

# NOTA TERMS OF SERVICE

Last Modified: July 19, 2024

These are the Nota Terms of Service ("Terms") between you ("Client," "you," "your") and M&T Bank, a New York State-chartered bank having offices at One M&T Plaza, Buffalo, New York 14203-2399 ("Nota", "M&T", "we", "us"). These Terms apply to your use of the Nota Service (described below), and when you visit any Nota website or communicate with our representatives.

Nota offers products and services designed to, among other things, help attorneys manage accounting in connection with their bank accounts, including their business bank accounts, and including their Interest on Lawyer Accounts/Interest on Lawyer Trust Accounts, and similar regulated accounts ("IOLA/ IOLTA account") (collectively, the "Nota Services"). The Nota Services entail use of a web-based platform which is referred to herein as the "Nota Platform."

## 1. Defined Terms

Capitalized terms used in these Terms have the meanings ascribed to them herein or, if not defined in these Terms, in the M&T Digital Services Agreement:

"Accounts" shall mean any account of Client, including Client's IOLA/IOLTA account, that is accessible by M&T for the Nota Services including: (1) any checking, savings, money market or credit card account that is accessible through M&T Online Banking; and (2) any checking, savings, or money market account that Client authorizes M&T to access for the Nota Services access via a third-party acceptable to Nota (e.g., Plaid). Account does not include loans, lines of credit, mortgages, or any account types.

"Law" shall mean any foreign, federal, state, or local law (statutory, common, or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, guideline, policy, order, injunction, judgment, decree, ruling, or other similar requirement or directive enacted, adopted, promulgated, or applied by a Governmental Authority that is binding upon or applicable to a party, and letters or guidelines issued by regulatory authorities. Law includes any regulations, rules, and policies of applicable payment, card, or other associations. Law also includes any laws, regulations, rules, or guidelines, including those promulgated or enforced by state bar associations or IOLA/IOLTA Funds or associations, governing IOLA/IOLTA accounts or operating accounts and attorneys' ethical obligations with respect to their clients' money and the safeguarding, management, and disbursement of such money.

## 2. Use of the Nota Services, Nota Platform and Websites

These Terms, together with the Nota Privacy Policy, govern your use of the Site. You accept these Terms by accessing the Nota Services, any Nota Platform, Nota site or affiliated site, or when you use any apps or mobile services (collectively the "Site"). If you do not agree with these Terms, you may not use the Nota Services or the Site. Nota reserves the right, in its sole discretion and at any time, to change, modify, or otherwise alter these Terms at any time by posting the new Terms on the Site or otherwise providing or making available to you the new Terms. Your continued use of the Site or the Nota Services means you accept the new Terms. You represent and warrant that (i) you are agreeing on behalf of Client and are duly authorized to agree on behalf of and legally bind Client to these Terms, and (ii) that your agreement to these Terms will constitute a legally binding obligation of Client enforceable against Client.

### 3. License and Access

Nota grants you a limited license to access and make use of the Site and the Nota Services. No other rights are granted. Your right to use any apps may be subject to a separate license agreement. You may not download (other than page caching), copy, or modify any portion of the Site unless Nota gives consent in writing. The following things are all prohibited: (a) resale or transfer of the Site or its contents, (b) any derivative use of the Nota Services or its contents, or (c) any use of data mining, robots or similar data gathering and extraction tools or processes.

You agree not to store, distribute, transmit, display, reproduce, modify, create derivative works from, or sell or otherwise exploit, any of the content on this Site or the Nota Services for any purpose other than for your own practice. By using the Site and the Nota Services, you warrant that you will not use the Site or the Nota Services, or any of the content obtained from the Site or the Nota Services, for any unlawful or prohibited purpose. Nota does not grant any license or other authorization to any trademarks, service marks, copyrightable material, or other intellectual property, whether or not registered or identified as such. You may not remove or modify any copyright or proprietary notices. If you violate any of these Terms, your permission to use the Site and the Nota Services automatically terminates.

### 4. Electronic Communications

When you visit the Site, send Nota email, or provide suggestions/comments on the Nota Service, you are communicating with Nota electronically. You consent to receive communications from Nota electronically. Nota may communicate with you by email or by posting notices on the Site. You agree that all agreements, notices, disclosures, and other communications that Nota provides to you electronically satisfy any legal requirement that a communication be in writing.

### 5. Conduct

You agree that you will not do any of the following:

- a. Restrict or inhibit any other user from using and enjoying the Site or the Nota Services.
- b. Post or transmit any unlawful, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, offensive, or otherwise objectionable information of any kind, including without limitation content that promotes or would result in criminal offense, give rise to civil liability, or otherwise violate any local, state, national or foreign law, including without limitation the U.S. export control laws and regulations. You will not post or transmit any content that would impersonate someone else or falsely represent your identity or qualifications, or that would cause a breach of any individual's privacy.
- c. Transmit any advertisements, solicitations, chain letters, investment opportunities, other schemes, or any unsolicited commercial communication. You agree not to engage in spamming or flooding.
- d. Transmit any information or software which contains a virus, Trojan horse, worm, or other harmful component.
- e. Post, publish, transmit, reproduce, distribute, or in any way exploit (a) any information, software or other material obtained through the Site for commercial purposes, or (b) any information, software, or other material which is protected by copyright or other proprietary right, or derivative works with respect thereto, without obtaining permission of the copyright owner or right holder.
- f. Any activity that is in violation of any provision of any license under which you practice or any applicable Laws.

## 6. Site Monitoring

Nota has no obligation to monitor your use of the Site. However, you acknowledge and agree that Nota has the right to monitor your use of the Site electronically from time to time and to disclose any information as necessary or appropriate to satisfy any law, regulation, or other governmental request; to operate the Site or the Nota Services properly; or to protect Nota or our customers. Nota reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in our sole discretion are unacceptable, undesirable, inappropriate, or in violation of these Terms.

## 7. Suggestions/Comment

You agree that Nota may, in its sole discretion, use the suggestions/comments you provide to Nota in any way, including in future modifications of the Nota Services, the Site, multimedia works, advertising and promotional materials, or development of additional products and services. You agree not to submit any suggestions/comments that you do not have rights in, such as copyrighted material belonging to a third party.

You hereby grant Nota a perpetual, worldwide, fully transferable, irrevocable, royalty-free license to use, reproduce, modify, create derivative works from, distribute, and display the suggestions/comments and any derivations in any manner and for any purpose, and you hereby waive all of your moral rights in your suggestions/comments in favor of Nota and our affiliates.

## 8. Third-Party Products and Services

In connection with your use of the Nota Services or the Site, you may be made aware of products, services, or other offers and promotions from third parties. You are responsible for reviewing and understanding the terms and conditions governing any such third-party offerings. You agree that the third party, and not Nota, shall be solely responsible for all such products, services, offers, and promotions and Nota shall have no liability for such products, services, offers or promotions.

## 9. Disclaimer of Warranties

YOUR USE OF THE SITE AND THE NOTA SERVICES, INCLUDING ANY APPLET, SOFTWARE, AND CONTENT CONTAINED THEREIN, IS ENTIRELY AT YOUR OWN RISK. THE SITE AND THE NOTA SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, OUR AFFILIATES, LICENSORS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DISTRIBUTORS, DEALERS, AND SUPPLIERS DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SITE AND RELATED MATERIALS INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND NON-INFRINGEMENT. NOTA DOES NOT WARRANT OR GUARANTEE THE ACCURACY, RELIABILITY, COMPLETENESS, USEFULNESS, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR QUALITY OF ANY CONTENT ON THE SITE OR THE NOTA SERVICES, REGARDLESS OF WHO ORIGINATES THAT CONTENT. NOTA DOES NOT WARRANT THAT THE SITE IS SECURE OR FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION OR THAT THE SITE OR THE NOTA SERVICES WILL MEET YOUR REQUIREMENTS. YOU UNDERSTAND AND EXPRESSLY AGREE THAT YOU BEAR ALL RISKS ASSOCIATED WITH USING OR RELYING ON ANY SITE CONTENT OR THE NOTA SERVICES. NOTA IS NOT LIABLE OR RESPONSIBLE IN ANY WAY FOR ANY CONTENT POSTED ON OR LINKED FROM THE SITE, INCLUDING BUT NOT LIMITED TO ANY ERRORS OR OMISSIONS IN CONTENT, OR FOR ANY LOSSES OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF OR RELIANCE ON ANY CONTENT.

## 10. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTA AND OUR AFFILIATES AND SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR DAMAGES RELATING TO TELECOMMUNICATION FAILURES OR LOSS, CORRUPTION, FAILURE OF SECURITY OR THEFT OF DATA, VIRUSES, SPYWARE, OR THE LIKE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF NOTA OR OUR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN ADDITION, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF NOTA AND ITS AFFILIATES AND SUPPLIERS FOR ANY AND ALL CLAIMS ARISING HEREUNDER SHALL BE THE AMOUNT YOU PAID TO NOTA FOR NOTA SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN NOTA AND YOU. NOTA WOULD NOT HAVE PROVIDED THE SERVICE WITHOUT SUCH LIMITATIONS.

## **TERM AND TERMINATION**

### **11. Term**

The Agreement commences as of the Effective Date and continues until terminated in accordance with the Agreement.

### **12. Termination**

Client may terminate the Agreement and its use of Nota only by providing thirty (30) days' prior written Notice to Nota. Nota may terminate the Agreement and Client's use of the site: (i) by providing thirty (30) days' prior written Notice to Client; or (ii) immediately if:

- a. Required by Law or regulator;
- b. Client breaches any term, condition, warranty, representation, or obligation in the Agreement or any other agreement with M&T and fails to cure the breach within fifteen (15) days of receipt of Notice from M&T (provided, if the breach is not curable, termination is effective on the date specified in the Notice);
- c. M&T reasonably believes fraudulent, illegal, dishonest, or unauthorized activity has occurred or is likely to occur with respect to the Product or Account;
- d. Client fails to maintain sufficient available funds in any Account for which the Product is used;
- e. Client makes an assignment for the benefit of a creditor; is unable, or admits its inability to, pay its obligations as they become due; enters a compromise agreement with its creditor; files for bankruptcy; or has an involuntary bankruptcy petition filed against it; or
- f. M&T determines that Client's financial status is materially impaired or believes that provision of the Product to Client creates risk of financial or reputational harm or unacceptable credit or fraud risk for M&T.

M&T shall use reasonable efforts to provide Client prompt Notice of such termination, but failure to do so does not invalidate the termination. Upon termination, you may have access to the site in a "Read Only" capacity.

### **13. Changes to Site and Nota Services**

Nota reserves the right, in its sole discretion, at any time and from time to time to change, modify, or discontinue, either temporarily or permanently, the Nota Services or the Site (or any part thereof). Nota

shall not be liable to you or other third party for any such modification, suspension, or discontinuance except as expressly provided herein. Nota will use reasonable efforts to provide prior Notice to Client of such action.

#### **14. Indemnification**

You agree to defend, indemnify and hold Nota and its affiliates and suppliers harmless from any and all claims, liabilities, costs, and expenses, including reasonable attorneys' fees, arising in any way from your use of the Nota Services, the Site, Accounts or the placement or transmission of any message, information, software, or other materials through the Site or to us via any means by you or users of your Accounts, or related to any violation of these Terms by you or users of your Accounts.

#### **15. Use of Nota Services, the Site and Accounts**

Clients may use the Nota Services, the Site, and Accounts only for their lawful business.

#### **16. Complete Documentation**

Client may not use the Nota Services or any of its features, including the Site, until:

- a. Nota has received any information and completed all actions and executed all documents required by Nota; and
- b. Nota has approved Client's use of Nota Services and has had a Reasonable Time to Act to implement Nota Services or any of its features for Client.

#### **17. Miscellaneous**

These Terms are a complete statement of the agreement between you and us, and set forth the entire liability of us, our affiliates, and our suppliers and your exclusive remedy with respect to your access and use of the Nota Services and the Site. In the event of a conflict between these Terms of Service and the Privacy Policy, the Privacy Policy shall prevail as to matters specifically stated therein. Our suppliers, agents, distributors, dealers, and employees are not authorized to make any representations, commitments, or warranties different from stated here. If any provision of these Terms is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible, and the remaining provisions will continue in full force and effect. The Terms will be governed by New York law as applied to agreements entered into and to be performed entirely within New York, without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction, and applicable federal law. These Terms do not limit any rights that Nota may have under trade secret, copyright, patent, or other laws.

#### **18. Aggregation of Accounts**

- a. To provide Nota the ability to aggregate information from your third-party accounts and/or M&T Bank accounts, you permit Nota to aggregate such accounts on your behalf and information from such accounts may be made available to you and may be incorporated into other tools made available through Nota. Depending on the type of account and/or information aggregated, your ability to manage those external accounts from the Nota Site or mobile app may vary. By providing Nota with access to data from third party accounts and/or M&T Bank accounts, you agree as follows:
- b. Providing Accurate Information. You represent and agree that all information provided to Nota in connection with third party accounts is accurate, current, and complete. You agree not to misrepresent your identity or account information. You agree to keep account information up to date and accurate and that you are a legal owner or authorized user of the accounts at third party sites which you include or access through Nota, and that you have the authority to (i) designate Nota as your agent and (ii) give Nota the passwords, usernames, and all other information you provide.

c. Content You Provide. Your use of Nota Services is your authorization for Nota or its service providers, as your agent, to access third party sites which you designate in order to retrieve information. You are licensing to Nota and its service providers any information, data, passwords, usernames, PINs, personally identifiable information, or other content you provide through Nota Services. You authorize Nota or our service providers to use any information, data, passwords, usernames, PINs, personally identifiable information, or other content you provide through Nota Services, or that Nota or our service providers retrieve on your behalf for purposes of providing Nota Services, to offer products and services, and for permissible Nota business purposes. Except as otherwise provided herein, Nota or our service providers may store, use, change, or display such information or create new content using such information.

d. YOU ACKNOWLEDGE AND AGREE THAT WHEN NOTA OR ITS SERVICE PROVIDERS ACCESS AND RETRIEVE INFORMATION FROM THIRD PARTY SITES, THEY ARE ACTING AS YOUR AGENT, AND NOT AS THE AGENT OR ON BEHALF OF THE THIRD PARTY SITES.

e. You understand that, if Accounts are added to the Nota Platform there may be an increased risk of potential loss or damages, including improper transfers. You certify that you have adequate internal controls to mitigate the risk of inappropriate transfers between accounts, and that each owner of the Account knows and agrees to the inclusion of the account on the Nota Platform. Nota has no obligation to monitor transfers or transactions between such accounts.

f. Responsibility; Indemnity. When you authorize Nota to combine account data on the Nota Platform, you understand that Nota allows you to do this for your convenience only. By authorizing and directing Nota to combine such accounts, Client agrees that (1) Nota is not responsible for any transactions or access permitted in accordance with these Terms as a result of the combined accounts; and (2) Nota is not responsible for unauthorized transactions performed by any person authorized to access any of the accounts (including any transfers to, from or between such accounts). Client agrees to indemnify, protect, hold harmless and defend Nota from and against any and all damages, expenses, liabilities or costs (including attorney's fees and court costs), of whatever kind or nature, arising from or relating to Nota providing access to third party accounts within the Nota Platform.

g. Third Party Accounts. With respect to any third party sites or information Nota may enable you to access through the Platform or with respect to any third party accounts you include within Nota, you agree to the following:

i. You are responsible for all fees charged in connection with any accounts and transactions. You agree to comply with the terms and conditions of those accounts and agree that this section does not amend any of those terms and conditions. If you have a dispute or question about any transaction on an account, you agree to direct these to the account provider.

j. For your security, when you provide login credentials for accounts, such credentials are only retained when necessary. This login information is encrypted and is not readable by Nota or its service providers.

k. Limitations of Nota. Nota advises you to only add accounts denoted in US Dollars. Any third-party account or M&T account you connect to Nota Services that represents currency values in foreign currencies may not display correctly. Tools, dashboards, and summaries that rely on external data may not accurately present information to you if you add foreign currency accounts.

## **19. Access to Nota and the Nota Platform & Authorized Representatives**

a. Client will provide access to Nota Services or the Site only to Authorized Representative(s). Client's designation, removal, or change in the authority of any Authorized Representative(s) must be made in a manner and form acceptable to Nota, including through the Site. Client represents and warrants that each Authorized Representative is authorized to give Instructions to Nota and to deal in all



ways with respect to Nota, Nota Services, the Site, and Client's Accounts. Such designation and authority remain in effect until Nota has had a Reasonable Time to Act on a request from Client.

b. Nota is entitled to rely on instructions provided in any form acceptable to Nota.

c. Client shall ensure that Authorized Representative(s) use Nota Services, the Site, and Accounts and provide Instructions in compliance with the Agreement and within the limits of their permissions, designations, and authority. Client shall regularly monitor Authorized Representatives' access to and use of Nota Services, the Site, and accounts and instructions to Nota. Client shall promptly provide Notice to Nota if it becomes aware of or suspects fraud or misconduct by any Authorized Representative.

d. Nota is not obligated to inquire into the identity or authority of an Authorized Representative or whether such person is, in fact, authorized by Client. Client is bound by all instructions, acts, and omissions of Authorized Representative(s) (whether or not such persons are acting within the scope of their authority or Client authorized or knew of such Instructions, acts, or omissions).

## **20. Administrator**

Under these Terms, the Administrator means the individual who will act on a Business's behalf as the primary contact with M&T and who is authorized to give M&T Instructions about a Business's Eligible Accounts (and all means of accessing each account (e.g., debit card)) and Authorized Users. The Administrator may provide one or more individuals with access to, and the ability to transact on, Client's Account(s) through the Nota Services by designating such individual(s) as an Authorized Representative in a manner and form acceptable to Nota. The Administrator will be solely responsible for the actions or inactions of Authorized Representatives as well as for administering the addition, deletion, and the level of access granted to Authorized Representatives.

## **21. Information Reporting**

a. Nota may:

(i) include statements, reports, and other information relating to the Nota Services or Accounts ("Product Information") that Nota makes available to Client, or

(ii) involve transmission of files, reports, or other information between Nota and Client ("Transmitted Information"). Product Information and Transmitted Information reported prior to final posting or settlement is subject to correction. Product Information and Transmitted Information may be current as of different dates and times (e.g., reported in real-time or for a prior day, updated periodically during the day, etc.).

b. Nota is not obligated to confirm receipt or non-receipt of, or to re-provide, any Product Information or Transmitted Information. Failure to provide Notice to Nota of non-receipt of Product Information or Transmitted Information within five (5) days of the date it is generally sent or made available constitutes Client's approval of such information.

## **22. Other Product Matters**

a. Client shall provide Nota with information about Client or its business as Nota may reasonably request.

b. Upon reasonable Notice to Client and at agreed times, Nota or its agents may visit, inspect, or audit Client Systems and information as reasonably requested by Nota.

c. Client agrees to comply with all, and to take no action or make any omission that would cause Nota to fail to comply with any, Laws in connection with the Agreement, Product, and Accounts. Client shall provide to Nota any documents or information as Nota may request to evidence such compliance or as required for Nota to comply with Law.

d. Client, as the fiduciary with respect to its clients' funds held in Client's IOLA/IOLTA account, is solely responsible for the proper management and disbursement of all funds held in such account, and for compliance with any Law, agreement, or document applicable to such funds. Nota makes no representation or guarantee that Nota will ensure Client's compliance with applicable Laws, agreements, or documents. Client shall be solely responsible for such compliance.

e. Client is solely responsible for, and Nota is not obligated to verify, the accuracy and completeness of any transaction, Instruction, or information provided by or on behalf of Client. Nota may rely on any Instruction that was actually transmitted, or that Nota reasonably believes was transmitted, by or on behalf of Client. Client shall promptly provide Notice to Nota of any error in connection with the Nota Services or Accounts, any known or suspected unauthorized, erroneous, or erroneously executed transaction, or of any discrepancy between a record of Client and any communication or Notice provided by Nota to Client with respect to the Nota Services or Accounts.

f. The Site and the Nota Services (or certain features thereof) may not be available at all times due to: (i) matters outside of Nota's control, including matters relating to third party support for software and hardware, Internet service providers, and connectivity and the Internet; and (ii) maintenance and servicing associated with the systems that host and support the Nota Services, the Site or certain features.

g. Clients may have the ability to receive alerts in connection with its Accounts and transactions via text messaging or email. Client agrees to receive all alerts via text messaging or email. Client also agrees to receive text messages and emails from Nota in connection with the Nota Services. Nota is not responsible for text messaging or data charges that may be incurred by Client in connection with such alerts or electronic communications.

## 23. Product Fees

a. You agree to pay Nota for any charge associated with a portion of the Nota Services, and acknowledge that the price stated for the Nota Services excludes all applicable taxes and currency exchange settlements, unless stated otherwise. M&T's standard deposit account and service fees also apply. You are solely responsible for paying such taxes or other charges.

b. Unless the parties agree otherwise in writing, M&T may debit an Account (other than Client's IOLA/IOLTA account), without prior Notice, in the amount of all Product Fees and other fees, expenses, and amounts Client owes to M&T (collectively, "Amounts Due"). Client must maintain available balances in such Accounts sufficient to pay all Amounts Due. If Client is eligible for earnings credits on balances in one or more Accounts, M&T will determine on a monthly basis if the collected balances are sufficient to compensate for all Amounts Due in the prior month. If the earnings credits are insufficient to offset all Amounts Due, M&T will debit the Accounts (other than Client's IOLA/IOLTA account) for any shortfall.

c. M&T may charge interest at the maximum rate permitted by Law on Amounts Due that are not paid when due. Client shall pay upon demand costs incurred by M&T in collecting Amounts Due or enforcing the Agreement, including attorneys' fees and disbursements.

d. Nota may suspend or cancel the Nota Services if Nota does not receive an on time, full payment from you. Suspension or cancellation of the Nota Services for non-payment could result in a loss of access to and use of your account and its content.

e. Statement and Errors. Any charges will appear on your applicable M&T account analysis statement, where you can view and print your statement. This is the only statement that Nota provides. If Nota makes an error in billing, you must tell Nota within 90-days after the error first appears on your statement. Nota will then promptly investigate the charge. If you do not tell Nota within that time, you release Nota from all liability and claims of loss resulting from the error and Nota won't be required to correct the error or provide a refund, unless otherwise required by law. If Nota has identified a billing error,



Nota will correct that error within 90-days of the error appearing on your statement. This policy does not affect any statutory rights that may apply.

f. **Trial-Period Offers.** If you are taking part in any trial-period offer, you may be required to cancel the trial Nota Services within the timeframe communicated to you when you accepted the offer in order to avoid being charged to continue the Nota Services at the end of the trial period.

g. **Promotional Offers.** From time to time, Nota may offer Nota Services for free for a trial period. Nota reserves the right to charge you for such Nota Services (at the normal rate) if Nota determines (in its reasonable discretion) that you are abusing the terms of the offer.

h. **Price Changes.** Nota may change the price of the Nota Services at any time and if you have a recurring purchase, Nota will notify you by email, or other reasonable manner, at least 30 days before the price change. If you do not agree to the price change, you must cancel and stop using the Nota Services before the price change takes effect. If there is a fixed term and price for your Nota Services offer, that price will remain in force for the fixed term.

i. **Payments to You.** If Nota owes you a payment, then you agree to timely and accurately provide Nota with any information Nota needs to get that payment to you. Subject to applicable law, you are responsible for any taxes and charges you may incur as a result of this payment to you. You must also comply with any other conditions Nota places on your right to any payment. If you receive a payment in error, Nota may reverse or require return of the payment. You agree to cooperate with Nota in our efforts to do this. Nota may also reduce the payment to you without notice to adjust for any previous overpayment.

j. **Additional fees for special cases:** Upon our demand, you will pay any costs we incur in collecting fees or enforcing this Agreement, including reasonable attorneys' fees and disbursements. We are authorized to obtain payment through the same methods outlined above. If payment is not made, in addition to our other remedies under applicable law and this Agreement, we may suspend or cancel access to the Services and/or exercise our right of offset (subject to applicable law) against any or all of your property held by us in any capacity.

## **24. Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating to the Nota Services, the Site, and Client's use thereof and supersedes any prior or other written or oral agreement, understanding, arrangement, communication, or representation with respect to the subject matter of these Terms. Any additional or conflicting term in any document from Client, sales or marketing material, or course of dealing or usage of trade is not part of these Terms. No course of dealing or conduct between the parties constitutes a change to these Terms or an agreement between the parties.

## **25. Waiver of Jury Trial**

THE PARTIES KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR CLAIM ARISING OUT OF THE AGREEMENT, ANY DOCUMENT EXECUTED BY THE PARTIES IN CONNECTION WITH THE AGREEMENT, OR ANY TRANSACTION CONDUCTED HEREUNDER.

## **26. Notices; Communication; Consents and Other Satisfaction**

a. All notices, demands, claims, consents, approvals, waivers, disclosures, Statements, and other communications required or permitted under the Agreement or in connection with the Nota Service or Accounts (collectively, "Notices") must be in writing, unless the Agreement provides otherwise. Notices to Nota must be sent to support@trustnota.com, unless otherwise provided in the applicable Addenda or

User Guides. Each party may rely on the other party's email address for Notices until it has had a Reasonable Time to Act on a Notice changing such address.

b. Notice is deemed effective on (i) the Business Day the sender sends the email message, if sent before 5:00 p.m. local time in the place of receipt, or (ii) the Business Day immediately following such day, if sent after such time.

c. Notwithstanding any other timeframes in the Agreement, Nota shall have a Reasonable Time to Act upon any Notice or Instruction it receives from or on behalf of Client. If the parties agree in writing that Client may give a Notice or Instruction orally, Client shall confirm such oral Notice or Instruction by Notice in accordance with this Section. Nota may rely on any oral Notice or Instruction from Client, whether or not Client confirms it, and Nota's records of the Notice or Instruction control.

d. Nota may provide Notices to Client as Electronic Records by:

(i) email;

(ii) posting to a website;

(iii) displaying to Client or its Authorized Representative during sessions on a website or otherwise; or

(iv) any other electronic means. Communications with Client regarding operational, product-related, procedural, and technical matters relating to the Nota Service and Accounts may be provided orally and not subject to the Notice requirements of this Section.

e. A Notice to Client will be effective if Nota sends it to any email address of Client or an Authorized Representative. Nota shall be deemed to have sent, and Client shall be deemed to have received, any email sent to the email address that Client provides to Nota, regardless of whether Client actually receives or views such email and even if Nota has notice that the email was undeliverable.

f. Whenever Nota's consent, authorization, or approval is required under the Agreement, it may be granted or withheld in Nota's sole and absolute discretion, unless the Agreement provides otherwise.

## **27. Construction of Agreement; Representations**

a. Neither the Agreement nor any ambiguity in it shall be construed more strongly against a party solely because it was the primary drafter.

b. Each representation and warranty of Client in the Agreement is deemed made to Nota as of the Effective Date and each time Client uses the Nota Service or any feature thereof.

## **28. Severability**

If a provision of the Agreement is held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect, impair, or invalidate any other provisions, which will remain in full force and effect, and the Agreement shall be deemed modified to the extent necessary to render enforceable the remaining provisions to the maximum extent permitted by Law. Additionally, to the extent any provision of the Agreement conflicts with Law and cannot be varied by agreement, the Law controls, but the remaining provisions of the Agreement apply.

## **29. Waivers**

Unless otherwise expressly provided in the Agreement, the rights and remedies under the Agreement shall be cumulative and not exclusive of any rights or remedies provided by Law. No failure or delay by Nota in exercising any right, power, or privilege under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise preclude any other or further exercise thereof or the exercise of

any other right, power, or privilege. A provision of the Agreement may only be waived by Nota in a signed writing.

### **30. Amendments**

The Agreement may not be amended orally or by course of conduct. Nota may add Addenda to the Agreement at any time setting forth the terms and conditions governing features added to Nota. Nota may propose changes to any of the documents comprising the Agreement as Nota deems appropriate (a "Proposed Change"). An Addendum or Proposed Change is effective on the date indicated in a Notice to Client. Such Notice may be provided or made available in paper or electronically, including on the Website. By continuing to use Nota or the new or affected feature after such Addendum or Proposed Change is effective, Client agrees to and is bound by such change. Notwithstanding anything else in the Agreement, Nota may make any Proposed Change without prior Notice to Client if required for security reasons or by Law. The Agreement may not otherwise be amended without the consent of both parties.

### **31. Representations and Warranties**

Client represents and warrants that:

- a. It is duly organized or formed, validly existing, and in good standing;
- b. The individual accepting/signing these Terms (or any part of the Terms) is duly authorized to do so and to engage in each transaction directed by such person; and
- c. Its execution and performance of the Agreement is duly authorized and does not, and will not, violate any Law, Client's organizational or governing documents, or any contract with a third party. Client shall promptly provide evidence of compliance with this Section upon request and Notice to Nota if any of its representations or warranties ceases to be accurate.

### **32. Binding Effect**

The Agreement is entered solely by and between, and may only be enforced by, Client and Nota (and their permitted successors and assigns) and, except to the extent provided herein, is not intended to confer on any other person any right, remedy, obligation, or liability.

### **33. Assignment**

Neither the Agreement, nor any rights, interests, or obligations under it, may be assigned by either party without the prior written consent of the other party; provided Client's prior consent will not be required for: (a) Nota's delegation, outsourcing, or subcontracting of all or part of the provision of the Nota Service or any feature thereof to an Affiliate or other party; or (b) an assignment by Nota (i) to an Affiliate, (ii) by merger, consolidation, or operation of Law, or (iii) as part of a sale or transfer of all or substantially all of Nota's business or assets relating to the Nota Service. Subject to this Section, the Agreement is binding on, inures to the benefit of, and is enforceable by the parties and their respective successors and permitted assigns. Any purported assignment in violation of this Section is void.

### **34. Force Majeure**

Neither party will be liable for any delay or failure in performance of any part of the Agreement or deemed in breach of its obligations hereunder, if such failure, delay, or breach is due to any cause beyond its reasonable control.

### **35. Further Assurances**

Client shall execute, deliver, and perform all other agreements required by vendors or other parties necessary for the provision of the Nota Service, any features thereof, and Accounts (including any sublicense agreements) or as required or requested by Nota.

### **36. Relationship**

Nothing in the Agreement creates a partnership, joint venture, or similar relationship between the parties, and neither Nota nor Client shall be deemed an agent of the other. Nota is not in a fiduciary or similar relationship with, nor does it have fiduciary duties or obligations to, Client or Client's clients.