

# Larry A. Ryle High School

The "Union" of Technology and Tradition  
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Union, Kentucky 41091  
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Andrew W. Dusing, *Assistant Principal*  
Elaine Brendel, *Assistant Principal*  
Cody Ryan, *Assistant Principal*  
Tony Pastura, *Assistant Principal*  
Morgan Medious, *Vice Principal*  
Jennifer Warford, *College & Career Coach*

Matt Shafer, *Principal*

Michelle Schilling, *Counselor*  
Erik Arkenberg, *Counselor*  
Amy Coleman, *Counselor*  
Katie Parks, *Counselor*  
Mario Kirkendall, *Athletic Director*  
Jennifer Woolf, *Instructional Coach*

## To Whom It May Concern,

We would like to purchase the Notability App from the Apple App Store in order to help facilitate a better remote learning experience for our students. .

We currently have 15 iPads that we would like to download this App to.

The privacy policy for the app can be found here: <https://notability.com/privacy>

Thank you for your consideration. If you have any concerns or questions please feel free to contact me at any time.

Sincerely,



Matt Shafer

Principal



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## App Store Preview

This app is available only on the App Store for iPhone and iPad.



### Notability 4+

Easy note-taking & annotation

Ginger Labs

#4 in Productivity

★★★★★ 4.8 • 118.7K Ratings

\$8.99 · Offers In-App Purchases

## NOTABILITY

# Terms of Use

Effective date: November 16, 2020

Welcome to Notability. Please read on to learn the rules and restrictions that govern your use of our mobile application called “Notability”, and website at <https://notability.com>, and the associated products, services and features (the “Services”). Notability is one of our products and services. Your use of our other products and services and their associated websites, applications, and other materials are subject to other terms applicable to them. If you have any questions, comments, or concerns regarding these terms or the Services, please contact us at:

- Email: [support@gingerlabs.com](mailto:support@gingerlabs.com)
- Address: 150 Spear Street, Suite 550, San Francisco, CA 94105

These Terms of Use (the “Terms”) are a binding contract between you and GINGER LABS, INC. (“Notability,” “we” and “us”). Your use of the Services in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Services. These Terms include the provisions in this document as well as those in the [Privacy Policy](#), [Copyright Dispute Policy](#) and any other relevant policies. Your use of or participation in certain Services may also be subject to additional policies, rules and/or conditions (“Additional Terms”), which are incorporated herein by reference, and you understand and agree that by using or participating in any such Services, you agree to also comply with these Additional Terms.

Please read these Terms carefully. They cover important information about Services provided to you and any charges, taxes, and fees we bill you. These Terms include information about [future changes to these Terms](#), [limitations of liability](#), [a class action waiver and resolution of disputes by arbitration instead of in court](#). PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR SERVICES ARE SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER.

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE [ARBITRATION AGREEMENT SECTION BELOW](#), YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

## Will these Terms ever change?

We are constantly trying to improve our Services, so these Terms may need to change along with our Services. We reserve the right to change the Terms at any time, but if we do, we will place a notice

on our site located at <https://www.gingerlabs.com/>, send you an email, and/or notify you by some other means.

If you don't agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

## **What about my privacy?**

Notability takes the privacy of its users very seriously. For the current Notability Privacy Policy, please [click here](#).

## **Children's Online Privacy Protection Act**

The Children's Online Privacy Protection Act ("COPPA") requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under thirteen (13). Our Services are not directed to children under 13. Also, we do not knowingly collect or solicit personally identifiable information from children under sixteen (16). Specifically, we do not collect any personal information as defined by COPPA from the Notability mobile application when a user only uses such application without registering an account with the Notability Services, and we do not allow users who identify themselves as under the age of 16 to register for an account with the Notability Services. If you are a child under sixteen (16), please do not attempt to register for an account with the Services or otherwise send any personal information about yourself to us. If we learn we have collected personal information from a child under sixteen (16), we will delete that information as quickly as possible. If you believe that a child under sixteen (16) may have provided us with personal information, please contact us at [support@gingerlabs.com](mailto:support@gingerlabs.com).

## **What are the basics of using Notability?**

You can use the Notability mobile application without registering any account with us. However, if you want to use certain features (such as the note sharing features) of our Services, you may be required to sign up for an account, select a password, and provide us with certain information or data, such as your contact information. You promise to provide us with accurate, complete, and updated registration information about yourself. You may not enter contact information that you do not have the right to use, or another person's contact information with the intent to impersonate that person. You may not transfer your account to anyone else without our prior written permission.

You represent and warrant that you are an individual of legal age to form a binding contract (or if not, you've received your parent's or guardian's permission to use the Services and have gotten your parent or guardian to agree to these Terms on your behalf). As noted above, if you're under the age of 16, you may not use some of our Services. You will only use the Services for your own internal, personal, non-commercial use, and not on behalf of or for the benefit of any third party, and only in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren't authorized to use the Services. We can't and won't be responsible for your using the Services in a way that breaks the law.

You will not share your Notability User ID, account or password with anyone, and you must protect the security of your Notability User ID, account, password and any other access tools or credentials. You're responsible for any activity associated with your Notability User ID and account.

## **What about messaging?**

As part of the Services, you may receive communications through the Services, including messages that Notability sends you (for example, via email). When signing up for the Services, you will receive a welcome message and instructions on how to stop receiving messages.

## **Are there restrictions in how I can use the Services?**

You represent, warrant, and agree that you will not contribute any Content or User Submission (each of those terms is defined below) or otherwise use the Services or interact with the Services in a manner that:

- a. infringes or violates the intellectual property rights or any other rights of anyone else (including Notability);
- b. violates any law or regulation, including, without limitation, any applicable export control laws, privacy laws or any other purpose not reasonably intended by Notability;
- c. is dangerous, harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- d. jeopardizes the security of your Notability User ID, account or anyone else's (such as allowing someone else to log in to the Services as you);
- e. attempts, in any manner, to obtain the password, account, or other security information from any other user;
- f. violates the security of any computer network, or cracks any passwords or security encryption codes;
- g. runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);
- h. "crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services or Content (through use of manual or automated means);
- i. copies or stores any significant portion of the Content; or
- j. decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services.

## **What are my rights in the Services?**

The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, User Submissions (as defined below) and so forth (all of the foregoing, the "Content") are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won't use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, (i) without the

prior consent of the owner of that Content or (ii) in a way that violates someone else's (including Notability's) rights.

Subject to these Terms, we grant each user of the Services a worldwide, non-exclusive, non-sublicensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for any purpose other than using the Services is expressly prohibited without prior written permission from us. You understand that Notability owns the Services. You won't modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit any of the Services. The Services may allow you to copy or download certain Content, but please remember that even where these functionalities exist, all the restrictions in this section still apply.

## **What about anything I contribute to the Services – do I have to grant any licenses to Notability or to other users?**

### **User Submissions**

Anything you post, upload, share, store, or otherwise provide through the Services is your "User Submission". Some User Submissions may be viewable by other users. You are solely responsible for all User Submissions you contribute to the Services. You represent that all User Submissions submitted by you are accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations.

You agree that you will not post, upload, share, store, or otherwise provide through the Services any User Submissions that: (i) infringe any third party's copyrights or other rights (e.g., trademark, privacy rights, etc.); (ii) contain sexually explicit content or pornography; (iii) contain hateful, defamatory, or discriminatory content or incite hatred against any individual or group; (iv) exploit minors; (v) depict unlawful acts or extreme violence; (vi) depict animal cruelty or extreme violence towards animals; (vii) promote fraudulent schemes, multi-level marketing (MLM) schemes, get rich quick schemes, online gaming and gambling, cash gifting, work from home businesses, or any other dubious money-making ventures; or (viii) that violate any law.

### **Licenses**

In order to display your User Submissions on the Services, and to allow other users to enjoy them (where applicable), you grant us certain rights in those User Submissions (see below for more information). Please note that all of the following licenses are subject to our [Privacy Policy](#) to the extent they relate to User Submissions that are also your personally-identifiable information.

By sharing your User Submissions publicly on the Services and/or in a manner that more than just you or certain specified users can view (such as by sharing the links to your User Submissions to others), you hereby do and shall grant us a license to display, modify, distribute, perform, reproduce, use, and otherwise act with respect to such User Submissions, in each case to enable us to operate the Services and our businesses, including without limitation for promoting and redistributing part or all of this site or the Services (and derivative works thereof) in any media formats and through any media channels (including, without limitation, third party websites and feeds), and including after your termination of your account or the Services. You also hereby do and shall grant each user of this site and/or the Services (including without limitation anyone with whom you share the links to your Submissions) a license to access your User Submissions through this site and/or the Services, and to use, download, edit, modify, reproduce, distribute, prepare derivative works of, display and perform

such User Submissions, including after your termination of your account or the Services. For clarity, the foregoing license grants to us and our users do not affect your other ownership or license rights in your User Submissions, including the right to grant additional licenses to your User Submissions, unless otherwise agreed in writing.

If you provide us (in a direct email or otherwise) with any feedback, suggestions, improvements, enhancements, and/or feature requests relating to the Services (the “Feedback”), you hereby grant us a license to freely use, edit, modify, truncate, aggregate, reproduce, distribute, prepare derivative works of, display, perform, and otherwise fully and commercially exploit the Feedback.

You represent and warrant that you have all rights to grant such licenses to us 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.

You agree that all the licenses you grant are royalty-free, fully paid, perpetual, sublicensable, transferable, irrevocable, and worldwide. When you delete your Notability account, we may stop storing and displaying your User Submissions. However, you acknowledge that any User Submissions you made publicly available through the Services or shared with others, may remain fully available to other users (if applicable). You understand and agree that it may not be possible to completely delete that content from Notability's records, and that your User Submissions may remain viewable elsewhere to the extent that they were downloaded, copied, or stored by other users.

Finally, you understand and agree that Notability, in performing the required technical steps to provide the Services to our users (including you), may need to make changes to your User Submissions to conform and adapt those User Submissions to the technical requirements of connection networks, devices, services, or media, and the foregoing licenses include the rights to do so.

## **What if I see something on the Services that infringes my copyright?**

We respect others’ intellectual property rights, and we reserve the right to delete or disable Content alleged to be infringing, and to terminate the accounts of repeat alleged infringers; to review our complete Copyright Dispute Policy and learn how to report potentially infringing content, [click here](#).

## **Who is responsible for what I see and do on the Services?**

Any information or Content publicly posted or privately transmitted through the Services is the sole responsibility of the person from whom such Content originated, and you access all such information and Content at your own risk, and we aren’t liable for any errors or omissions in that information or Content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services. We can’t guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it.



The Services may contain links or connections to third-party websites or services that are not owned or controlled by Notability. When you access third-party websites or use third-party services, you accept that there are risks in doing so, and that Notability is not responsible for such risks.

Notability has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third-party websites or by any third party that you interact with through the Services. In addition, Notability will not and cannot monitor, verify, censor or edit the content of any third-party site or service. We encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each third-party website or service that you visit or utilize. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third-party website or service.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Notability shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

If there is a dispute between participants on this site or Services, or between users and any third party, you agree that Notability is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Notability, its directors, officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. You shall and hereby do waive California Civil Code Section 1542 or any similar law of any jurisdiction, which says in substance: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

## **Will Notability ever change the Services?**

We're always trying to improve our Services, so they may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We'll try to give you notice when we make a material change to the Services that would adversely affect you, but this isn't always practical. We reserve the right to remove any Content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice.

## **Do the Services cost anything?**

The Services may be free or we may charge a fee for using the Services. If you are using a free version of the Services, we will notify you before any Services you are then using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services.

- a. Paid Services. Certain of our Services may be subject to payments now or in the future (the "Paid Services"). Please note that any payment terms presented to you in the process of using or signing up for a Paid Service are deemed part of these Terms. Currently, we offer our



mobile application and In-App Purchases (defined below) through Apple App Store (the “App Store”). You agree to comply with, and your license to use our mobile application is conditioned upon your compliance with, such App Store terms and conditions. Any refunds relating to the applications or inquiries regarding refunds relating to the applications shall be handled solely by the applicable App Store in accordance with such App Store’s terms and conditions.

- b. Billing. All payments for the Paid Services are processed through Apple iTunes services (the “Payment Processor”) by billing your payment account linked with the App Store (your “Billing Account”). The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processor in addition to these Terms. We are not responsible for any error by, or other acts or omissions of, the Payment Processor. By choosing to use Paid Services, you agree to pay us, through the Payment Processor, all charges at the prices then in effect for any use of such Paid Services in accordance with the applicable payment terms, and you authorize us, through the Payment Processor, to charge your chosen payment provider (your “Payment Method”). You agree to make payment using that selected Payment Method. We reserve the right to correct any errors or mistakes that the Payment Processor makes even if it has already requested or received payment.
- c. Payment Method. The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method. If we, through the Payment Processor, do not receive payment from you, you agree to pay all amounts due on your Billing Account upon demand.
- d. Current Information Required. YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY US OR OUR PAYMENT PROCESSOR IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE AT YOUR ACCOUNT SETTINGS WITH THE APP STORE. IF YOU FAIL TO PROVIDE ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT WE MAY CONTINUE CHARGING YOU FOR ANY USE OF PAID SERVICES UNDER YOUR BILLING ACCOUNT UNLESS YOU HAVE TERMINATED YOUR PAID SERVICES AS SET FORTH ABOVE.
- e. Change in Amount Authorized. If the amount to be charged to your Billing Account varies from the amount you preauthorized (other than due to the imposition or change in the amount of state sales taxes), you have the right to receive, and we shall provide, notice of the amount to be charged and the date of the charge before the scheduled date of the transaction. Any agreement you have with your payment provider will govern your use of your Payment Method. You agree that we may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle.
- f. Free Trials and Other Promotions. Any free trial or other promotion that provides access to a Paid Service must be used within the specified time of the trial. You must stop using a Paid Service before the end of the trial period in order to avoid being charged for that Paid Service. If you cancel prior to the end of the trial period and are inadvertently charged for a Paid Service, please contact us at [support@gingerlabs.com](mailto:support@gingerlabs.com).

## What if I want to stop using the Services?

You're free to do that at any time by contacting us at [support@gingerlabs.com](mailto:support@gingerlabs.com); please refer to our [Privacy Policy](#), as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

Notability is also free to terminate (or suspend access to) your use of the Services or your account for any reason in our discretion, including your breach of these Terms. Notability has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Account termination may result in destruction of any Content associated with your account, so keep that in mind before you decide to terminate your account. We will try to provide advance notice to you prior to our terminating your account so that you are able to retrieve any important User Submissions you may have stored in your account (to the extent allowed by law and these Terms), but we may not do so if we determine it would be impractical, illegal, not in the interest of someone's safety or security, or otherwise harmful to the rights or property of Notability. The Services have the functionality that allows you to download your User Submissions. Since we may not be storing your User Submissions after the termination of your account or the Services to you, please remember to download and store your User Submissions before such termination.

If you have deleted your account by mistake, contact us immediately at [support@gingerlabs.com](mailto:support@gingerlabs.com) – we will try to help, but unfortunately, we can't promise that we can recover or restore anything.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us, including without limitation the arbitration agreement.

## **What about Mobile Applications and In-App Purchases?**

You acknowledge and agree that the availability of our mobile application is dependent on the third party stores from which you download the application, e.g., the App Store from Apple. The App Store has its own terms and conditions to which you must agree before downloading mobile applications from such store, including the specific terms relating to Apple App Store set forth below. You agree to comply with, and your license to use our application is conditioned upon your compliance with, such App Store terms and conditions. To the extent such other terms and conditions from such App Store are less restrictive than, or otherwise conflict with, the terms and conditions of these Terms of Use, the more restrictive or conflicting terms and conditions in these Terms of Use apply.

Through our mobile applications, you may purchase ("In-App Purchase") certain goods or features designed to enhance the performance of the Services. When you make an In-App Purchase, you are doing so through the Apple iTunes service and you are agreeing to the applicable Terms and Conditions, available at <http://www.apple.com/legal/internet-services/itunes/us/terms.html>. Notability is not a party to any In-App Purchase.

## **I use the Notability App available via the Apple App Store – should I know anything about that?**

These Terms apply to your use of all the Services, including our iOS applications (the "Application") available via the Apple, Inc. ("Apple") App Store, but the following additional terms also apply to the Application:

- a. Both you and Notability acknowledge that the Terms are concluded between you and Notability only, and not with Apple, and that Apple is not responsible for the Application or the Content;
- b. The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Services;
- c. You will only use the Application in connection with an Apple device that you own or control;
- d. You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
- e. In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;
- f. You acknowledge and agree that Notability, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;
- g. You acknowledge and agree that, in the event of any third-party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, Notability, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- h. You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- i. Both you and Notability acknowledge and agree that, in your use of the Application, you will comply with any applicable third-party terms of agreement which may affect or be affected by such use; and
- j. Both you and Notability acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

## **What else do I need to know?**

Warranty Disclaimer. Notability and its licensors, suppliers, partners, parent, subsidiaries or affiliated entities, and each of their respective officers, directors, members, employees, consultants, contract employees, representatives and agents, and each of their respective successors and assigns (Notability and all such parties together, the "Notability Parties") make no representations or warranties concerning the Services, including without limitation regarding any Content contained in or accessed through the Services, and the Notability Parties will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services or any claims, actions, suits procedures, costs, expenses, damages or liabilities arising out of use of, or in any way related to your participation in, the Services. The Notability Parties make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through or in connection with the Services. THE SERVICES AND CONTENT ARE PROVIDED BY NOTABILITY (AND ITS LICENSORS AND SUPPLIERS) ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ANY OF THE NOTABILITY PARTIES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, (B) ANY SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, (C) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) ONE-HUNDRED (\$100) DOLLARS OR (II) THE AMOUNTS PAID AND/OR PAYABLE BY YOU TO NOTABILITY IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM OR (D) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL OR CERTAIN OTHER DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. You agree to indemnify and hold the Notability Parties harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms. In the event of such a claim, suit, or action ("Claim"), we will attempt to provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

Assignment. You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Notability's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

Choice of Law. These Terms are governed by and will be construed under the Federal Arbitration Act, applicable federal law, and the laws of the State of California, without regard to the conflicts of laws provisions thereof.

Arbitration Agreement. Please read the following ARBITRATION AGREEMENT carefully because it requires you to arbitrate certain disputes and claims with Notability and limits the manner in which you can seek relief from Notability. Both you and Notability acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms and/or the Services, Notability's officers, directors, employees and independent contractors ("Personnel") are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

- 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 these Terms and/or the Services 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 County, California, or, if the JAMS Consumer Arbitration Minimum Standards are applicable, near or in the county in which you reside. 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. The JAMS Consumer Arbitration Minimum Standards shall apply as required by JAMS. The JAMS Optional Arbitration Appeal Procedures shall apply to disputes and claims having a value of \$250,000 or greater.

- b. *Costs of Arbitration.* The Rules will govern payment of all arbitration fees. Notability will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Notability will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.
- c. *Small Claims Court; Infringement.* Either you or Notability may assert claims, if they qualify, in small claims court in San Francisco County, California or any United States county where you live or work. 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.* YOU AND NOTABILITY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Notability are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between you and Notability over whether to vacate or enforce an arbitration award, YOU AND NOTABILITY 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 ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Notability is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in (g) below.
- f. *Opt-out.* You have the right to opt out of the provisions of this Section by sending written notice of your decision to opt out to the following address: Ginger Labs, 150 Spear Street, Suite 550, San Francisco, CA postmarked within thirty (30) days of first accepting these Terms. You must include (i) your name and residence address, (ii) the email address and/or telephone number associated with your account, and (iii) a clear statement that you want to opt out of these Terms' arbitration agreement.
- g. *Exclusive Venue.* If you send the opt-out notice in (f), and/or in any circumstances where the foregoing arbitration agreement permits either you or Notability to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the foregoing arbitration agreement will not apply to either party, and both you and Notability agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, San Francisco County, 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 Arbitration Agreement section will be null and void. This arbitration agreement will survive the termination of your relationship with Notability.

*Miscellaneous.* You will be responsible for paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services,

provided that the Notability may, in its sole discretion, do any of the foregoing on your behalf or for itself as it sees fit. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of these Terms are found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Notability agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Notability, and that these Terms supersede and cancel all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms. You hereby acknowledge and agree that you are not an employee, agent, partner, or joint venture of Notability, and you do not have any authority of any kind to bind Notability in any respect whatsoever.

Except as expressly set forth in the sections above regarding the Apple Application and the arbitration agreement, you and Notability agree there are no third-party beneficiaries intended under these Terms.