

## Schedule 2 – Distribution of Paid Applications

By Your clicking to agree to this Schedule 2, which is hereby offered to You by Livescribe, You agree with Livescribe to amend that certain Livescribe Developer Program License Agreement currently in effect between You and Livescribe (the "Agreement") to add this Schedule 2 thereto (supplanting any existing Schedule 2). Except as otherwise provided herein, all capitalized terms shall have the meanings set forth in the Agreement.

### Schedule 2

#### 1. Appointment of Agent and Commissionaire

1.1 You hereby appoint Livescribe and Livescribe Subsidiaries (collectively "Livescribe") as: (i) Your agent for the marketing and delivery of the Licensed Applications to end-users located in those countries listed on Exhibit A, Section 1 to this Schedule 2; and (ii) Your commissionaire for the marketing and delivery of the Licensed Applications to end-users located in those countries listed on Exhibit A, Section 2 to this Schedule 2, during the Delivery Period. You hereby acknowledge that Livescribe will market and make the Licensed Applications available for download by end users through one or more App Stores on Your behalf. For purposes of this Schedule 2, the term "Licensed Application" includes any additional functionality or content sold by You from within a Licensed Application.

1.2 In furtherance of Livescribe's appointment under Section 1.1 of this Schedule 2, You hereby authorize and instruct Livescribe to:

- (a) market, solicit, and obtain orders on Your behalf for Licensed Applications from end-users located in the countries listed on Exhibit A;
- (b) provide hosting services to You, in order to allow for the storage of, and end-user access to, the Licensed Applications;
- (c) make copies of, format, and otherwise prepare Licensed Applications for acquisition and download by end-users, including adding a digital rights management solution;
- (d) allow end-users to access copies of the Licensed Applications, so that end-users may acquire from You and electronically download those Licensed Applications, Licensed Application Information, and associated metadata to end-users through one or more App Stores;
- (e) issue invoices for the purchase price payable by end-users for the Licensed Applications;
- (f) use (i) screen shots and/or up to 30 second excerpts of the Licensed Applications; (ii) trademarks and logos associated with the Licensed Applications; and (iii) Licensed Application Information, for promotional purposes in marketing materials and gift cards, excluding those portions of the Licensed Applications, trademarks or logos, or Licensed Application Information which You do not have the right to use for promotional purposes, and which You identify in writing at the time that the Licensed Applications are delivered by You to Livescribe under Section 2.1 of this Schedule 2, and use images and other materials that You may provide

to Livescribe, at Livescribe's reasonable request, for promotional purposes in marketing materials and gift cards; and

(g) otherwise use Licensed Applications, Licensed Application Information and associated metadata as may be reasonably necessary in the marketing and delivery of the Licensed Applications in accordance with this Schedule 2.

1.3 The parties acknowledge and agree that their relationship under this Schedule 2 is, and shall be, that of principal and agent, or principal and commissionaire, as the case may be, as described in Exhibit A, Section 1 and Exhibit A, Section 2, respectively, and that You, as principal, are, and shall be, solely responsible for any and all claims and liabilities involving or relating to, the Licensed Applications, as provided in this Schedule 2. The parties acknowledge and agree that Your appointment of Livescribe as Your agent or commissionaire, as the case may be, under this Schedule 2 is non-exclusive.

1.4 For purposes of this Schedule 2, the "Delivery Period" shall mean the period beginning on the Effective Date of the Agreement, and expiring on the last day of the Agreement or any renewal thereof; provided, however, that Livescribe's appointment as Your agent and commissionaire shall survive expiration of the Agreement for a reasonable phase-out period not to exceed thirty (30) days.

## 2. Delivery of the Licensed Applications to Livescribe

2.1 You will deliver to Livescribe, at Your sole expense, the Licensed Applications, Licensed Application Information and associated metadata, in a format and manner prescribed by Livescribe, as required for the delivery of the Licensed Applications to end-users in accordance with this Schedule 2. Metadata You deliver to Livescribe under this Schedule 2 will include: (i) the title and version number of each of the Licensed Applications; (ii) any copyright or other intellectual property rights notices; and (iii) Your end-user license agreement ("EULA"), if any, in accordance with Section 4.2 of this Schedule 2.

2.2 All Licensed Applications will be delivered by You to Livescribe using software tools, a secure FTP site address and/or such other delivery methods as prescribed by Livescribe.

2.3 You hereby certify that all of the Licensed Applications You deliver to Livescribe under this Schedule 2 are authorized for export from the United States to each of the countries listed on Exhibit A hereto, in accordance with the requirements of the United States Export Administration Regulations, 15 C.F.R. Parts 730-774. Without limiting the generality of this Section 2.3, You certify that (i) none of the Licensed Applications contains, uses or supports any data encryption or cryptographic functions; or (ii) in the event that any Licensed Application contains, uses or supports any such data encryption or cryptographic functionality, You have qualified that Licensed Application for export as a "mass market encryption item" in accordance with section 742.15(b)(2) of the Export Administration Regulations, and You will provide Livescribe with a PDF copy of the mass market export classification ruling (CCATS) issued by the United States Commerce Department, Bureau of Industry and Security for that Licensed Application. You acknowledge that Livescribe is relying upon Your certification in this Section 2.3 in allowing end-users to access and download the Licensed Applications under

this Schedule 2. Except as provided in this Section 2.3, Livescribe will be responsible for compliance with the requirements of the Export Administration Regulations in allowing end-users to access and download the Licensed Applications under this Schedule 2.

### 3. Delivery of the Licensed Applications to End-Users

3.1 You acknowledge and agree that Livescribe, in the course of acting as agent and/or commissionaire for You, is hosting the Licensed Applications, and is allowing the download of those Licensed Applications by end-users, on Your behalf. All of the Licensed Applications shall be marketed by Livescribe, on Your behalf, to end-users at prices established by You, in Your sole discretion, based on the pricing schedule attached to this Schedule 2 as Exhibit C. You may change the price for any Licensed Application by emailing your request to [developer@livescribe.com](mailto:developer@livescribe.com). As Your agent and/or commissionaire, Livescribe shall be solely responsible for the collection of all prices payable by end-users for Licensed Applications acquired by those end-users under this Schedule 2.

3.2 In the event that the sale or delivery of any of the Licensed Applications to any end-user is subject to any sales, use, goods and services, value added, or other similar tax, under applicable law, responsibility for the collection and remittance of that tax for sales of the Licensed Applications to end-users will be determined in accordance with Exhibit B to this Schedule 2. You shall indemnify and hold Livescribe harmless against any and all claims by any tax authority for any underpayment of any sales, use, goods and services, value added or other tax or levy, and any penalties and/or interest thereon.

3.3 In furtherance of the parties' respective tax compliance obligations, Livescribe requires that You comply with the requirements listed on Exhibit D to this Schedule 2 depending upon, among other things, Your country of residence. In the event that Livescribe collects any amounts corresponding to the purchase price for any of Your Licensed Applications before You have provided Livescribe with any tax documentation required under Exhibit D to this Schedule 2, Livescribe will not remit those amounts to You, but will hold those amounts in trust for You, until such time as You have provided Livescribe with the required tax documentation. Upon receipt of all required tax documents from You, Livescribe will remit to You any amounts held in trust by Livescribe for You, without interest, under this Section 3.3, in accordance with the provisions of this Schedule 2.

3.4 Livescribe shall be entitled to the following commissions in consideration for its services as Your agent and/or commissionaire under this Schedule 2:

- (a) For sales of Licensed Applications to end-users located in those countries listed in Exhibit B, Section 1 of this Schedule 2, Livescribe shall be entitled to a commission equal to thirty five percent (35%), or thirty eight percent (38%) for Licensed Applications that utilize handwriting recognition, of all prices payable by each end-user. For purposes of determining the commissions to which Livescribe is entitled under this Section 3.4(a), the prices payable by end-users shall be net of any and all taxes collected, as provided in Section 3.2 of this Schedule 2.
- (b) For sales of Licensed Applications to end-users located in those countries listed in Exhibit

B, Section 2 of this Schedule 2, Livescribe shall be entitled to a commission equal to thirty five percent (35%), or thirty eight percent (38%) for Licensed Applications that utilize handwriting recognition, of all prices payable by each end-user.

Except as otherwise provided in Section 3.2 of this Schedule 2, Livescribe shall be entitled to the commissions specified in Sections 3.4(a) and 3.4(b) hereof without reduction for any taxes or other government levies, including any and all taxes or other, similar obligations of You, Livescribe or any end-user relating to the delivery or use of the Licensed Applications.

3.5 Upon collection of any amounts from any end-user as the price for any Licensed Application delivered to that end-user hereunder, Livescribe shall deduct the full amount of its commission with respect to that Licensed Application, and any taxes collected by Livescribe under Section 3.2 hereof, and shall remit to You, or issue a credit in Your favor, as the case may be, the remainder of those prices on a monthly basis, no later than forty-five (45) days following the close of the month in which that amount was received by Livescribe. Each remittance by Livescribe under this Section 3.5 shall be accompanied by a sales report in sufficient detail to permit You to verify the accuracy and completeness of the amount remitted by Livescribe. You hereby acknowledge and agree that Livescribe shall be entitled to a commission, in accordance with this Section 3.5 on the delivery of any Licensed Application to any end-user, even if Livescribe is unable to collect the price for that Licensed Application from that end-user. In the event that the purchase price received by Livescribe from any end-user for any Licensed Application is in a currency other than the remittance currency agreed between Livescribe and You, the purchase price for that Licensed Application shall be converted to the remittance currency, and the amount to be remitted by Livescribe to You shall be determined, in accordance with an exchange rate fixed for the Delivery Period, as reflected in Exhibit C attached hereto. You agree that any resulting currency exchange differentials or fees charged by Livescribe's bank may be deducted from such remittances. You remain responsible for any fees (e.g., wire transfer fees) charged by Your bank or any intermediary banks between Your bank and Livescribe's bank.

3.6 In the event that any price payable by any end-user for any of the Licensed Applications is subject to (i) any withholding or similar tax; or (ii) any sales, use, goods and services, value added, or other tax or levy not collected by Livescribe under Section 3.2 hereof; or (iii) any other tax or other government levy of whatever nature, the full amount of that tax or levy shall be solely for Your account, and shall not reduce the commission to which Livescribe is entitled under this Schedule 2.

3.7 In the event that any remittance made by Livescribe to You is subject to any withholding or similar tax, the full amount of that withholding or similar tax shall be solely for Your account, and will not reduce the commission to which Livescribe is entitled on that transaction. If Livescribe reasonably believes that such tax is due, Livescribe will deduct the full amount of such withholding or similar tax from the gross amount owed to You, and will pay the full amount withheld over to the competent tax authorities. Livescribe will apply a reduced rate of withholding tax, if any, provided for in any applicable income tax treaty only if You furnish Livescribe with such documentation required under that income tax treaty or otherwise satisfactory to Livescribe, sufficient to establish Your entitlement to the benefit of that reduced rate of withholding tax. Livescribe will use commercially practical efforts to obtain, and to

furnish to You, copies of official tax receipts or similar evidence of payment, confirming Livescribe's payment of those withholding or similar taxes to the competent tax authorities. You will indemnify and hold Livescribe harmless against any and all claims by any competent tax authority for any underpayment of any such withholding or similar taxes, and any penalties and/or interest thereon, including, but not limited to, underpayments attributable to any erroneous claim or representation by You as to Your entitlement to, or Your disqualification for, the benefit of a reduced rate of withholding tax.

#### 4. Ownership and End-User Licensing

4.1 The parties acknowledge and agree that Livescribe shall not acquire any ownership interest in or to any of the Licensed Applications or Licensed Application Information, and title, risk of loss, responsibility for, and control over the Licensed Applications shall, at all times, remain with You. Livescribe may not use any of the Licensed Applications or Licensed Application Information for any purpose, or in any manner, except as specifically authorized in this Schedule 2 and in Section 3.4 of the Agreement.

4.2 You may deliver to Livescribe Your own EULA for any Licensed Application at the time that You deliver that Licensed Application to Livescribe, in accordance with Section 2.1 of this Schedule 2; provided, however, that Your EULA must include and may not be inconsistent with the minimum terms and conditions specified on Exhibit E to this Schedule 2 and must comply with all applicable laws in all countries where Livescribe allows end-users to download that Licensed Application. Livescribe shall allow each end-user to which Livescribe allows access to any such Licensed Application to review Your EULA (if any) at the time that Livescribe delivers that Licensed Application to that end-user, and Livescribe shall notify each end-user that the end-user's use of that Licensed Application is subject to the terms and conditions of Your EULA (if any)(e.g., Livescribe may provide a statement such as "By downloading this application you accept the developer's EULA"). In the event that You do not furnish Your own EULA for any Licensed Application to Livescribe, You acknowledge and agree that each end-user's use of that Licensed Application shall be subject to Livescribe's standard EULA (which is part of the App Store Terms of Service).

4.3 You hereby acknowledge that the EULA for each of the Licensed Applications is solely between You and the end-user and conforms to applicable law, and Livescribe shall not be responsible for, and shall not have any liability whatsoever under, any EULA or any breach by You or any end-user of any of the terms and conditions of any EULA.

#### 5. Content Restrictions and Software Rating

5.1 You represent and warrant that: (a) You have the right to enter into this Agreement, to reproduce and distribute each of the Licensed Applications, and to authorize Livescribe to permit end-users to download and use each of the Licensed Applications through one or more App Stores; (b) none of the Licensed Applications, or Livescribe's or end-users' permitted uses of those Licensed Applications, violate or infringe any patent, copyright, trademark, trade secret or other intellectual property or contractual rights of any other person, firm, corporation or other entity; (c) each of the Licensed Applications is authorized for distribution, sale and use in, export to, and import into all countries where Livescribe allows end-users to download that

Licensed Application, in accordance with the laws and regulations of those countries and all applicable export/import regulations; (d) none of the Licensed Applications contains any obscene, offensive, or other materials that are prohibited or restricted under the laws or regulations of any of the countries where Livescribe allows end-users to download that Licensed Application; and (e) all information You provide Livescribe, including any information relating to the Licensed Applications, is accurate and that, if any such information ceases to be accurate, You will promptly update it.

5.2 You shall use the Application Submission Form to supply information regarding each of the Licensed Applications delivered by You for marketing and fulfillment by Livescribe through the App Store under this Schedule 2 in order to assign a rating to each such Licensed Application. For purposes of assigning a rating to each of the Licensed Applications, You shall use Your best efforts to provide correct and complete information about the content of that Licensed Application with the software rating tool. You acknowledge and agree that Livescribe is relying on: (i) Your good faith and diligence in assigning a rating to each Licensed Application; and (ii) Your representations and warranties in Section 5.1 hereof, in making that Licensed Application available for download by end-users in each of the countries where Livescribe allows end-users to download that Licensed Application.

5.3 In the event that any country requires the approval of, or rating of, any Licensed Application by any government or industry regulatory agency as a condition for the distribution, sale and/or use of that Licensed Application, You acknowledge and agree that Livescribe may elect not to make that Licensed Application available for download by end-users in that country from any App Store.

## 6. Responsibility, Liability and Indemnity

6.1 Livescribe shall have no responsibility for the installation and/or use of any of the Licensed Applications by any end-user. You shall be solely responsible for any and all product warranties, end-user assistance and product support with respect to each of the Licensed Applications.

6.2 You shall be solely responsible for, and Livescribe shall have no responsibility or liability whatsoever with respect to, any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, or attributable to, the Licensed Applications and/or the use of those Licensed Applications by any end-user, including, but not limited to: (i) claims of breach of warranty, whether specified in the EULA or established under applicable law; (ii) product liability claims; and (iii) claims that any of the Licensed Applications and/or the end-user's possession or use of those Licensed Applications infringes the copyright or other intellectual property rights of any third party.

6.3 In the event that Livescribe receives any notice or claim from any end-user that: (i) the end-user wishes to cancel its license to any of the Licensed Applications within fifteen days (15) days of the date of purchase of that Licensed Application by that end-user; or (ii) a Licensed Application fails to conform to Your specifications or Your product warranty or the requirements of any applicable law, Livescribe may refund to the end-user the full amount of the price paid by the end-user for that Licensed Application. In the event that Livescribe refunds

any such price to an end-user, You shall reimburse, or grant Livescribe a credit for, an amount equal to the price for that Licensed Application.

6.4 You shall indemnify and hold Livescribe harmless against any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, or related or attributable to: (i) the Licensed Applications; (ii) Your failure to fulfill or perform any of Your obligations under the EULA for those Licensed Applications; (iii) Your failure to fulfill or perform any of Your obligations under this Schedule 2, including, but not limited to, Your obligations under Section 6.2 hereof; or (iv) any breach of Your representations and warranties, as set forth in Section 5.1 hereof, or any breach of Your obligations under Section 5.2 hereof.

## 7. Termination

7.1 This Schedule 2, and all of Livescribe's obligations hereunder, shall terminate upon the expiration or termination of the Agreement. Notwithstanding any such termination, Livescribe shall be entitled to: (i) all commissions on all copies of the Licensed Applications purchased by end-users prior to the date of termination (including the phase-out period set forth in Section 1.4 hereof); and (ii) reimbursement from You of refunds paid by Livescribe to end-users, whether before or after the date of termination, in accordance with Section 6.3 of this Schedule 2.

7.2 In the event that You no longer have the legal right to distribute the Licensed Applications, or to authorize Livescribe to allow access to those Licensed Applications by end-users, in accordance with this Schedule 2, You shall promptly inform Livescribe in writing to withdraw those Licensed Applications from the App Store; provided, however, that such withdrawal by You under this Section 7.2 shall not relieve You of any of Your obligations to Livescribe under this Schedule 2, or any liability to Livescribe and/or any end-user with respect to those Licensed Applications.

7.3 Livescribe reserves the right to cease marketing and allowing download by end-users of the Licensed Applications at any time, with or without cause, by providing notice of termination to You. Without limiting the generality of this Section 7.3, You acknowledge that Livescribe may cease the marketing and allowing download by end-users of some or all of the Licensed Applications if Livescribe reasonably believes that: (i) those Licensed Applications are not authorized for export to one or more of the countries listed on Exhibit A, in accordance with the Export Administration Regulations; (ii) those Licensed Applications and/or any end-user's possession and/or use of those Licensed Applications, infringe patent, copyright, trademark, trade secret or other intellectual property rights of any third party; or (iii) the distribution, sale and/or use of those Licensed Applications violates any applicable law in any country where Livescribe allows end-users to download that Licensed Application. An election by Livescribe to cease the marketing and allowing download of any Licensed Applications, pursuant to this Section 7.3, shall not relieve You of Your obligations under this Schedule 2.

7.4 You may at any time submit a written request to Livescribe to withdraw any or all of the Licensed Applications from the App Store, for any reason.

## 8. Legal Consequences

The relationship between You and Livescribe established by this Schedule 2 may have

important legal and/or tax consequences for You. You acknowledge and agree that it is Your responsibility to consult with Your own legal and tax advisors with respect to Your legal and tax obligations hereunder.

## EXHIBIT A

### 1. Livescribe as Agent

You appoint Livescribe Inc. as Your agent pursuant to California Civil Code §§ 2295 et seq. for the marketing and end-user download of the Licensed Applications by end-users located in the following countries:

Australia  
Canada  
United States

### 2. Livescribe as Commissionaire

You appoint Livescribe Inc. as Your commissionaire pursuant to Article 91 of the Luxembourg Code de commerce for the marketing and end-user download of the Licensed Applications by end-users located in the following countries:

United Kingdom

## EXHIBIT B

1. Livescribe shall collect and remit to the competent tax authorities the taxes described in Section 3.2 of this Schedule 2 for sales of the Licensed Applications to end-users located in the following countries:

United Kingdom  
United States

2. Livescribe shall not collect and remit the taxes described in Section 3.2 of this Schedule 2 for sales of the Licensed Applications to end-users located in the countries listed below. You shall be solely responsible for the collection and remittance of such taxes as may be required by local law.

To be announced when Livescribe enables the sale of Licensed Applications to end-users in additional countries.

## EXHIBIT C

Customer Price is the price displayed to the end-user on the App Store. The agreed remittance currency is: US dollars.

## EXHIBIT D

### 3. Delivery of Licensed Applications to end-users in the United States

Where You designate Livescribe to allow access to the Licensed Applications to end-users in the United States:

3.1 If You are not a resident of the United States for U.S. federal income tax purposes, You will complete Internal Revenue Service Form W-8BEN and any other required tax forms and provide Livescribe with a copy of such completed form(s), and any other information necessary for compliance with applicable tax laws and regulations.

3.2 If Livescribe, in its reasonable belief, determines that any state or local sales, use or similar transaction tax may be due from Livescribe or You in connection with the sale or delivery of any of the Licensed Applications, Livescribe will collect and remit those taxes to the competent tax authorities. To the extent that the incidence of any such tax, or responsibility for collecting that tax, falls upon You, You authorize Livescribe to act on Your behalf in collecting and remitting that tax, but to the extent that Livescribe has not collected any such tax, or has not received reimbursement for that tax, from end-users, You shall remain primarily liable for the tax, and You will reimburse Livescribe for any tax payments that Livescribe is required to make, but is not otherwise able to recover.

3.3 In the event that You incur liability for income tax, franchise tax, business and occupation tax, or any similar taxes based on Your income, You shall be solely responsible for that tax.

## EXHIBIT E

### Instructions for Minimum Terms of Developer's End-User License Agreement

**1. Acknowledgement:** You and the end-user must acknowledge that the EULA is concluded between You and the end-user only, and not with Livescribe, and You, not Livescribe, are solely responsible for the Licensed Application and the content thereof. The EULA may not provide for usage rules for Licensed Applications that are less restrictive than the terms set forth for Licensed Applications in this Agreement..

**2. Scope of License:** The license granted to the end-user for the Licensed Application must be limited to a non-transferable license to use the Licensed Application on any Livescribe smartpen that the end-user owns or controls and as permitted by the Usage Rules set forth in the App Store Terms of Service.

**3. Maintenance and Support:** You must be solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. You and the end-user must acknowledge that Livescribe has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

**4. Warranty:** You must be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. The EULA must provide that, in the event of any failure of the Licensed Application to conform to any applicable warranty, the end-user may notify Livescribe, and Livescribe will refund the purchase price for the Licensed Application to that end-user; and that, to the maximum extent permitted by applicable law, Livescribe will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Your sole responsibility.

**5. Product Claims:** You and the end-user must acknowledge that You, not Livescribe, are responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or the end-user's possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. The EULA may not limit Your liability to the end-user beyond what is permitted by applicable law.

**6. Intellectual Property Rights:** You and the end-user must acknowledge that, in the event of any third party claim that the Licensed Application or the end-user's possession and use of that Licensed Application infringes that third party's intellectual property rights, You, not Livescribe, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

**7. Legal Compliance:** The end-user must represent and warrant that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) he/she is not listed on any U.S.

Government list of prohibited or restricted parties.

**8. Developer Name and Address:** You must state in the EULA Your name and address, and the contact information (telephone number; E-mail address) to which any end-user questions, complaints or claims with respect to the Licensed Application should be directed.

**9. Third Party Beneficiary:** You and the end-user must acknowledge and agree that Livescribe, and Livescribe's subsidiaries, are third party beneficiaries of the EULA, and that, upon the end-user's acceptance of the terms and conditions of the EULA, Livescribe will have the right (and will be deemed to have accepted the right) to enforce the EULA against the end-user as a third party beneficiary thereof.

I have read and agree to the Paid Applications agreement, Schedule 2.