum>.

1.3. “**Personal Information**” means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located, including without limitation all data considered “personal data”, “personally identifiable information”, or something similar under applicable laws, rules, or regulations relating to data privacy.

1.4. “**Platform**” means [Noteable’s proprietary hosted collaborative notebook software platform made available at <https://noteable.io> or a sub- or successor site thereto (e.g., <https://customername.noteable.io>)].

1.5. “**Privacy Policy**” means Noteable’s Privacy Policy available at <https://www.noteable.io/legal/privacy-policy>.

1.6. “**Sensitive Data**” means (i) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (ii) protected health information as defined in the Health Insurance Portability and Protection Act, as amended (“**HIPAA**”); (iii) payment cardholder information or financial account information, including bank account numbers or other personally identifiable financial information; (iv) social security numbers, driver’s license numbers, or other government identification numbers; (v) other information subject to regulation or protection under specific laws such as the Children’s Online Privacy Protection Act (“**COPPA**”) or the Gramm-Leach-Bliley Act (“**GLBA**”), in each case as amended, or related rules or regulations; or (vi) any data similar to the above protected under applicable laws, rules, or regulations.

1.7. “**Service Level Agreement**” means Noteable’s Service Level Agreement available at <https://www.noteable.io/legal/service-level-agreement>.

1.8. “**Term**” means the period during which this Agreement is in effect.

1.9. “**Users**” means an employee, consultant, or independent contractor of Customer who has been authorized by Customer to use the Platform.

2. Usage & Restrictions.

2.1. **Access and Use of the Platform.** Subject to the terms and conditions of this Agreement, Customer may, solely through its Users, access and use the Platform via the internet during the Term on a non-exclusive, non-transferable, non-sublicensable basis. Such use is limited to Customer’s internal business purposes. The Platform is subject to modification from time to time at Noteable’s sole discretion, for any purpose deemed appropriate by Noteable. Customer will be responsible for maintaining the security of Customer’s and its Users’ accounts, passwords (including but not limited to administrative and User passwords) and files, and for all uses of Customer’s and its Users’ accounts with or without Customer’s knowledge or consent. Customer will cooperate with Noteable in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Noteable may reasonably request. Customer will also cooperate with Noteable in establishing a password or other procedures for verifying that only designated Users of Customer have access to any administrative functions of the Platform. Users may not share their account credentials with one another or any third party. Customer is responsible for all of the acts and omissions of its Users in connection with this Agreement and for all use of Users’ accounts (whether or not authorized by Customer).

2.2. **Ownership.** Noteable and its licensors retain all right, title and interest in and to the Platform, all copies, modifications and derivative works thereof; all Noteable trademarks, names, logos; and all documentation for the Platform, including without limitation, all rights to patent, copyright, trade secret and other proprietary or intellectual property rights. Customer may (but is not obligated to) provide suggestions, comments or other feedback to Noteable with respect to the Platform (“**Feedback**”). Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation

for Noteable notwithstanding anything else. Noteable acknowledges and agrees that all Feedback is provided “AS IS” and without warranty of any kind. Customer shall, and hereby does, grant to Noteable a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Platform, or any intellectual property rights.

2.3. Restrictions. Customer will not and will not allow its Users or a third party to: (i) decompile, reverse engineer, disassemble or otherwise attempt to derive, analyze or use any source code or underlying ideas or algorithms related to the Platform by any means whatsoever; (ii) use or allow the use of the Platform by or for the benefit of third parties, including without limitation by renting, leasing, lending, timesharing, or using for service bureau purposes; (iii) disseminate benchmark performance information or analysis for purposes other than internal issue resolution or as requested by Noteable; (iv) sell, reproduce, distribute, translate or market the Platform; (v) modify or create derivative works based on the Platform; (vi) use the Platform in any infringing, defamatory, harmful, fraudulent, illegal, violent, deceptive, threatening, harassing, or obscene way; (vii) compromise the performance, security or integrity of our Platform or related systems, network or data by probing, scanning, monitoring, crawling, or testing the vulnerability of the Platform or any system or network that hosts the Platform; (viii) tamper with, hack or circumvent any security or authentication measures, or attempt to gain unauthorized access to the Platform, related systems, networks or data; (ix) harvest or scrape any Content; (x) use the Platform to make or distribute malware or spyware (including remote user surveillance); (xi) use the Platform to engage in phishing, extortion, fraud, or mining of cryptocurrencies; or (xii) use the Platform other than in accordance with this Agreement and in compliance with all applicable laws, regulations and rights (including but not limited to those related to privacy intellectual property, consumer and child protection, SPAM, text messaging, obscenity or defamation). Customer is responsible for any breach, compromise or violation, by Customer employees, consultants, or independent contractors, of such obligations and Noteable’s rights and title to the Platform.

2.4. Irreparable Injury. Customer acknowledges that there is no adequate remedy at law for a breach of this [Section 2](#), that such breach would irreparably harm Noteable for which monetary damages would be inadequate and that Noteable is entitled to injunctive and equitable relief in addition to any other remedies.

3. No Support & Maintenance. Noteable has no obligation under this Agreement to provide any support or maintenance of any kind. As provided in the Service Level Agreement with respect to customers purchasing the Bronze Support Tier, Customer and its Users may utilize Noteable’s community support forum, currently available at <https://community.noteable.io/>, to post questions and receive answers regarding the Platform and its use.

4. Customer Content.

4.1. Content Ownership and License. Noteable will obtain and process certain content or data provided by or on behalf of Customer (“**Content**”) only to perform its obligations under this Agreement. By submitting Content through the Platform, Customer hereby grants Noteable a worldwide, non-exclusive, perpetual, royalty-free, fully paid sublicensable and transferable license to use, edit, modify, truncate, aggregate, reproduce, distribute, display and perform the Content in connection with the Platform and Noteable’s (and its successors’ and assigns’) businesses. To the extent that Customer agrees to make any Content available to Noteable’s other customers through the functionality provided on the Platform, Customer also hereby grants each such customer a worldwide, non-exclusive, perpetual, royalty-free, fully paid, sublicensable and transferable license to access the Content through the Platform, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such Content, including after the termination of Customer’s account on the Platform. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all Content distributed through the Platform and the intellectual property rights with respect to that Content without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights.

4.2. Copyright Disputes. Customer acknowledges and agrees to the Copyright Dispute Policy, which is hereby incorporated by reference. If Noteable receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party, Noteable may (but is not required to) suspend activity hereunder with respect to that Content or remove such Content in its sole discretion.

4.3. Safeguards. Noteable will implement and maintain commercially reasonable administrative, physical, and technical safeguards designed to protect Content from unauthorized access, use, alteration, or disclosure.

4.4. Personal Information. To the extent Content includes any Personal Information, Noteable’s rights and obligations with respect to such Personal Information are set forth in Noteable’s Privacy Policy and, to the extent Content includes any Personal Information from a data subject that is subject to (i) European Union’s General Data Protection Regulation (“**EU GDPR**”), (ii) EU GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European

Union (Withdrawal) Act 2018 (“**UK GDPR**”), (iii) the UK Data Protection Act 2018, (iv) Swiss Federal Act on Data Protection, or (v) California Consumer Privacy Act (“**CCPA**”), the Data Processing Addendum, each of which is hereby incorporated by reference. Notwithstanding the foregoing, Customer acknowledges and agrees that: (x) the Platform is not designed to store Sensitive Data; and (y) Customer will not use the Platform to store Sensitive Data and will not submit, post, or otherwise transmit through the Platform any Content that includes or constitutes Sensitive Data.

5. Third Party Services. Customer acknowledges and agrees that the Platform operates on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties (“**Third Party Services**”). Noteable is not responsible for the operation of any Third Party Services nor the availability or operation of the Platform to the extent such availability and operation is dependent upon Third Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services and for complying with any applicable terms or conditions thereof. Noteable does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party’s terms and conditions. Certain aspects of the Platform may contain or be distributed with open source software code or libraries (“**Open Source Components**”). Noteable will provide a list of Open Source Components for a particular version of any distributed portion of the Platform on Customer’s request. To the extent required by the license applicable to such Open Source Components: (i) Noteable will use reasonable efforts to deliver to Customer any notices or other materials (such as source code); and (ii) the terms of such licenses will apply to such Open Source Components in lieu of the terms of these Terms. To the extent the terms of such licenses prohibit any of the restrictions in these Terms with respect to any particular Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of such licenses require Noteable to make an offer to provide source code or related information in connection with the Open Source Component, such offer is hereby made. For purposes of clarity, Open Source Components are Third-Party Services.

6. Term & Termination.

6.1. Term. Unless earlier terminated in accordance with [Section 6.2](#), this Agreement shall become effective on the Effective Date and will remain in effect until the date on which this Agreement is terminated.

6.2. Termination. This Agreement may be terminated (i) by either party upon 30 days prior written notice in the event of a material breach of a material provision of this Agreement by the other party which is not cured within such period; (ii) by either party, immediately, if the other shall seek protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable insolvency proceeding, or if any such insolvency proceeding is instituted against the other (and not dismissed within 120 days); or (iii) by either party, immediately on written notice, for any reason or for no reason.

6.3. Effects of Termination. Upon termination of this Agreement, all licenses granted hereunder shall terminate and Customer shall immediately cease use of the Platform, provided that [Sections 2.2, 2.3, 2.4, 6.3, 7, 8, 9, 10, and 11](#) shall survive any expiration or termination of this Agreement. Termination is not the sole remedy under this Agreement and, whether or not termination is effected, all other remedies will remain available.

7. Warranty Disclaimer. EXCEPT AS OTHERWISE STATED HEREIN, NEITHER NOTEABLE NOR ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, AND HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, CORRECTNESS OR RELIABILITY RELATING TO PATIENT INFORMATION, REGARDING THE USE AND RESULTS OF THE PLATFORM, OR THAT USE WILL BE UNINTERRUPTED OR ERROR-FREE, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE.

8. Limitations. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTEABLE, AND ITS SUPPLIERS WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF US \$1,000; (II) ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS; (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES; (IV) FOR LOSS, INACCURACY, OR CORRUPTION OF DATA OR INTERRUPTION OF USE; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. Indemnification.

Customer will: (i) defend and settle, at its option, any claims, suits, actions, or proceedings brought by an unaffiliated third party (each a “**Third Party Claim**”) brought against Noteable arising from (a) an alleged violation of the restrictions set forth in [Sections 2.3](#) or 4 otherwise from Customer’s use of the Platform or (b) that any Content, or either party’s authorized activities hereunder with respect to any Content, infringes or violates the rights of a third party; and; and (ii) indemnify Noteable and its

affiliates and its and their respective directors, officers, employees, contractors, agents, successors, and assigns against any losses, liabilities, or expenses incurred (including reasonable attorneys' fees), as well as amounts finally awarded in a settlement or by a court, in connection with any such Third Party Claim.

10. Confidential Information.

10.1. Definition. Each party agrees that the business, technical and financial information, including without limitation, the Platform, source code, inventions, algorithms, know-how and ideas and the terms and conditions of this Agreement, that is designated in writing as confidential, or is disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed, shall be the confidential property of the disclosing party and its licensors ("**Confidential Information**"). Confidential Information does not include information that (i) is previously rightfully known to the receiving party without restriction on disclosure, (ii) is or becomes known to the general public, through no act or omission on the part of the receiving party, (iii) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (iv) is independently developed by the receiving party without use or reliance on the Confidential Information.

10.2. Confidentiality. Except as expressly and unambiguously allowed herein, the receiving party will hold in confidence and not use or disclose any Confidential Information and shall similarly bind its employees, consultants, and independent contractors in writing to confidentiality restrictions at least as restrictive as those contained herein.

10.3. Return of Confidential Information. Upon the expiration or termination of this Agreement, all of the Confidential Information (including any copies) will be returned to the disclosing party, and receiving party will make no further use of such materials.

10.4. Required Disclosure. If required by law, the receiving party may disclose Confidential Information of the disclosing party, but will give adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment therefor.

10.5. Relief. Money damages will not be an adequate remedy if this [Section 10](#) is breached and, therefore, either party may, in addition to any other legal or equitable remedies, seek an injunction or other equitable relief against such breach or threatened breach without the necessity of posting any bond or surety.

11. General.

11.1. Relationship of Parties. The parties hereto shall each be independent contractors in the performance of their obligations under this Agreement, and nothing contained herein shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

11.2. Publicity. Noteable may identify Customer as a user of the Platform and may use Customer's name, logo, and other trademarks in Noteable's customer list, press releases, blog posts, advertisements, and website (and all use thereof and goodwill arising therefrom shall inure to Customer's sole and exclusive benefit). Otherwise, neither party may use the name, logo, or other trademarks of the other party for any purpose without the other party's prior written approval.

11.3. Notices. Notices under this Agreement shall be sufficient only if in writing and personally delivered, delivered by a major commercial rapid delivery courier service or mailed by certified or registered mail, return receipt requested to a party at the address first set forth herein or as amended by notice pursuant to this subsection, and if such notice is sent to Noteable, such notice shall be addressed to the attention of "Legal".

11.4. Force Majeure. If either party is unable to perform any of its obligations under this Agreement, other than payment obligations, due to any cause beyond the reasonable control of such party, the affected party's performance shall be extended for the period of its inability to perform due to such occurrence.

11.5. Export Control. Customer shall comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions and regulations of the U.S. Department of Commerce, and any other applicable U.S. and foreign agency or authority. Customer represents and warrants that it is not (i) a person or entity that is the target of sanctions administered by U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), or other relevant sanctions authority or (ii) located in a Crime Region of Ukraine, Cuba, Iran, North Korea and Syria. Violation of this Section 11.5 will result in immediate termination of this Agreement.

11.6. Headings. Headings and captions used in this Agreement are for convenience only and are not to be used in the interpretation of this Agreement.

11.7. Assignment. This Agreement and the rights and obligations herein may not be assigned or otherwise transferred, in whole or in part, whether by operation of law or otherwise, by Customer without Noteable's prior written consent. Noteable may freely assign this Agreement. Any assignment in violation of this provision is void and without effect. In

the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties hereto.

11.8. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof.

11.9. Arbitration.

(a) **Arbitration Rules; Applicability of Arbitration Agreement.** The parties shall use their best efforts to settle any dispute, claim, question, or disagreement arising out of or relating to the subject matter of this Agreement directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in San Francisco, California. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "Rules") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.

(b) **Cost of Arbitration.** The Rules will govern payment of all arbitration fees. Noteable will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Noteable will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that Customer's claim is frivolous.

(c) **Small Claims Court; Infringement.** Either Customer or Noteable may assert claims, if they qualify, in small claims court in San Francisco, California or any United States county where Customer resides. Furthermore, notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction, to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

(d) **Waiver of Jury Trial.** CUSTOMER AND NOTEABLE WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. Customer and Noteable are instead choosing to have claims and disputes resolved by arbitration. In any litigation between Customer and Noteable over whether to vacate or enforce an arbitration award, CUSTOMER AND NOTEABLE WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

(e) **Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS SECTION 11.9 MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER. If however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither Customer nor Noteable is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in Section 11.9(g) below.

(f) **Opt-out.** Customer has the right to opt out of the provisions of this Section 11.9 by sending written notice of opt out to the following address: 548 Market Street, Suite 64793, San Francisco, CA 94104 postmarked within thirty (30) days of first accepting this Agreement. Customer must include (i) Customer's name and residence address, (ii) the email address and/or telephone number associated with Customer's account, and (iii) a clear statement that Customer want to opt out of the arbitration provision in this Agreement.

(g) **Exclusive Venue.** If Customer sends the opt-out notice pursuant to Section 11.9(f), or if otherwise permitted by Section 11.9 to litigate any dispute arising out of or relating to the subject matter of this Agreement in court, then Customer and Noteable agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, San Francisco, California, or the federal district in which that county falls.

(h) **Severability.** If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Section 11.9 will be null and void. This Section 11.9 will survive the termination of this Agreement.

11.10. Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover its costs, expenses and attorneys' fees.

11.11. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement otherwise remains in full force and effect and enforceable.

11.12. Entire Agreement. This Agreement constitute the entire agreement between the parties relating to the subject matter hereof and supersede all proposals, letters of intent, memoranda of understanding, or discussions, whether written or oral, relating to the subject matter of this Agreement and all past dealing or industry custom.

11.13. Waiver. No provision of, right or privilege under this Agreement shall be deemed to have been waived by any act, delay, omission or acquiescence on the part of any party, its agents or employees, but only by an instrument in writing duly executed by both parties. No waiver by any party of any breach or default of any provision of this Agreement by the other party shall be effective as to any other breach or default, whether of the same or any other provision and whether occurring prior to, concurrent with, or subsequent to the date of such waiver.

11.14. Modification. Noteable may change these Terms from time to time at its discretion. The date on which these Terms were last modified will be updated at the top of these Terms. Noteable will use reasonable efforts to provide Customer with reasonable notice prior to any amendments or modifications taking effect, either by emailing the email address associated with Customer's account on the Platform or by another method reasonably designed to provide notice to Customer. If Customer accesses or uses the Platform after the effective date of the revised Terms, such access and use will constitute Customer's acceptance of the revised Terms. Except as set forth in the foregoing, no other amendment or modification of these Terms will be effective unless in writing and signed by both Noteable and Customer.

11.15. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute the same instrument.