



**INTERMEDIA**

The Business Cloud™

## MASTER SERVICE AGREEMENT: RESELLER

**CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND INTERMEDIA TECHNOLOGIES COMPANY LTD., ONLY AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MAY EXECUTE THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, CLOSE YOUR BROWSER AND DO NOT PROCEED WITH USING THE SERVICES.**

By clicking “I Agree and Continue,” You agree to be bound by all of the terms and conditions of (i) this Master Service Agreement with Intermedia Technologies Company Ltd. (“Intermedia”); (ii) You represent and warrant that you have entered into agreements with Your End Users that contain, at a minimum, the terms or their analogs found in Appendix I; and (iii) the following:

- Intermedia’s Privacy Policy (the “Privacy Policy”);
- Intermedia’s product specific Service Level Agreement ( the “Service Level Agreement” or “SLA”);
- Intermedia’s Acceptable Use Policy (the “AUP”); and
- Intermedia’s product specific Schedules (the “Schedules”).
- All of the above referenced documents are collectively referred to as the “Agreement.”

Each of the foregoing are expressly incorporated herein by reference and may be updated from time-to-time by Intermedia. Current copies of the Privacy Policy, SLA, AUP, and Schedules are located at <http://www.intermedia.co.uk/legal>.

If You do not agree to any of the terms of this Agreement, then You (i) must click “I Decline” or close Your browser and (ii) do not have Intermedia’s permission use the Services.

*If you are an individual entering into this Agreement on behalf of an Entity (as defined below), you represent and warrant that you have the authority to bind such Entity to this Agreement. If you do not have such authority, neither you nor such Entity may accept this Agreement or use the Services.*

**Definitions.** For the purposes of this Master Service Agreement, the following definitions apply:

“Access Information” means information that alone or together with other information, can provide access to any portion of Your Account, including but not limited to Your Account number, login names, passwords, credit card or other financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Your Access Information will include any similar information for each of Your Users.

“Account” means the account created with Intermedia in connection with this Agreement that relates to Your purchase or subscription to and use of Services by You and Your Users.

“Applicable Law” means any applicable laws, rules, regulations or interpretations of relevant Governmental Authorities or self-regulatory bodies.

“Beta Offerings” means any portion of the Services offered on a “beta” basis, as designated by Intermedia, including but not limited to products, plans, services and platforms.

“Data” means all data submitted by Your Users to Intermedia in connection with the Services, including all content, material, IP and similar addresses, recordings, messages, software, Account information and Account-related settings.

“End User” means any person or Entity purchasing Services from You.

“Entity” means a company, corporation, partnership, association, trust, unincorporated organization, government or political subdivision or any other legal entity.

“Governmental Authority” means a government, regulatory organization, self-regulatory organization, court of competent jurisdiction or similar body.

“Intellectual Property Rights” or “IPR” means patents (including rights in, and/or to, inventions), trade marks, service marks, trade names and business names (in each case including rights in goodwill attached thereto), design rights, rights in and/or to internet domain names and website addresses,

copyright (including future copyright), database rights, rights in and to confidential information (including know how and trade secrets) and all other intellectual property rights, in each case subsisting at any time in any part of the world (whether registered or unregistered) and (i) any pending applications or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction and (ii) any similar or analogous rights to any of these rights, whether arising or granted under the laws of England & Wales or in any other jurisdiction.

“Intermedia” means Intermedia Technologies Company Ltd., a company registered in England with company number 6350460 and whose registered office is at 4th Floor Imperial House, 15 Kingsway, London W2CB 6UN, United Kingdom. Intermedia operates the website <http://www.intermedia.co.uk>. Intermedia’s VAT number is 925 4342 30.

“Intermedia Parties” means Intermedia’s affiliates (including parents and subsidiaries), vendors, licensors and partners, and it and their officers, employees, agents and representatives.

“Partner” means You

“Schedule(s)” means documents that specifically describe the Services used by You under this Agreement, including product descriptions, pricing, and other terms. Each Schedule shall be deemed a part of and incorporated into the Agreement.

“Services” means Intermedia’s hosting and/or other services, software and products, as such services, software and products are offered by Intermedia from time-to-time in its discretion and subscribed to, purchased by, or used by You as set forth on a Schedule.

“Third-Party Service” means any service or product offered by a party that is not Intermedia.

“User” means any of Your employees, consultants or independent contractors to whom You grant permission to access the Services in accordance with Intermedia’s entitlements, procedures, and this Agreement.

“You” or “Your” means the individual or Entity on whose behalf this Agreement is accepted.

**1. PARTNER APPOINTMENT.**

1.1. Appointment. Subject to and in accordance with the terms of this Agreement, Intermedia hereby appoints You, and You hereby accept appointment, as Intermedia’s limited, non-exclusive partner to promote and sell Services to Your customers and/or their end users (“End Users”) under the terms provided herein. For the avoidance of doubt, your End Users may not further resell Services under

this Agreement. You acknowledge and agree that the actions of any of Your Users with respect to the terms of this Agreement and the Services will be deemed to be actions by You and that any breach by any of Your Users of the terms of this Agreement will be deemed to be a breach by You.

1.2. Obligations. You agree to comply with the terms and conditions of this Agreement and with all applicable Intermedia procedures and policies and shall identify and register End Users in accordance with the terms hereof and Intermedia’s applicable policies (in each case, as amended from time to time by Intermedia). You shall ensure that (i) prior to accessing the Services, each End User agrees to, and is legally bound by, a written contract with You that contains, at a minimum, the terms or their analogs found in Appendix I and any other agreements and documents presented by Intermedia that are required to provide the Services, each as amended by Intermedia from time-to-time; (ii) Services will only be provided to such End Users; and (iii) Your End Users comply with and that You will enforce the terms of the written contract entered into between You and End Users; and (iv) You will have Your legal counsel review, revise and otherwise advise You regarding the End User contract You enter into with End User. **You acknowledge that the End User agreement provided in Appendix I is only a sample agreement and You are not relying on Intermedia for legal advice with respect to this sample agreement and/or your End User contract.** You are permitted to obligate End Users to agree to additional terms and conditions, provided that such additional terms and conditions do not conflict with the terms provided for in Appendix I or this Agreement. You hereby represent and warrant that (i) You are a bona fide partner and have not entered into this Agreement for the purposes of receiving the Services for Yourself; (ii) You have sufficient personnel and resources to promote, support and sell the Services; (iii) You shall perform Your duties and obligations hereunder in a diligent and businesslike manner and refrain from any activity or action that may damage Intermedia’s reputation or the reputation of the Services; and (iv) You shall use Your best efforts to promote the Services.

**2. SCOPE; ACCESS; SECURITY**

2.1. Account Information and Ownership. You agree to maintain accurate Account information by providing updates to Intermedia promptly, but no later than three (3) business days, when any of Your Account information requires change, including any relevant Account contact information. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by Intermedia to determine the validity of information provided by You will

constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any Intermedia account or any portion thereof, including Your Account, Intermedia will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, Intermedia may immediately suspend, alter or terminate any relevant account, including Your Account, or any portion thereof. You will reimburse Intermedia for any legal and other fees incurred with respect to any dispute regarding control or ownership of Your Account or Your Data or the same of another Intermedia customer. You acknowledge and agree that (i) the legal owner of all Data on the Account is You, the counterparty to this Agreement, and not any individual User, including any Account contact registered with Intermedia, regardless of any administrative designation (e.g., Administrator, Billing Contact, Owner, etc.); and (ii) Intermedia may request any documentation it requires to establish ownership and rights to Your Account and any related Data; provided that any User with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

2.3. Account Security and Activity. You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your Access Information, and (ii) all activities that occur in connection with Your Account, whether initiated by You, by others on Your behalf or by any other means. You will notify Intermedia immediately of any unauthorized use of Your Account, Access Information or any other actual or potential breach of security. You acknowledge and agree that Intermedia will not be liable for any loss that You may incur as a result of any party using Your Access Information, either with or without Your knowledge and/or authorization. You further agree that You may be held liable for losses incurred by Intermedia, any Intermedia Party or another party due to any party using Your Access Information. Intermedia strongly recommends that You keep Your Access Information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. **Intermedia specifically disclaims all liability for any activity in Your Account, whether authorized by You or not.**

2.4. Expenses. You are solely responsible for any and all marketing, advertising and other costs and expenses of Your office, employees and activities that You undertake in connection herewith.

2.5. Restrictions on Use. You agree that the Intermedia Property contains trade secrets and

other valuable confidential and/or proprietary information belonging to Intermedia and/or its licensors. You shall not (i) sell, rent, lease, encumber, pledge, lend, copy, sub-license, make available or distribute the Intermedia Property, except as expressly permitted by this Agreement; (ii) disclose the Intermedia Property to any third party, (iii) alter, or permit the alteration of any Intermedia Property; (iv) copy, or permit the copying or distribution of any Intermedia Property; (v) knowingly take any action that jeopardizes Intermedia's proprietary rights in any Intermedia Property; (vi) acquire or seek to acquire any ownership interest in or to any Intermedia Property; (vii) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from any Intermedia Property; or (viii) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on the Intermedia Property or that appear during use of any Intermedia Property. Except as expressly provided herein, nothing in the Agreement shall be interpreted as granting to You or any other person or Entity, any right, title, or interest in or to any Intermedia Property.

2.6. Third Party Beneficiary. You acknowledge and agree that (i) Intermedia shall be deemed to be a third party beneficiary of the End User MSA and (ii) You shall use Your reasonable efforts at Your own expense to assist Intermedia in enforcing the terms of the End User MSA.

2.7. Non-Conforming or Interfering Use of Services; Privacy Policy. If Intermedia determines that the use of Services by You or Your End Users (i) fails to conform with the terms and conditions of this Agreement (including any Intermedia policies), or (ii) interferes with Intermedia's ability to provide the Services to You, Your End Users or our other partners and/or resellers or customers, then Intermedia may immediately suspend the Services until such non-conformity or interference is cured. You acknowledge and agree that the terms of Intermedia's Privacy Policy shall apply to the Data of You and Your Users and the Data of your End Users.

2.8. Intellectual Property. Nothing in this Agreement shall operate to assign or transfer any title, interest or Intellectual Property Rights existing prior to the date of this Agreement. All Intermedia Products are the exclusive property of Intermedia and nothing in this Agreement shall be interpreted as granting to Advisor or any other person or Entity, any right, title, or interest in or to any Intermedia Property.

### 3. TERM AND TERMINATION.

3.1. Term. This Agreement shall be effective from Your acceptance of this Agreement and shall continue until the expiration or termination of all

Schedules (“Agreement Term”). The term of each Schedule (“Schedule Term”) shall be either the Initial Term or Renewal Term as defined herein.

(a) Monthly Plan Schedule Term. For a Monthly Plan with Intermedia, the Initial Term of a Schedule is the period from the date of Your initial payment or acceptance of the Schedule, whichever occurs earlier, through the remainder of that calendar month. A Renewal Term for a Monthly Plan of a Schedule is defined as one (1) calendar month beginning at the end of the Initial Term and each subsequent calendar month thereafter.

(b) Annual Plan Agreement Term. For an Annual Plan with Intermedia, the Initial Term of the Schedule is the period from the date of Your initial payment or acceptance of the Schedule, whichever occurs earlier, through the remainder of that calendar month and continuing through the next twelve (12) calendar months (for example, an Annual Plan that begins April 14th will continue until April 30th of the following year), unless the parties have agreed in writing to a longer term. A Renewal Term for an Annual Plan of a Schedule is defined as the twelve-month period beginning at the end of the Initial Term and each subsequent twelve-month period thereafter.

(c) Automatic Renewal. Each Schedule will renew automatically at the end of the then-current Schedule Term for a Renewal Term unless terminated in accordance with this Agreement by either You or Intermedia.

### 3.2. Termination by You.

(a) Monthly Plan. For a Monthly Plan, You may terminate any Schedule for any reason by following the termination procedure located within the “Account” section of the administrative control panel prior to the beginning of any Renewal Term. If You terminate a Monthly Plan prior to the end of the then-current Term, Intermedia will not be required to refund to You any fees already paid.

(b) Annual Plan. For an Annual Plan, You may terminate any Schedule for any reason by following the termination procedure located within the Account section of the administrative control panel at any time for Intermedia to terminate Your Account. If such a termination is effective prior to the end of the then-current Term, You will incur a fee that is the lesser of (a) two (2) months of the Minimum Package Fee from the end of the calendar month following the requested termination date, as defined on Your then-current plan; or (b) the Minimum Package Fee for the remainder of the then-current Term. The “Minimum

Package Fee” is the monthly charge for Your base package excluding any additional items that You have purchased along with such base package.

(c) Refunds/Fees for Termination by You. Fees for non-recurring Services and set up fees will not be refunded. Any fees previously waived or discounts applied may be reinstated if You terminate the account during the Schedule Term or if You breach this Agreement, including any Schedule.

### 3.3. Termination by Intermedia.

(a) 30-Day Termination. Intermedia may terminate this Agreement and/or any Schedule for any reason by providing thirty (30) calendar days’ notice. If Intermedia terminates this Agreement pursuant to this Section 3.3(a), then all Schedules will terminate at the end of the thirty (30) day notice period. If Intermedia terminates any Schedule pursuant to this Section 3.3(a), then (i) for a Schedule with a Monthly Plan, if the effective termination date occurs prior to the end of the then-current Schedule Term, Intermedia will refund (or refrain from charging You) the pro rata monthly fees for the month in which Services terminate and (ii) for a Schedule with an Annual Plan, Intermedia will refund (or refrain from charging You) the monthly fees for the month in which Services terminate. For Schedules with either a Monthly Plan or an Annual Plan, if Intermedia terminates this Agreement or any Schedule pursuant to this Section 3.3(a), Intermedia will not charge You monthly fees for any month following the month in which Intermedia terminates this Agreement, including any Schedule.

(b) Immediate Termination. Intermedia may terminate this Agreement, including any Schedule (or suspend Your Account) immediately and without prior notice for any of the following reasons:

(i) Any material breach of this Agreement, including any Schedule, by You, as determined by Intermedia in its sole discretion, including, but not limited to, failure to make any payment when due, violation of the AUP or any other Intermedia policy or procedure applicable to the Services as notified to You from time to time, which remains unremedied beyond thirty (30) days’ after notice by Intermedia; and/or

(ii) If Your use of the Services results in, or is the subject of, actual or potential legal action or threatened legal action, against Intermedia or any of its affiliates, vendors, partners, representatives or customers, without consideration for whether such actual or potential legal action or

threatened legal action is eventually determined to be with or without merit.

(c) Termination or Suspension of Users. In lieu of terminating or suspending Your entire Account, Intermedia may suspend Your Account or terminate or suspend individual Users.

3.4. No Refunds; Further Payment Due. If Intermedia terminates this Agreement or any Schedule pursuant to Section 3.3(b), (i) Intermedia will not refund to You any paid fees and (ii) You will be liable for any payment that would have been due had You terminated pursuant to section 3.2.

3.5. Following Termination. Termination will not cancel or waive any fees owed to Intermedia or incurred prior to or upon termination. You agree that Intermedia may charge such unpaid balance to Your Account on file or otherwise bill You for such unpaid balance. Upon termination, You must promptly uninstall all software provided by Intermedia in connection with this Agreement and will promptly return to Intermedia or (at such other Intermedia's request) destroy all copies of all materials supplied by Intermedia pursuant to this Agreement, including without limitation all Confidential Information, Intermedia Products, customer lists, lists of sales and marketing personnel, marketing and promotional brochures and sales kits, or certify to Intermedia in writing, over the signature of a duly authorized representative of such party, that it has done so. All of Your Data will be irrevocably deleted within fourteen (14) calendar days of termination, including but not limited to, databases, contacts, calendars, e-mail, website content and any other Data hosted by Intermedia. It will be solely Your responsibility to secure all necessary Data from Your Account prior to termination. Intermedia will not be responsible for any loss of Your Data, or any damages arising from the deletion of Your Data following termination of the Services.

3.6. Effects of Termination. Termination of this Agreement by either Intermedia or You in accordance with the terms of this Agreement will be without prejudice to the terminating party's other rights and remedies under or in connection with this Agreement, both at law and in equity.

#### 4. FEES, PAYMENT AND EXPENSES.

4.1. Fees. You agree to pay the fees ("Service Fees") on the page linked to from [www.intermedia.co.uk/partners/private-label-model](http://www.intermedia.co.uk/partners/private-label-model), as such page is amended by Intermedia from time to time in its sole discretion without prior notice. Additional fees may apply, such as migration and customization fees, professional services fees, out-of-

pocket expenses and any other fees that your End Users are responsible for including excess use fees.

4.2. End User Billing and Collection. You shall be solely responsible for billing Your End Users and collecting their payments. If You utilize the Intermedia payment gateway functionality to collect payments from your End Users, You assume full responsibility for Your usage of such functionality and Intermedia is in no way responsible for the performance of the Intermedia payment gateway, your payment processor or your bank.

4.3. Intermedia Billing. Intermedia shall use commercially reasonable efforts to bill You no later than on the fifth (5th) day of each month for the previous month's usage of the Services.

4.4. Unpaid Accounts. No Service Fee shall be due to Intermedia in connection with any unpaid End User account which is (i) disabled no later than the fifteenth (15th) of the month following the month in which such account was created and (ii) terminated within fifteen (15) days after it was disabled. No Service Fee shall be due to Intermedia in connection with any partner internal test accounts provided such accounts are marked as non-chargeable test accounts prior the end of the month in which such accounts were created and such accounts to not exceed thirty (30) days in duration.

4.5. Electronic Billing. Except as provided in Section 3.7 below, all payments hereunder shall be made by credit card. You hereby authorize Intermedia to electronically charge Your credit card for payment for the Services. You hereby authorize Intermedia to (i) make such charges as necessary for payment of current and outstanding bills and invoices, and recurring fees; (ii) make additional attempts to charge should the initial attempt fail; and (iii) in the event that You provide Intermedia with different credit card information to correct any failure, act upon Your instructions, whether by phone, in writing, or by other means, that Intermedia reasonably believes to be genuine.

4.6. Invoice Billing. After Your partner account has been in good standing for six (6) consecutive months in each of which You were charged at least GDP 300.00 (three hundred pounds sterling) per month, You may request to be switched to invoice billing. Acceptance into Intermedia's invoice program shall be at Intermedia's sole discretion. Upon approval by Intermedia, you may be allowed to pay on an invoice basis, and Intermedia will issue You an invoice within the first five (5) days of each calendar month for the prior month's charges. Each monthly invoice shall include an invoice processing fee of GDP 15.00 (fifteen pounds sterling).

Payment by cheque or wire must be received by the fifteenth (15th) calendar day of the month in which the invoice is sent. All such payments shall be made in pound sterling. Payments may not be made by any other means without the prior written consent of Intermedia. Should any cheque from you not be honored by the relevant financial institution, a returned check fee in the amount of the lesser of GDP 30.00 ( thirty pounds sterling) or the maximum amount allowed by law, will be assessed.

4.7. Late Payment. In the event that Intermedia does not receive payment by the fifteenth (15th) calendar day of the month for which the payment is due, Intermedia shall have the right to assess a late payment fee, equal to the greater of the amount of (a) interest calculated at the lesser of 4% above the base rate of HSBC Bank plc's base lending rate or the maximum interest rate permitted by English law; or (b) GDP 15.00 (fifteen pounds sterling) Such interest shall accrue on a daily basis from the applicable due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount. You will pay all collection/recovery costs incurred by Intermedia (including, without limitation, reasonable legal fees). In the event of late payment(s) on Your account, Intermedia, at its sole discretion and without waiving other rights it may have, may suspend, interrupt, or terminate the Services to You and Your End Users. In the event of excessive churn or failure to pay timely, Intermedia reserves the right to convert Your private label or gray label accounts to Intermedia direct accounts under its agent or advisor program. In the event that this conversion takes place, You will be entitled to ongoing commissions at the rate available at that time; however, You shall not be entitled to any special incentives, bounties, or one-time payments.

4.8. Fees for Additional Services. You agree to pay Intermedia's current rates and expenses, including the cost of Intermedia's vendors, for any requests related to information retrieval, subpoenas, consulting and advisory services or similar work.

4.9. Service Continuation. In the event that You fail to pay any outstanding amounts within sixty (60) days of any uncontested amount due, Intermedia shall have the right to assume responsibility for any customer accounts for which payments are due. In this event, these accounts would be branded, billed and supported directly by Intermedia, and reseller would receive a monthly recurring Advisor commission (less any monies due for prior service) pursuant to the then-current Intermedia Advisor rates posted at <http://www.intermedia.co.uk/>; and provided

that You have executed Intermedia's Advisor Agreement.

#### 5. MODIFICATION OF TERMS.

Intermedia may update, amend, modify or supplement the terms and conditions of this Agreement from time to time upon notice to You. You can review the most current version of this Agreement at any time at <http://www.intermedia.co.uk/legal>.

#### 6. LIMITED WARRANTY; LIMITATION OF DAMAGES.

6.1. **Nothing in this Agreement shall exclude either party's liability:**

(a) for death or personal injury caused by that party's negligence;

(b) for any losses for which a party provides an indemnity under this Agreement;

(c) any fraud or fraudulent misrepresentation; or

(d) to the extent such limitation or exclusion is not permitted by UK law.

6.2. **Intermedia provides Services "as is." You expressly agree that the resale and/or use of Services is at your sole risk. Intermedia and its subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors expressly Except as expressly stated in this Agreement, all other terms, conditions, obligations, warranties and representations (whether express or implied) in respect of this Agreement are, to the fullest extent permitted by law, hereby excluded from this Agreement. You hereby agree that the terms of this agreement shall not be altered due to custom or usage or due to the parties' course of dealing or course of performance under this agreement.**

6.3. **Intermedia and its subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors shall not be liable for any loss of profit; loss of goodwill; loss of business; loss of business opportunity; loss of anticipated savings; loss or corruption of data or information; or special, consequential, or incidental damages, whether based on breach of contract, fundamental breach, tort (including negligence), product liability, or otherwise, and whether or not the Partner has been advised of the possibility of such damage.**

6.4. **Subject to section 6.1, You agree that the total liability of Intermedia and the Intermedia Parties and Your sole remedy for any claims regarding the Services, Agreement or any other matter relating to this Agreement is limited to the credits set forth in the applicable Service Level Agreement. You further agree that You will**

**limit the liability of End Users to conform with this Section 6.3.**

**6.5. In the case of translated or otherwise customized versions of the Services that have been enabled by You, Intermedia may, in its sole direction and without notice, update, revise or amend the Services, in which case, the Services provided to your End Users may contain text that does not reflect the corrected or updated text of the Services provided to Intermedia's direct end users. You shall be responsible for notifying Your End Users of any such changes or discrepancies. Intermedia is not responsible for updating or supporting any translated text.**

#### **7. INDEMNITY.**

You shall defend, indemnify, save, and hold Intermedia and the Intermedia Parties harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against them that may arise or result from (i) Your breach of this Agreement and/or of any license related to the Services, (ii) Your failure to comply with Section 1.3 of this Agreement, (iii) Your negligence or willful misconduct or any of Your services or products, and (iv) any action or claim brought by End Users or third parties, including but not limited to, Governmental Authorities, related to the Services, including but not limited to, any action taken by Intermedia with respect to Sections 1.3 and 9.13 of this Agreement.

#### **8. CONFIDENTIALITY AND PRIVACY POLICY.**

**8.1. Confidential Information.** "Confidential Information" is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information will include Your Data. Intermedia's Confidential Information will include the Services (and any portion thereof), the terms and conditions of this Agreement and all related forms and support records (written or electronic), as well as Intermedia's business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by Intermedia. Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

#### **8.2. Protection of Confidential Information.**

Except as otherwise permitted by this Agreement or in writing by the Disclosing Party, the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement.

#### **8.3. Use and Disclosure by Intermedia.**

Notwithstanding the foregoing, Intermedia may use or disclose Your Data or the Data of your End Users (as defined in the End User MSA) (a) as expressly permitted in writing by You, (b) as expressly provided in this Agreement, including (i) in accordance with the Privacy Policy (as if such Data were "Information" as defined under the Privacy Policy), and (ii) to access such Data to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.

**8.4. Authorization of Use and Disclosure.** **You expressly authorize, acknowledge and agree that Your Data and the Data of your End Users is subject to the Privacy Policy and that Intermedia may act in accordance with the Privacy Policy in connection with providing the Services or when otherwise necessary.**

#### **9. MISCELLANEOUS.**

**9.1. No Solicitation.** During the term of this Agreement and for one (1) year after its termination, you shall not solicit or attempt to solicit, directly or indirectly, for employment or other services, any persons or entities employed or engaged by Intermedia during such period without Intermedia's prior written approval.

**9.2. Governing Law and Jurisdiction;** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales without regard to its conflicts of laws or its principles. Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this section 9.2 shall limit the right of Intermedia to take or issue proceedings in any other jurisdiction.

#### **9.3. Written Communications and Notice.**

You accept that communication from Intermedia may be electronic. Intermedia may contact You by e-mail or provide You with information by posting notices on Intermedia's website or to Your Account. You agree to

this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that Intermedia provides to You electronically are acceptable and effective as notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given (i) immediately upon personal delivery, (ii) the second (2<sup>nd</sup>) business day after mailing, (iii) the second (2<sup>nd</sup>) business day after sending by confirmed facsimile, or (iv) the first(1<sup>st</sup>) business day after sending by email or, if from Intermedia to You, online posting. Notices to You may be addressed by Intermedia to any e-mail address, postal address or facsimile number registered with Intermedia, or through means of online posting through the Services. Notices to Intermedia that are not expressly authorized by administrative control panel under this Agreement shall be mailed to Intermedia Technologies Company Ltd., 4th Floor Imperial House, 15 Kingsway, London WC2B 6UN United Kingdom, or such other address as designated on Intermedia's website from time to time.

9.4. Age and Capacity. You hereby represent and warrant that You and any person to whom You grant access to Your Account have reached the older of (i) the age of eighteen (18) and (ii) the age of majority in Your jurisdiction, and that You are not subject to a limitation on Your ability to enter into this Agreement.

9.5. Severability. If any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any of the other provisions of this Agreement, and this Agreement will be construed as if such provision(s) had never been contained herein, provided that such provision(s) will be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

9.6. Waiver. No waiver by Intermedia of any breach by You of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing.

9.7. Assignment. No benefit or duty of You under this Agreement will, without the consent of Intermedia, be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so will be void. Intermedia may assign, transfer, subcontract or otherwise deal with any of its rights and obligations under this Agreement without Your consent and without notice.

9.8. Force Majeure. Except for monetary obligations, neither party shall be liable to the other for failure or delay in the performance of a required obligation hereunder if such inability or delay is caused by reason of Force Majeure Event. "Force Majeure Event" is any cause beyond a party's reasonable control or anticipation, including, without limitation, acts of war, acts of god, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet or other reason that is beyond a party's reasonable control or anticipation.

9.9. Survival. The preamble, "Definitions" and Sections 2, 3, 4, 5, 6, 8, and 9 of this Master Service Agreement will survive termination.

9.10. Entire Agreement; Third Party Beneficiaries. This Agreement, including any Schedules, constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and Intermedia with respect to the Services. You understand and agree that (a) Intermedia and You may include, as the sole third party beneficiaries of this Agreement, the Intermedia Parties, and (b) in the event of any breach of this Agreement or any Schedule, such Intermedia Parties shall have all rights and remedies available to them as if they were parties to this Agreement, including claiming the benefit of Section 8.

9.11. Independent Parties. Nothing contained in this Agreement shall be deemed to create, or be construed as creating, a joint venture or partnership between the parties. Neither party is, by virtue of this Agreement or otherwise, authorized as an agent or legal representative of the other party. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf or in the name of the other party, or to bind such other party in any manner.

9.12. Publicity and Advertising. Except as required by law, You shall not make any written public statement, such as advertisements, marketing materials, or press releases, referring to the existence or terms of the Agreement, or the relationship memorialized by the Agreement, without the prior written approval of Intermedia.

9.13. Regulatory Changes. If a foreign or state regulatory body, or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of materially increasing the cost to



provide Services hereunder or canceling, changing, or superseding any material term or provision of this Agreement (collectively "Regulatory Requirement") then this Agreement shall be deemed modified in such a way as the parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with such Regulatory Requirement. Should the parties not be able to agree on modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then, upon written notice, either party may, to the extent practicable, terminate that portion of the Agreement impacted by the Regulatory Requirement. Termination

of this Agreement by either party in accordance with this Section 9.13 shall be without prejudice to any other rights and remedies under or in connection with this Agreement, both at law and in equity.

9.14. Contracts (Rights of Third Parties) Act 1999. Subject to section 9.10, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. Intermedia and the Advisor may terminate, rescind or vary this Agreement without the consent of any other third party.