

Livescribe Developer License Agreement

ATTENTION: READ CAREFULLY BEFORE YOU INSTALL THE SOFTWARE THAT ACCOMPANIES THIS AGREEMENT. BY INSTALLING OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL THE SOFTWARE, OR IF YOU HAVE INSTALLED IT, UNINSTALL IT FROM YOUR COMPUTER SYSTEM.

Purpose

You would like to use the “Software Development Kit” or “SDK” to develop Applications for use with the Livescribe Pulse™ Smartpen. Livescribe is willing to grant You a limited license to use the SDK to develop and test Your Applications on the terms and conditions set forth in this Agreement.

You may submit Applications that meet Livescribe’s Requirements for Livescribe’s consideration for distribution via the Livescribe Store. If selected, Livescribe will distribute Your Applications subject to the distribution terms contained in the Schedule 1.

1. Accepting this Agreement; Definitions

1.1. Acceptance.

In order to use the SDK, You must first agree to this License Agreement. If You do not or cannot agree to this Agreement, You are not permitted to use the SDK. Do not download or use the SDK in that case.

You accept and agree to the terms of this Agreement on Your own behalf and/or on behalf of Your company or organization as its authorized legal representative, by doing the following: (a) checking the box displayed at the end of this Agreement if You are reading this on a Livescribe website; (b) clicking an “Agree” or similar button, where Livescribe provides this option, or (c) downloading or using the SDK in any manner.

1.2. Definitions. Whenever capitalized in this Agreement:

“Agreement” means this Livescribe Developer License Agreement, including Schedule 1 and Schedule 2, if executed.

“Anoto Technology” means Technology owned or Controlled by Anoto or an Anoto Group Company. Notwithstanding anything to the contrary, Anoto Technology does not include software source code other than the Anoto source code licensed to Livescribe.

“Application” means Smartpen Application and Desktop Application.

“Authorized Developers” means Your employees and contractors or members of Your organization, or if You are an educational institution, Your faculty and staff who (a) each have

an active and valid registered developer account with Livescribe, (b) have a demonstrable need to know or use the SDK in order to develop and test Applications, and (c) each have written and binding agreements with You to protect the unauthorized use and disclosure of Livescribe Confidential Information and third party confidential information.

“Authorized Test Devices” means Smartpen devices owned or controlled by You that have been designated by You for testing and development purposes and specifically registered with Livescribe under this Program.

“Business Market” means the market for Smartpens, Applications and Smartpen Content promoted, positioned, and sold to enterprises (including, without limitation, businesses, governmental agencies and non-profits). For avoidance of doubt, the Business Market includes use of the products for any applications, including without limitation, business forms and transaction verification applications.

“Consumer Market” means the market for Smartpens, Applications and Smartpen Content promoted, positioned, and sold to individual consumers and not to enterprises (including, without limitation, businesses, governmental agencies and non-profits). Consumer Market specifically excludes the Business Market.

“Controlled” means and any cognates thereof means, with respect to technology or Intellectual Property Rights, lawfully possessing the ability to grant rights of the scope contemplated by this Agreement to another without payment, accounting or other obligations or liability to a third party.

“Desktop Application” means a software application designed to (a) run on devices or products other than Smartpens (e.g., PCs and Macintosh computers) and (b) interact with data accessible on such devices or products and/or (c) transfer data to or from a Penlet that runs on the Smartpen and interact with such data. A Desktop Application includes all updates, upgrades, modifications, bug fixes, enhancements, supplements, revisions, new releases and new versions.

“Documentation” means any technical or other specifications or documentation that Livescribe may make available or provide to You relating to or for use in connection with the SDK.

“Dot Pattern” means the absolute positioning and electronically detectable background pattern licensed to Livescribe from Anoto that is printed on paper or other media and that is read by the Smartpen and that incorporates technology and Intellectual Property Rights owned or controlled by Anoto.

“Fixed Print Paper Product” which means any paper products printed with the Dot Pattern other than Open Paper or Note Pads (e.g., a paper product with pre-printed graphics on more than 15% of its surface area).

“Intellectual Property Rights” means any and all worldwide copyrights, mask works, industrial designs, trademarks, service marks, trade names, trade secrets, know-how, patents (and all claims, applications, registrations, reissues, divisions, substitutions, renewals, extensions,

provisionals, continuations, continuations-in-part and reexaminations hereof) and any other intellectual property rights, recognized in any jurisdiction or country of the world, whether or not perfected.

“Licensed Application” means an Application that (a) meets and complies with all of the Documentation and Program Requirements, and (b) has been selected and digitally signed by Livescribe for production distribution.

“Licensed Application Information” means screen shots, images, artwork, icons, audio, voice, music, and/or any other copyrighted text or information relating to a Licensed Application that You provide to Livescribe for use in accordance with Schedule 1.

“Livescribe” means Livescribe, Inc., a Delaware corporation with its principal place of business at 7677 Oakport St, 12th Floor, Oakland, CA 94621.

“Livescribe Subsidiary” means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by Livescribe, and that is involved in the operation of or otherwise affiliated with the Store.

“Livescribe Technology” means Technology owned or Controlled by Livescribe or a Livescribe Subsidiary.

“Note Pad” means a collection of sheets of Open Paper, in which each sheet may have pre-printed graphical materials on no more than 15% of its surface area (e.g., tool bars), excluding ruled lines, grids, and page numbers which may appear on all or any part of the surface area.

“Open Paper” means a surface, or a portion of surface, (a) that is printed with parts of the Dot Pattern and (b) on which no pre-printed materials other than ruled lines, grids, or page numbers appear.

“Open Paper Product” means paper products that are Open Paper or Note Pads.

“Open Source” means any software that is subject to terms that, as a condition of use, copying, modification or redistribution, require such software and its derivative works to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library General Public License.

“Paper Product” means Open Paper Product and Fixed Print Paper Product.

“Penlet” means a Java application You develop that runs on a Smartpen including, without limitation, interacting with specific active regions defined on a Paper Product. The active regions can be either pre-defined regions (e.g. static regions on Fixed Print Paper Products), or dynamic (e.g., established during the runtime interaction of a user with Open Paper or a Note Pad). The

Penlet may handle Smartpen events, perform actions associated with the active regions, transfer data between Penlets, and transfer data to and from the Smartpen and interact with such data.

“Program” means the overall Application development, testing, approval, digital signing, and distribution program.

“Program Requirements” mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Livescribe, including but not limited to the requirements set forth in Section 3.3, as they may be modified from time to time by Livescribe in accordance with this Agreement.

“Published API(s)” means the public and documented Application Programming Interface(s) contained in the SDK.

"Registered Devices" means Smartpen devices owned or controlled by You, or owned by individuals who are affiliated with You, that You have specifically registered with Livescribe under this Program.

“SDK” (Software Development Kit) means the Documentation, software (source code and object code), applications, sample code, simulator, tools, Penlet tools, Paper Product tools, libraries, APIs, data, files, and materials provided or made available by Livescribe for use by You in connection with Your Application development, and includes any Updates that Livescribe may make available.

“Smartpen” means the Pulse™ smartpen, and subsequent generations of smartpens, sold by Livescribe.

“Smartpen Application” means a Penlet software application designed to (a) run exclusively on Smartpens (and no other devices or other products), and (b) give the user real time feedback when using a Smartpen. A Smartpen Application includes all updates, upgrades, modifications, bug fixes, enhancements, supplements, revisions, new releases and new versions.

“Smartpen Content” means (a) Paper Products that work with or support Smartpen Applications (“Smartpen Printed Content”) and (b) audio content (such as music and recorded speech) and/or video content and/or data, in digital form, that may be downloadable to, or installed on, a Smartpen (“Smartpen Digital Content”).

“Store” means an electronic store and its storefronts branded, and owned and/or controlled by Livescribe or a Livescribe affiliate.

“Subsidiary” means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by Livescribe.

“Technology” means any computer program or routines (in object code or embedded format, regardless of the medium on which it resides), know-how, hardware and/or software

configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, designs, symbols, names, procedures, processes, technical improvements, prototypes, samples, copies and other materialized forms of any intangibles within the foregoing. Technology does not include trademarks, service marks, logos, insignias, trade dress and other proprietary trade designations protected by law.

“Term” means the period described in Section 12.

“Updates” means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the SDK, or to any part of the SDK.

“Website” means www.livescribe.com and its authorized sub-sites.

“You,” “Your,” and “Licensee” means and refers to the person(s) or legal entity using the SDK or otherwise exercising rights under this Agreement. If You are entering into this Agreement on behalf of Your company, organization, or educational institution, “You” or “Your” refers to your company or organization as well.

2. Internal Use License and Restrictions

2.1. Permitted Uses and Restrictions

Subject to the terms and conditions of this Agreement, Livescribe hereby grants You during the Term, a limited, non-exclusive, personal, revocable, non-sublicensable and non-transferable license to:

- (a) Install up to five (5) copies of the SDK on computers owned or controlled by You;
- (b) Have You or Your Authorized Developers use the SDK for the sole purpose of developing or testing Applications; and
- (c) Make and distribute a reasonable number of copies of the Documentation to Authorized Developers for their internal use only and for the sole purpose of developing or testing Applications.

Livescribe reserves the right to set the limited number of Smartpen devices that each Licensee may register with Livescribe and obtain licenses for under this Program (a "Block of Registered Device Licenses"), as specified on the Program web portal. For the purposes of limited distribution on Registered Devices under Section 7.2, each company, organization, educational institution, or affiliated group may only acquire one (1) Block of Registered Device Licenses per company, organization, educational institution or group, unless otherwise agreed in writing by Livescribe. You therefore agree not to knowingly acquire, or to cause others to acquire, more than one Block of Registered Device Licenses for the same company, organization, educational institution or group.

2.2. Authorized Test Devices

As long as an Authorized Test Device contains or utilizes any pre-release versions of the SDK or uses pre-release versions of services, You agree to restrict access to such Authorized Test Device to Your Authorized Developers and to not disclose, show, rent, lease, lend, sell or otherwise transfer such Authorized Test Device to any third party. You further agree to take reasonable precautions to safeguard, and to instruct Your Authorized Developers to safeguard, all Authorized Test Devices from loss or theft.

You acknowledge that by installing any pre-release SDK or using any prerelease services on Your Authorized Test Devices, these Devices may be “locked” into testing mode and may not be capable of being restored to their original condition. Any use of any pre-release SDK or pre-release services are for evaluation and development purposes only, and You should not use any pre-release SDK or pre-release services in a commercial operating environment or with important data. You should back up any data prior to using the pre-release SDK or pre-release services. Livescribe shall not be responsible for any costs, expenses or other liabilities You may incur as a result of provisioning Your Authorized Test Devices and Registered Devices, Your Application development or the installation or use of this SDK, including but not limited to any damage to any equipment, software or data.

2.3. Confidential Nature of SDK

The SDK, future pre-release versions of the SDK, Livescribe’s Intellectual Property Rights, and related services is Livescribe Confidential Information and subject to this Agreement’s confidentiality obligations.

2.4. Copies

You agree to retain and reproduce in full the copyright, disclaimers and other proprietary notices that appear in the SDK in all copies of the SDK that you are permitted to make under this Agreement.

2.5. Ownership

Livescribe and its licensors retain all right, title, and interest in and to its Intellectual Property Rights, Livescribe Technology, and the SDK and any Updates it may make available to You under this Agreement. You agree to cooperate with Livescribe to maintain this ownership of the SDK, and You agree to promptly provide notice of any claims relating to the SDK that are known by You.

2.6. No Other Permitted Uses

You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the SDK, in whole or in part, or to enable others to do so. You may not use the SDK, or Livescribe Technology, or Livescribe Intellectual Property Rights for any purpose that this

Agreement does not expressly permit. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of Livescribe Technology, Livescribe Intellectual Property Rights, the SDK or services provided by the SDK, or any part thereof (except as and only to the extent applicable law prohibits the foregoing restriction or to the extent as may be permitted by licensing terms governing use of Open Source). You agree not to exploit any services provided by the SDK in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. Any attempt to do so is a violation of the rights of Livescribe and its licensors of the SDK or services provided by the SDK. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. Livescribe reserves all licenses not expressly granted in this Agreement and grants no other licenses, immunity or rights by implication, estoppel, or otherwise. This Agreement does not grant You any rights to use any trademarks, logos or service marks belonging to Livescribe, including but not limited to the Pulse™ word marks. If You make reference to any Livescribe products or technology, You agree to comply with Livescribe's brand guidelines, as modified by Livescribe from time to time.

2.7. Updates; No Support or Maintenance

Livescribe may extend, enhance, or otherwise modify the SDK or services provided under this Agreement at any time without notice. Livescribe is not obligated to provide You with any Updates to the SDK. If Livescribe makes any Updates available, this Agreement will govern unless otherwise noted in the Update. Livescribe is not obligated to provide any maintenance, technical or other support for the SDK. You acknowledge that Livescribe has no express or implied obligation to announce or make available any Updates to the SDK to anyone in the future. Any Update may have APIs, features, services or functionality that are different from those found in the previous SDK or the services provided under this Agreement.

2.8. Anoto Restrictions

The Anoto Restrictions listed in Exhibit A apply to You and the distribution of certain Smartpen Application that You develop.

3. Your Obligations

3.1. General

You certify to Livescribe and agree that:

(a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization, or educational institution, that You have the right and authority to legally bind Your company, organization, or educational institution to the terms and obligations of this Agreement;

(b) All information that You provide to Livescribe, including without limitation Licensed Application Information, will be current, true, accurate and complete and You will promptly notify Livescribe of any changes in writing via email to developer@livescribe.com;

(c) You will comply with the terms of and fulfill Your obligations under this Agreement and You agree to monitor and be responsible for Your Authorized Developers' use of the SDK and services and Authorized Test Devices and their compliance with the terms of this Agreement;

(d) You will be solely responsible for all costs, expenses, losses, and liabilities incurred, and activities undertaken by You and Authorized Developers in connection with the SDK and services, the Registered Devices, Your Applications and Your related development and distribution efforts including, but not limited to, any related development efforts, network and server equipment, Internet service(s), or any other hardware, software or services used by You in connection with Your use of any services;

(e) For the purposes of Schedule 1 (if applicable), You represent and warrant that You own or control the necessary rights in order to appoint Livescribe as your worldwide agent for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Livescribe shall not violate or infringe the rights of any third party; and

(f) You will not act in any manner which conflicts or interferes with any existing commitment or obligation You may have and no agreement previously entered into by You will interfere with Your performance of Your obligations under this Agreement.

3.2. Use of the SDK

As a condition to using the SDK, You agree that:

(a) You will only use the SDK for the purposes and in the manner this Agreement expressly permits and in accordance with all applicable laws and regulations;

(b) You will not use the SDK for any unlawful or illegal activity, nor to develop any Application which would commit or facilitate the commission of a crime, or other tortious, unlawful or illegal act;

(c) You will develop Your Application in compliance with the Documentation and the Program Requirements, the current set of which is set forth in Section 3.3 below;

(d) To the best of Your knowledge and belief, Your Application does not and will not violate, misappropriate, or infringe any copyright, patent, trademark, trade secret, rights of privacy and publicity, or other proprietary or legal right of any third party or of Livescribe;

(e) You will not, through use of the SDK or otherwise, create any Application or other program that would disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Smartpen,

Livescribe desktop software, this SDK, or other Livescribe software or technology, or enable others to do so; and

(f) You will only distribute Applications that have been selected by Livescribe (in its sole discretion) and only through the Store.

3.3. Program Requirements for Applications

Any Application developed using this SDK must meet all of the following criteria and requirements, as they may be modified by Livescribe from time to time:

APIs and Functionality:

(a) Applications may only use Published APIs in the manner prescribed by Livescribe and must not use or call any unpublished or private APIs.

(b) An Application may not itself install or launch other executable code by any means, including without limitation through the use of a plug-in architecture, calling other frameworks, other APIs or otherwise. No interpreted code may be downloaded and used in an Application except for code that is interpreted and run by Livescribe's Published APIs and built-in interpreter(s).

(c) Without Livescribe's prior written approval, an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the Store.

(d) An Application may write data on a device only to the Application's designated container area, except as otherwise specified by Livescribe.

User Interface and Data:

(e) Applications must comply with the Documentation provided by Livescribe.

(f) Any form of user or device data collection, or image, picture or voice capture or recording performed by the Application (collectively "Recordings"), and any form of user data, content or information uploading, syncing, or transmission performed by the Application (collectively "Transmissions") must comply with all applicable privacy laws and regulations as well as any Livescribe program requirements related to such aspects, including but not limited to any notice or consent requirements. In particular, a reasonably conspicuous visual indicator must be displayed to the user as part of the Application to indicate that a Recording is taking place.

Content and Materials:

(g) Any master recordings and musical compositions embodied in Your Application must be wholly-owned by You or licensed to You on a fully paid-up basis and in a manner that will not require the payment of any fees, royalties and/or sums by Livescribe to You or any third party. In

addition, if Your Application will be distributed outside of the United States, any master recordings and musical compositions embodied in Your Application (i) must not fall within the repertoire of any mechanical or performing/communication rights collecting or licensing organization now or in the future and (ii) if licensed, must be exclusively licensed to You for Your Application by each applicable copyright owner.

(h) If Your Application includes or will include any other content, You must either own all such content or have permission from the content owner to use it in Your Application.

(i) Applications must not contain any obscene, pornographic, offensive or defamatory content or materials of any kind (text, audio, graphics, images, photographs, etc.), or other content or materials that in Livescribe's reasonable judgment a Smartpen user may find objectionable.

(j) Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g. computer viruses, trojan horses, "backdoors") which could damage, destroy, or adversely affect other software, firmware, hardware, data, systems, services, or networks.

(k) Applications must comply with all applicable criminal, civil and statutory laws and regulations, including those in any jurisdictions in which Your Applications may be delivered.

(l) If Your Application includes any Open Source, You agree to comply with all applicable Open Source licensing terms. You also agree not to use any Open Source in the development of Your Application in such a way that would cause the non-Open Source portions of the SDK to be subject to any Open Source licensing terms or obligations.

4. Changes to Program Requirements or Terms

Livescribe may change the Program Requirements or the terms of this Agreement at any time. New or modified Program Requirements will not retroactively apply to Applications already in distribution. In order to continue using the SDK, You must agree to the new Program Requirements and/or new terms of this Agreement. If You do not, You must stop using the SDK and uninstall it from your computer systems. You agree that Livescribe may consider such new Agreement terms or Program Requirements as accepted based on Your electronic "signature," including without limitation, by Your checking a box or clicking on an "agree" or similar button or by Your continued use of the SDK. Nothing in this Section shall affect Livescribe's rights under Section 8 below.

5. Digital Signing of Applications; Restrictions on Certificates

All Applications must be signed with a Livescribe-issued certificate in order to be installed on Registered Devices. During the Term of this Agreement, You may obtain development-related digital certificates from Livescribe, subject to a maximum number as reasonably determined by Livescribe, that will allow Your Application to be installed and tested on Authorized Test Devices. You may also obtain, during the Term, one or more production digital certificates from Livescribe, subject to a maximum number as reasonably determined by Livescribe, to be used for

the sole purpose of signing Your Application(s) prior to submission of Your Application to Livescribe or limited distribution of Your Application for use on Registered Devices.

In relation to this, You represent and warrant to Livescribe that: (a) You will not take any action to interfere with the normal operation of any Livescribe-issued digital certificates; (b) You are solely responsible for preventing any unauthorized person from having access to Your digital certificates and corresponding private keys and You will use best efforts to safeguard Your digital certificates and corresponding private keys from compromise; (c) You agree to immediately notify Livescribe in writing if You have any reason to believe there has been a compromise of any of Your digital certificates or corresponding private keys; (d) You will not provide or transfer Livescribe-issued digital certificates provided under this Program to any third party, nor use Your digital certificate to sign a third party's application; and (e) You will use Livescribe-issued certificates provided under this Program exclusively for the purpose of signing Your Applications for testing, submission to Livescribe and/or limited distribution for use on Registered Devices as contemplated under this Program, and only in accordance with this Agreement.

You further represent and warrant to Livescribe that the licensing terms governing Your Application, or governing any third party code or Open Source included in Your Application, will be consistent with and not conflict with the digital signing or content protection aspects of the Program or any of the terms, conditions or requirements of the Program or this Agreement. In particular, such licensing terms will not purport to require Livescribe (or its agents) to disclose or make available any of the keys, authorization codes, methods, procedures, data or other information related to the digital signing or digital rights management mechanisms utilized as part of the Program. If You discover any such inconsistency or conflict, You agree to immediately notify Livescribe of it and will cooperate with Livescribe to resolve such matter. Livescribe may immediately cease distribution of any affected Licensed Applications and refuse to accept any subsequent Application submissions from You until such matter is resolved to Livescribe's reasonable satisfaction.

6. Application Submission and Selection

6.1. Submission to Livescribe

You may submit Your Application for consideration by Livescribe for distribution via the Store once You decide that Your Application has been adequately tested and is complete. By submitting Your Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect. You agree to cooperate with Livescribe in this process and to answer questions and provide information about Your submitted Application that Livescribe reasonably requests.

If You make any changes to an Application after it has been submitted to Livescribe, You must resubmit the Application. Similarly all bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of Your Application must be submitted to Livescribe for review in order for them to be considered for distribution via the Livescribe Store.

6.2. Selection by Livescribe for Distribution

You understand and agree that Livescribe may, in its sole discretion:

- (a) determine that Your Application does not meet all or any part of the Documentation or Program Requirements then in effect;
- (b) reject Your Application for distribution for any reason, even if Your Application meets the Documentation and Program Requirements; or
- (c) select and digitally sign Your Application for distribution via the Store.

Livescribe shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of Your Application development, use of this SDK, or participation in the Program, including without limitation the fact that Your Application may not be selected for distribution via the Store. You will be solely responsible for developing Applications that are safe, free of defects in design and operation, and comply with applicable laws and regulations. You will also be solely responsible for any documentation and end user customer support and warranty of your Applications. The fact that Livescribe may have reviewed, tested, approved or selected an Application will not relieve You of any of these responsibilities.

7. Distribution

Applications developed under this Agreement may be distributed in two ways: (1) through the Store, if selected by Livescribe, and (2) distribution for use on a limited number of Registered Devices.

7.1 Delivery of Freely Available Licensed Applications via the Store

If Your Application qualifies as a Licensed Application, it is eligible for delivery to end users via the Store by Livescribe and/or a Livescribe Subsidiary and/or Livescribe-affiliated international website ("Livescribe International Affiliate)." If You would like Livescribe and/or a Livescribe Subsidiary and/or a Livescribe International Affiliate to deliver Your Licensed Application to end users for free (no charge), then You appoint Livescribe, Livescribe Subsidiaries, and Livescribe International Affiliates as Your legal agent pursuant to the terms of Schedule 1, for Licensed Applications designated by You as free of charge Applications.

If Your Application qualifies as a Licensed Application and You intend to charge end users a fee of any kind for Your Licensed Application, You must enter into a separate agreement (Schedule 2) with, and provided by, Livescribe and/or a Livescribe Subsidiary and/or a Livescribe International Affiliate before any such commercial distribution of Your Licensed Application may take place via the Store. To the extent that You enter (or have previously entered) into Schedule 2 with Livescribe and/or a Livescribe Subsidiary and/or a Livescribe International

Affiliate, the terms of Schedule 2 will be deemed incorporated into this Agreement by this reference.

7.2 Distribution on Registered Devices

Subject to the terms and conditions of this Agreement, and subject to Anoto's pre-approval, You may also distribute Your Applications to individuals within Your company, organization, educational institution, group, or who are otherwise affiliated with You for use solely on a limited number of Registered Devices (as specified on the Program web portal), if Your Application has been digitally signed using Your Livescribe-issued digital certificate as described in this Agreement. By distributing Your Application in this manner, You represent and warrant to Livescribe that Your Application complies with the Documentation and Program Requirements then in effect and You agree to cooperate with Livescribe and to answer questions and provide information about Your Application, as reasonably requested by Livescribe.

You also agree to be solely responsible for determining which individuals within Your company, organization, educational institution or affiliated group should have access to and use of Your Applications and Registered Devices, and for managing such Registered Devices. Livescribe shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of distributing Your Applications in this manner, or for Your failure to adequately manage, limit or otherwise control the access to and use of Your Applications and Registered Devices.

You will be responsible for attaching or otherwise including, at Your discretion, any relevant usage terms with Your Applications. Livescribe will not be responsible for any violations of Your usage terms. You will be solely responsible for all user assistance, warranty and support of Your Applications.

7.3 No Other Distribution Authorized Under this Agreement

Except for the distribution of freely available Licensed Applications and the distribution of Applications for use on Registered Devices as set forth in Sections 7.1 and 7.2 above, no other distribution of programs or applications developed using the SDK is authorized or permitted hereunder. In the absence of a separate express written agreement with Livescribe, You agree not to distribute, sell, or transfer Your Application to third parties via other distribution methods or to enable or permit others to do so.

8. Revocation

You understand and agree that Livescribe may cease distribution of Your Application(s) or revoke the digital certificate of any of Your Applications at any time. By way of example only, Livescribe might choose to do this if at any time:

(a) Any of Your digital certificates or corresponding private keys has been compromised or Livescribe has reason to believe that either has been compromised;

- (b) Livescribe has been notified or otherwise has reason to believe that Your Application violates, misappropriates, or infringes the rights of a third party or of Livescribe;
- (c) Livescribe has reason to believe that Your Application contains malicious or harmful code, malware, programs or other internal components (e.g. software virus);
- (d) Livescribe has reason to believe that Your Application damages, corrupts, degrades, destroys or otherwise adversely affects the devices it operates on, or any other software, firmware, hardware, data, systems, or networks accessed or used by the Application;
- (e) You breach any term or condition of this Agreement, including its Schedules;
- (f) Any information or documents that You provide to Livescribe is false or inaccurate;
- (g) Any representation, warranty or certification that You provide to Livescribe is untrue or inaccurate;
- (h) Livescribe is required by law, regulation or other governmental or court order requires Livescribe to take such action;
- (i) You request that Livescribe take such action in accordance with Schedule 1;
- (j) You misuse or overburden any services provided hereunder;
- (k) You fail to renew this Agreement and pay the applicable renewal fee; or
- (l) Livescribe has reason to believe that such action is prudent or necessary.

9. Application Submission Fees

As consideration for the rights and licenses Livescribe grants You under this Agreement and for Livescribe's evaluation of Your Application for Distribution, You agree to pay Livescribe the requisite Application submission fee as set forth on the Program website. The fees are non-refundable. Your Application submission fees must be paid before You submit (or resubmit) Applications to Livescribe under this Agreement, and Your continued use of the Program web portal is subject to Your payment of such fees.

10. Confidentiality

10.1. Information Deemed Confidential

You agree that the SDK, pre-release versions of the SDK, Anoto Technology, the Documentation, the terms and conditions of this Agreement, and any other non-public information that You learn about Livescribe's products, designs, research, development, know-how, or Livescribe's business, finances, or personnel, or non-public third party information, in

connection with this Agreement or in connection with Your use of any part of the SDK is “Livescribe Confidential Information.”

10.2. Information Not Deemed Confidential

Livescribe works with many application and software developers and some of their products may be similar to or compete with Your Applications. Livescribe may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings, Livescribe cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the Program, including information about Your Application, Licensed Application Information, and metadata (such disclosures will be referred to as “Licensee Disclosures”). You agree that any such Licensee Disclosures will be non-confidential. Livescribe will be free to use and disclose any Licensee Disclosures on an unrestricted basis without notifying or compensating You. You release Livescribe from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Livescribe will become Livescribe property and Livescribe will have no obligation to return those materials to You or to certify their destruction.

The following information that otherwise would be deemed Confidential Information is not Confidential Information: (i) it is generally available to the public through no fault or breach of the recipient, (ii) it is independently developed by the recipient without the use of any of the other party’s Confidential Information, (iii) it was rightfully obtained from a third party who had the right to transfer or disclose it to the recipient without limitation, or (iv) any Open Source included in the SDK and accompanied by licensing terms that do not impose confidentiality obligations on its use or disclosure.

10.3. Obligations Regarding Confidential Information

You agree to protect Livescribe Confidential Information using at least the same degree of care that You use to protect Your own confidential information of similar importance, but no less than a reasonable degree of care. You agree to use Livescribe Confidential Information solely for the purpose of exercising Your rights and performing Your obligations under this Agreement and agree not to use Livescribe Confidential Information for any other purpose, or for Your own or any third party’s benefit, without the express prior written consent of an authorized representative of Livescribe. You further agree not to disclose or disseminate Livescribe Confidential Information to anyone, or to discuss anything about the Livescribe Confidential Information with anyone, other than (i) those of Your employees and contractors, or those of Your faculty and staff if You are an educational institution, who have a need to know and who are bound by a written agreement that prohibits unauthorized use or disclosure of the Confidential Information, or (ii) except as otherwise agreed in writing by Livescribe. You may disclose Livescribe Confidential Information to the extent required by law, provided that You take reasonable steps to notify Livescribe of such requirement before disclosing the Livescribe Confidential Information and to obtain protective treatment of the Livescribe Confidential Information. You acknowledge that damages for improper disclosure of Livescribe Confidential

Information may be irreparable; therefore, Livescribe is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

10.4. Press Releases and Other Publicity

You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Livescribe's express prior written approval, which may be withheld at Livescribe's discretion.

11. Indemnification

You agree to indemnify, defend and hold harmless Livescribe, its directors, officers, employees, independent contractors and agents (each an "Livescribe Indemnified Party") from any and all claims, losses, liabilities, damages, expenses and costs (including without limitation attorneys fees and court costs) (collectively "Losses") incurred by a Livescribe Indemnified Party as a result of: Your breach of this Agreement; a breach of any certification, covenant, representation or warranty made by You in this Agreement; any claims that Your Applications or the distribution, sale, offer for sale, use or importation of Your Applications (whether alone or as an essential part of a combination), Licensed Application Information or metadata violate or infringe any third party intellectual property or proprietary rights; any claims arising out of Livescribe's permitted use, promotion or distribution of Your Licensed Application(s), related trademarks and logos, or images and other materials that You provide to Livescribe at Livescribe's request; and/or otherwise related to or arising from Your use of the SDK, Your Application(s), metadata, or Your development and distribution of Applications.

You acknowledge that the SDK is not intended for use in the development of Applications in which errors or inaccuracies in the content, data or information provided by the Application or the failure of the Application, could lead to death, personal injury, or severe physical or environmental damage, and You hereby agree to indemnify, defend and hold harmless each Livescribe Indemnified Party from any Losses incurred by such Livescribe Indemnified Party by reason of any such use.

In no event may You enter into any settlement or like agreement with a third party that affects Livescribe's rights or binds Livescribe in any way, without the prior written consent of Livescribe.

12. Term and Termination

12.1. Term

The Term of this Agreement shall commence on the date You first accept it (the "Effective Date") and extend for an initial period of one (1) year following the activation date of Your Program account by Livescribe. Thereafter, subject to Your payment of Application submission fees and compliance with the terms of this Agreement, the Term will automatically renew for successive one (1) year terms, unless sooner terminated in accordance with this Agreement.

12.2. Termination

This Agreement and all rights and licenses that Livescribe grants hereunder will terminate, effective immediately upon notice from Livescribe:

- (a) if You or any of Your Authorized Developers fail to comply with any term of this Agreement other than those contained in Section 10 (Confidentiality) and fail to cure such breach within 30 days after becoming aware of or receiving notice of such breach;
- (b) if You or any of Your Authorized Developers fail to comply with the terms of Section 10;
- (c) in the event of the circumstances described in the subsection entitled “Severability” below;
- (d) if You, at any time during the Term, commence an action for patent infringement against Livescribe;
- (e) if You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy;
- (f) if You engage, or encourage others to engage, in any fraudulent, improper, unlawful or dishonest act relating to this Agreement, including, but not limited to, embezzlement, alteration or falsification of documents, theft, inappropriate use of computer systems, bribery, or other misrepresentation of facts.

Livescribe may also terminate this Agreement, or suspend Your rights to use the SDK, if You fail to accept any new Program Requirements or Agreement terms as described in Section 4.

Either party may terminate this Agreement for its convenience, for any reason or no reason, effective 30 days after providing the other party with written notice of its intent to terminate.

12.3. Effect of Termination

Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the SDK and erase and destroy all copies, full or partial, of the SDK and all copies of Livescribe Confidential Information in Your and Your Authorized Developers' possession or control. At Livescribe's request, You agree to provide written certification of such destruction to Livescribe. Upon the expiration of the Delivery Period defined and set forth in Schedule 1, all Licensed Applications in Livescribe's possession or control shall be deleted or destroyed within a reasonable time thereafter, excluding any archival copies maintained in accordance with Livescribe's standard business practices or required to be maintained by applicable law, rule or regulation. The provisions of Sections 1, 2.5, 2.6, 3.1(d), 3.1(e), 3.1(f), 3.2(d), 3.2(e), 3.2(f), 3.3, 5 (second and third paragraphs), 6.1, 6.2, 7.1 (Schedule 1 for the Delivery Period), 7.3, 8, and 10 through 15 inclusive will survive any termination of this Agreement. Livescribe will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in

accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Livescribe may have, now or in the future.

13. NO WARRANTY

The SDK may contain inaccuracies or errors that could cause failures or loss of data and it may be incomplete. Livescribe may provide or make available through the SDK or as part of the Program, certain web-based applications, certificate-issuance services, Store services or other services for Your use (collectively the "Services"). Livescribe and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Livescribe be liable for the removal of or disabling of access to any such Services.

The SDK is not fault-tolerant and is not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, implantable human medical devices, external human life-support machines, explosives control devices, submarines, weapons systems, or in controlling the operation of moving motor vehicles, in which the failure of the SDK could lead directly to death, personal injury, or severe physical or environmental damage.

Livescribe may also impose limits on the use of or access to certain Services, in any case and without notice or liability. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE LIVESCRIBE SDK AND SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE LIVESCRIBE SDK AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND LIVESCRIBE, LIVESCRIBE'S AGENTS AND LIVESCRIBE'S LICENSORS (COLLECTIVELY REFERRED TO AS "LIVESCRIBE" FOR THE PURPOSES OF SECTIONS 12 AND 13) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE LIVESCRIBE SDK AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LIVESCRIBE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE LIVESCRIBE SDK, THAT THE LIVESCRIBE SDK OR SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE LIVESCRIBE SDK OR THE PROVISION OF SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS IN THE LIVESCRIBE SDK OR SERVICE-RELATED SOFTWARE WILL BE CORRECTED, OR THAT THE LIVESCRIBE SDK OR SERVICE-RELATED SOFTWARE WILL BE COMPATIBLE WITH FUTURE LIVESCRIBE PRODUCTS OR SOFTWARE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LIVESCRIBE OR A LIVESCRIBE AUTHORIZED REPRESENTATIVE WILL CREATE A WARRANTY. SHOULD THE LIVESCRIBE SDK OR SERVICE-RELATED SOFTWARE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

14. LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL LIVESCRIBE OR ITS SUPPLIERS AND LICENSORS BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE LIVESCRIBE SDK OR SERVICES, OR YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF LIVESCRIBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. In no event shall Livescribe's total liability to You under this Agreement for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00).

15. General Legal Terms

- 15.1. Third Party Notices. Portions of the SDK utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the SDK, and Your use of such material is governed by their respective terms.
- 15.2. Consent to Collection and Use of Non-Personal Data. You agree that Livescribe and its Subsidiaries may collect and use technical and related information, including but not limited to information about Your Applications, computer, system software, other software and peripherals, that is gathered periodically to facilitate the provision of software updates and other services to You (if any) related to the SDK, and to verify compliance with the terms of this Agreement. Livescribe may use this information, as long as it is in a form that does not personally identify You, to improve the SDK, our products or to provide services or technologies to You and our customers.
- 15.3. Assignment. This Agreement may not be assigned, nor may any of Your obligations under this Agreement be delegated, in whole or in part, by You by operation of law, merger, or any other means without Livescribe's express prior written consent and any attempted assignment without such consent will be null and void.
- 15.4. Relationship of Parties. Except as specifically set forth in Schedule 1 (if applicable), this Agreement will not be construed as creating any other agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Livescribe, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not for the benefit of any third parties.

- 15.5. Independent Development. Nothing in this Agreement will impair Livescribe's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, Applications or any other products or technologies that You may develop, produce, market, or distribute.
- 15.6. Notices. Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Livescribe when sent to You at the email address or mailing address You provided during the sign-up process. All notices to Livescribe relating to this Agreement will be deemed given (a) when delivered personally, (b) three business days after having been sent by commercial overnight carrier with written proof of delivery, and (c) five business days after having been sent by first class or certified mail, postage prepaid, to this Livescribe address:

ATTN: Developer Licensing, Livescribe, Inc., 7677 Oakport St., Oakland, CA 94621, USA.

You consent to receive notices by email and agree that any such notices that Livescribe sends You electronically will satisfy any legal communication requirements. A party may change its email or mailing address by giving the other written notice as described above.

- 15.7. Severability. If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with, or appointing Livescribe and Livescribe Subsidiaries as Your agent under Schedule 1 or the Sections of this Agreement entitled "Internal Use License and Restrictions," "Your Obligations," or "Digital Signing of Applications; Restrictions on Certificates", or prevents the enforceability of any of those Sections or Schedule 1, this Agreement will immediately terminate and You must immediately discontinue any use of the SDK as described in the Section entitled "Term and Termination."
- 15.8. Waiver and Construction. Livescribe's failure to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any laws or regulations that provide that the language of a contract will be construed against the drafter will not apply to this Agreement. Section headings are for convenience only and are not to be considered in construing or interpreting this Agreement.
- 15.9. Export Control. You may not use, export, re-export, import, sell or transfer the SDK except as authorized by this Agreement and pursuant to United States law, the laws of the jurisdiction in which You obtained the SDK, and any other applicable laws and regulations. In particular, but without limitation, the SDK may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the SDK, You represent and warrant that You are not located in any such country or on any such list. You also agree

that You will not use the SDK for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

- 15.10. Government End Users. The SDK and Documentation are “Commercial Items,” as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.
- 15.11. Dispute Resolution. Any litigation or other dispute resolution between You and Livescribe arising out of or relating to this Agreement, the SDK, or Your relationship with Livescribe will take place in the Northern District of California, and You and Livescribe hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 15.12. Entire Agreement; Governing Language. This Agreement constitutes the entire agreement between the parties with respect to the use of the SDK and supersedes all prior understandings and agreements regarding its subject matter. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Livescribe by written or email notice to You). If any translation of this Agreement is done for local requirements, in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern. If You are located in the province of Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.

Exhibit A

Anoto Restrictions

“Anoto” means Anoto AB, a company incorporated under the laws of Sweden, as well as any legal entity that Anoto AB directly or indirectly controls, is controlled by or is under common control with (“control” meaning beneficial ownership of more than 50% of the ownership interest).

“Approval” means approval by Livescribe and Anoto.

The following additional restrictions required by Anoto apply to Your use of the SDK:

1. You will not: (a) modify, create derivative works of, reverse engineer or decompile the Dot Pattern or any other part of the Anoto Technology; (b) remove any patent, copyright, trade secret or other proprietary rights ownership notices; or (c) assign or transfer Your sublicensed right to the Dot Pattern or any other part of Anoto Technology without prior written Approval.
2. This Agreement will automatically terminate upon any expiration or termination of the Anoto License, provided that Anoto may offer You a direct license of the rights to Anoto IP and Anoto Technology that Livescribe had properly sublicensed to You for the remainder of the minimum guaranteed term of this Agreement and on substantially the same terms and conditions (for avoidance of doubt, Anoto will have no obligation to assume or otherwise agree to, or offer to assume or otherwise agree to, any of Livescribe’s obligations under this Agreement).
3. Notwithstanding anything to the contrary, none of the licenses granted in this Agreement may be exercised in any way in Japan.
4. Applications that are to be promoted, positioned, and sold to the Business Market shall be governed by a subsequent version of this Agreement to be released by Livescribe after Livescribe and Anoto complete an amendment to Livescribe’s Technology License Agreement with Anoto. Until the new version of this Agreement is released no Applications may be sold or distributed to the Business Market unless expressly approved by Anoto and Livescribe.
5. Anoto retains all right, title and interest (including, without limitation, all intellectual property rights) in and to the Anoto technology.
6. You may not and You agree not to, or to enable others to, reverse engineer, decompile or disassemble, any hardware or object code software products containing Anoto Technology (i.e., the SDK). You may not in any way use Livescribe Confidential Information to create or enhance Your own or another party’s services, products or systems, except as explicitly provided for under this Agreement.
7. You may not use any part of the SDK that is not Open Source for any of the following purposes: (a) to create or enhance Your own products or services, except as expressly allowed by this Agreement; (b) port all or part of the SDK to any other hardware or software platform, computer language or environment, chip instruction set or device; (c) use the SDK to create a software or hardware product capable of emulating (or facilitating the emulation of) any part of any Anoto product; (d) use the SDK to create or distribute (or facilitate the same) any product, service,

device, component or part that is designed to be used or likely to be used to circumvent protection afforded by a technological measure that effectively controls access to or protects copyrights in any Anoto product.

8. Any of the following Paper Products must include the “digital paper enabling Anoto functionality” statement:
 - a. For Fixed Print Paper Products that have a front and back cover (i.e., not Open Paper or Note Pads, but rather, for example, an appointment book), the statement must be on the back cover.
 - b. For Fixed Print Paper Products that do not have a front or back cover, that are size A5 or above, and are not a Note Pad (e.g., a map), the statement must be printed on the page itself (location to be determined by You).
 - c. For Note Pads the statement shall be printed on the first page after the front cover and on the back cover so long as the back cover has other printing. If You print Your logo on each page of the Note Pad You shall also print the statement on each page as well.
9. All Smartpen Applications must comply with the following Application Data Routing Restrictions in the Consumer Market:
 - a. A Smartpen Application may transfer data off a Smartpen without Approval if:
 - i. The data is audio data only.
 - ii. The data is transferred to a Livescribe Webportal, which is an internet accessible portal managed and controlled by Livescribe on which Livescribe makes available Applications and Smartpen Content for download to Smartpens, and with which Smartpens can exchange data. Such data transfer to a Livescribe Webportal contains further restrictions that are governed by a separate agreement.
 - iii. The data is generated through the use of the Smartpen Application with Open Paper.
 - iv. The data is generated through the use of the Smartpen Application with a Note Pad.
 - v. The data is reporting Smartpen usage, Smartpen settings, Smartpen status or Smartpen diagnostics.
 - b. Any Smartpen Application that transfers data off a Smartpen in any manner other than those identified in Section 9(a) above (e.g., a Smartpen Application that transfers data from a Fixed Print Paper Product to the Livescribe Desktop) must be pre-Approved in writing via Your submission of the Application to Livescribe under Section 6.1.

10. Indemnification.

10.1 Indemnification by Livescribe

Conditioned upon Anoto’s compliance with Section 10.2 below (Indemnification Procedures), You will defend and settle any suit brought against Anoto by a third party based on the alleged infringement of a third party’s Intellectual Property Rights by Your Application, limited to any features or portions of it not originating from Anoto (the “Developer Indemnified Elements”).

You will indemnify Anoto for any damages, court costs and third party attorney fees awarded in such suit by final judgment not subject to further appeal, or any payments made by Anoto in a settlement of such suit negotiated and concluded by You.

Notwithstanding the foregoing, You shall have no obligation under this Section with respect to any claim to the extent based upon:

- (i) A combination of any Developer Indemnified Element with other technology not supplied by You, if such Developer Indemnified Element itself would not result in infringement, or
- (ii) Use of the Developer Indemnified Elements other than as permitted under this Agreement, or
- (iii) Modification (other than by You) of any of the Developer Indemnified Elements, if the infringement would not have occurred but for the modification.

10.2 Indemnification Procedures

The undertakings set forth above are conditional upon the following:

- (i) Anoto has notified You, the indemnifying party, without undue delay in writing of any claim, suit or proceeding;
- (ii) You, the indemnifying party, assume the defense of the claim and will have full control over the defense and settlement of the claim, provided that Anoto may, at its own expense, retain its own legal counsel to consult with You in the defense or settlement of any such claim; and
- (iii) Anoto cooperates in the defense and settlement and refrains from all steps in any legal action that could prejudice You.

11. You acknowledge that Anoto makes no warranties, and has no other liability, to You or any other parties in connection with the Agreement.

12. You acknowledge that Anoto is an intended third party beneficiary of this Agreement.