



"Bring Your Own Notary" Supplement

Last Modified Date: October 13, 2020

This Bring Your Own Notary Supplement ("BYON Supplement") applies to you if you are Registered User that is utilizing the Platform to access the BYON Services (i.e. you are using your own Notaries instead of relying on Notarize to match you with qualified Notaries). This BYON Supplement is incorporated into and made a part of the User TOS, and provides additional terms for the BYON Services accessed or used by you on the Platform.

1. General.

- a. Capitalized terms not defined here have the same meaning as defined in the User TOS or the Glossary which is found [HERE](#).
- b. In the event of a conflict between this BYON Supplement and the User TOS, this BYON Supplement supersedes the User TOS with respect to the BYON Services.

2. Licenses; Grant of Rights; and Ownership.

- a. **Notarize License to You for Platform.** During the Term and subject to payment of the applicable fees set forth in the Order Form governing your access and use of the Platform (the "**BYON Order Form**"), Notarize grants to you under Notarize's Intellectual Property Rights, a nonexclusive, non-sublicenseable, non-transferable subscription license to access and use the Platform in the United States, and to permit your Authorized Notaries, Signatories and Witnesses/Participants to access and use the Platform, solely for the purposes allowed under this Supplement. You will be limited to cloud-based access to an instance of the Notarize System that resides in object code form on servers controlled by Notarize; (ii) the access will be via a browser approved by Notarize; and (iii) the Platform will in all respects be the current version generally made available by Notarize to its customers. Customer must: (a) provide for its own access to the Internet and pay any service fees associated with such access, and (b) provide all equipment necessary to make such connection to the Internet.
- b. **Authorized Notaries.** Prior to allowing a Notary to access the Platform, you will ensure that the Notary has met the following requirements: (a) the Notary has executed a technology access agreement with Notarize, (b) the Notary has completed training with Notarize (unless otherwise agreed, such training is to be provided at your expense), and (c) the Notary has provided to Notarize (or at Notarize's sole discretion, has provided to you on behalf of Notarize) all necessary current Compliance Documentation (and continue to update as necessary). You acknowledge that during the Term, Notarize may update the requirements with reasonable advance notice to you. Upon meeting the aforesaid requirements, a Notary will be considered an "**Authorized Notary**" for purposes of accessing the Platform in accordance with this

Supplement. You represent and warrant that the Notaries that it utilizes in connection with the Platform are: (i) employees that receive a W-2 from you, (ii) individuals duly commissioned (or registered if separate commission is not required) as notary publics by a United States state, commonwealth or territory to perform electronic notarizations utilizing audio-video communication technology. You have, and will continue to, perform background checks on all notaries to confirm that they meet the current version of the National Notary Associations National Signing Agent background criteria, or other criteria as may be permitted by Notarize. You are responsible for the acts and omissions of the Authorized Notaries and will defend, indemnify and hold harmless Notarize for any claims arising from the acts or omissions of the notaries you utilize in in connection with the Platform.

3. Fees Not Billable To Consumer. The fee that is due for use of the Platform under this Notaverse Addendum is a technology fee (not a fee for notarization services) and you agree that it will not as a standalone line item to the consumer. Notarize should not appear as a payee on any documentation provided to the consumer (e.g. this fee is not billable as a lone item on your firms invoice, or if a real estate closing is cocuring the fee should not appear as a fee payable to Notarize on the closing documents). It is your duty to understand Applicable Notary Law in all aspects, including but not limited to, fees that may be charged for Notarizations. Notarize is permitting you to access and use the Platform conditioned upon your agreement to this Section 3 and such.

4. Representations and Warranties.

1. **Your Representations and Warranties.** You represent and warrant that (i) it owns all right, title and interest in and to (a) the User Data, or that it has otherwise secured rights in the User Data necessary to permit the access, use and processing of such User Data according to this BYON Supplement; (b) your Systems; and (c) other resources according to this BYON Supplement; and, (ii) if applicable, it is duly organized, validly existing and in good standing, and is qualified and/or licensed to do business in all jurisdictions to the extent necessary to carry out its obligations under this BYON Supplement.
2. **Notarize Representations and Warranties.** Notarize represents and warrants to you (i) that Platform software will be scanned using commercially available virus scanning and removal software according to good industry practice and frequency; and (ii) that it is duly organized, validly existing and in good standing, and is qualified and/or licensed to do business in all jurisdictions necessary to carry out its obligations as a provider of software services under this BYON Supplement.

5. Indemnifications.

- a. **Indemnification by You.** You agree to indemnify, defend and hold harmless Notarize from and against any demand, suit, action or other claim that is related to or arises from its User Data, your Systems, a breach of this BYON Supplement by you or its Authorized Notary, employee, contractor or agent, negligence or more culpable act or omission (including recklessness or willful misconduct by you, your employees, contractors or agents, or any third party on behalf of you), in connection with this BYON Supplement or its failure to comply with applicable law (each a "**Subscriber-Related Claim**"), and, subject to the damage limitations, to indemnify Notarize for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of any such Subscriber-Related Claim.

- b. **Intellectual Property Indemnification by Notarize.** Notarize agrees to defend you against any demand, suit, action or other claim by a third party that the Platform or Services misappropriate or infringe the intellectual property rights of such third party (each a “**Notarize-Related IP Claim**”), and to indemnify you for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys’ fees) awarded and arising out of any such Notarize-Related IP Claim. Notarize will be entitled, at its option, to (i) modify the Platform or Services to resolve such third party infringement claims, provided such modifications do not materially degrade the features or performance of such Services; (ii) obtain for you a license to continue using the infringing Services; or (iii) terminate all of your licenses to use the Services. If Notarize is unable at reasonable effort or expense to implement (i) and (ii) above, and therefore implements (iii), then you will be entitled to a pro-rata refund of its most recent period fee charged and paid in advance, representing the unused portion of its most recent periodic payment under its then-current Order Form or other Agreement. The foregoing states the entire liability of Notarize, and your exclusive remedy, with respect to actual or alleged violation of third party intellectual property rights by the Platform or other performance by or deliverable from Notarize under this BYON Supplement or any other agreement between you and Notarize.
- c. **Conditions to Indemnification.** The indemnifying party’s obligations hereunder are conditioned on (i) the party seeking indemnification providing prompt written notice thereof and reasonable cooperation, information, and assistance in connection therewith (at the indemnifying party’s expense) and (ii) the indemnifying party having sole control and authority to defend, settle or compromise such claim. The indemnified party may participate in the defense at its sole cost and expense. The indemnifying party will not enter into any settlement that adversely affects the indemnified party’s rights or interest without its prior written approval, not to be unreasonably withheld. The indemnifying party will not be responsible for any settlement it does not approve in writing.

6. Limitation on Remedies.

- a. **Consequential Damages Waiver.** In no event will either party be liable to the other party for any indirect, incidental, punitive, special, or consequential damages of any kind or nature whatsoever, including without limitation any claim of loss of profits or arising out of loss of data, loss or interruption of use, cost to procure substitute technologies or goods or services, or any other indirect or consequential economic loss, even if such party has been advised of the possibility of such losses or damages.
- b. **General Limitation of Liability.** In no event will the liability of a party, in the aggregate respecting any and all claims arising out of or relating to this BYON Supplement, exceed the lesser of (a) the total amount of payments, for the immediately preceding six (6) month period, paid or due to Notarize under this BYON Supplement or any other agreement between the parties, or (b) the actual monetary damages suffered by the injured party. These limitations are independent of all other provisions of this BYON Supplement and will apply notwithstanding the failure of any remedy provided herein.
- c. **Exclusions.** THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTIONS 6.A AND 6.B. WILL NOT APPLY TO THE FOLLOWING: THE INDEMNIFICATION OBLIGATIONS IN SECTIONS 2.B, 3, or 5.A.OF

THIS BYON SUPPLEMENT, OR SECTION 5 OF THE USER TOS (CONFIDENTIALITY), OR CLAIMS DUE TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

7. Survival Provisions. The following will survive the termination or expiration of the Agreement for whatever reason or cause: Sections 5, 6, and 7 of this BYON Supplement and any other that may be reasonably interpreted as surviving termination or expiration of this Supplement) will survive the termination or expiration of this Supplement.

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