



**CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND INTERMEDIA.NET, INC. ONLY AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MAY ACCEPT THIS AGREEMENT ON BEHALF OF YOUR COMPANY. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, YOU DO NOT HAVE PERMISSION TO USE OR MARKET INTERMEDIA SERVICES AND DO NOT HAVE ANY OF THE OTHER RIGHTS SET FORTH BELOW.**

By accepting this Agreement between Advisor (defined below) and Intermedia.net, Inc. – by clicking “I Agree and Continue” – Advisor agrees to be bound by all of the terms and conditions of (i) this Advisor Agreement with Intermedia.net, Inc. and (ii) Intermedia’s Privacy Policy (collectively, this “Agreement”).

Intermedia’s Privacy Policy is expressly incorporated herein by reference, and a current copy is located at <http://intermedia.net/legal>.

If Advisor does not agree to the terms in this Agreement, then (i) Advisor must click “I Decline” or close the browser and (ii) Advisor does not have Intermedia’s permission to market any of the Intermedia Products. If you are an individual entering into this Agreement on behalf of Advisor, you represent and warrant that you have the authority to bind Advisor to this Agreement, that you have reached the age of majority in your jurisdiction (generally, 18 years of age) and you have the required capacity to enter into this agreement on behalf of Advisor.

**DEFINITIONS.** For the purposes of this Advisor Agreement, the following definitions apply:

**"Account"** means any account on the Advisor Portal created by or used by Advisor and its Authorized Representatives.

**"Advisor"** means the individual or Entity on whose behalf this Agreement is accepted.

**"Advisor Account Information"** means information that, alone or in combination with other information, can provide an individual with access to any portion of Advisor's Account, including but not limited to Advisor's Account number, login names, passwords, financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Advisor Account Information will include any of the foregoing information related to accounts of Authorized Representatives.

**"Advisor Commission"** means all one-time and recurring payments and commissions that are contemplated, pursuant to [Exhibit A](#), to be paid by Intermedia to Advisor in connection with sales of Intermedia Products.

**"Advisor Data"** means all data submitted by Authorized Representatives to Intermedia in connection with this Agreement, including all Advisor Account Information, content, material, IP and similar addresses, Account information and Account-related settings.

**"Advisor ID"** means the unique ID provided by Intermedia to Advisor, that Advisor provides to prospective End Users to identify Advisor during the End Users’ agreement execution process. The Advisor ID may be in the form of a code, an encrypted link or another form determined by Intermedia.

**"Advisor Portal"** means the on-line interface operated by Intermedia through which Intermedia may make available to Advisor accounting information, marketing materials, End User tracking, or other information or materials that relate to the subject matter of this Agreement and through which Advisor may make available to Intermedia certain information related to Advisor's Account, such as contact or payment information.

**"Authorized Representative"** means any of Advisor's employees, representatives, consultants or independent contractors whom Advisor authorizes to assist it in carrying out its duties or exercise its rights under this Agreement.

**"End User"** means an Entity that purchases or subscribes to Intermedia Products.

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

**"Intermedia"** means Intermedia.net, Inc.

**"Intermedia Products"** has the meaning assigned to such term on [Exhibit A](#) attached hereto.

**"Material Gross Breach"** means (a) an unlawful or willful effort taken by Advisor that defrauds Intermedia or the End User or (b) any mishandling, misuse or negligent care of PII. This type of breach will be cause for immediate termination by Intermedia and the other remedies set forth herein.

**"Personally Identifiable Information" or "PII"** means information that could be used on its own to directly

identify, contact or precisely locate an End User, such as End Users' names, mailing addresses, email addresses or telephone numbers. The term may also include electronic addresses in combination with any of the following: passwords, social security numbers, credit card numbers or other credit or bank account data, precise location information, all device or other identification numbers issued to End Users, all electronic serial numbers, MAC addresses, all automatic identification information and all information described in the FCC's definition of "Customer Proprietary Network Information" as set forth in 47 U.S.C. Section 222(h)(1) (as amended and interpreted from time to time) and its implementing regulations (but subject to the exceptions set forth in 47 U.S.C. Section 222 as amended and interpreted from time to time). For purposes of clarification, the term "PII" does not include IP addresses, pseudonymous cookie IDs, pseudonymous advertising IDs or other pseudonymous End User identifiers.

"Triggering Contract" means an agreement that is: (i) agreed to between Intermedia and an End User and in which Intermedia agrees to provide the End User with Intermedia Products, and (ii) accompanied by a valid Advisor ID during the agreement acceptance or execution process. The term "Triggering Contract" excludes agreements between Intermedia and existing End Users.

## 1. GRANT OF RIGHTS; ACCOUNT INFORMATION.

1.1 Grant of Rights. Intermedia hereby grants to Advisor a nonexclusive, revocable, personal, non-transferable and non-assignable right to market the Intermedia Products to prospective End Users, subject to the terms and conditions of this Agreement. A breach of this Agreement by any Authorized Representative will be deemed to be a breach by Advisor.

1.2 Designated Contact. Advisor will designate an individual to serve as the primary contact with Intermedia for all matters relating to this Agreement. Advisor may change such designated individual by providing notice to Intermedia.

1.3 Advisor Portal. Intermedia grants to Advisor a non-exclusive, non-transferable, non-sublicenseable (except to Authorized Representatives) right and license, solely during the term of this Agreement, to use the Advisor Portal made available by Intermedia to Advisor solely for the purposes of performing under this Agreement and subject to the terms and conditions of this Agreement, Intermedia's Acceptable Use

Policy (a current copy of which is available at <http://www.intermedia.net/legal>) and other policies, terms, and conditions that Intermedia may publish from time to time. The collection, use, and disclosure of information through any Advisor Portal is governed by Intermedia's Privacy Policy (a current copy of which is available at <http://www.intermedia.net/legal>).

1.4 Account Information. All information related to Advisor's Account (including contact and payment information) will remain accurate and up-to-date at all times.

1.5 Account Security and Activity. Advisor is solely responsible for: (i) maintaining the confidentiality and security of Advisor Account Information, and (ii) all activities that occur in connection with Advisor's Account. Advisor will notify Intermedia immediately of any unauthorized use of Advisor's Account, Advisor Account Information, Advisor ID or any other actual or potential breach of security of Intermedia Products. Advisor will indemnify Intermedia for losses resulting from such failure to maintain confidentiality and security.

## 2. ADVISOR REPRESENTATIONS AND DUTIES.

2.1 Representations, Warranties, and Obligations. Advisor:

(a) will use commercially reasonable efforts to promote the Intermedia Products to prospective End Users;

(b) will not send SPAM or unsolicited e-mails and communications (whether personalized or bulk, personal or commercial) in promoting Intermedia or any Intermedia Product;

(c) will comply with all applicable laws and regulations, including without limitation anti-corruption and anti-bribery laws and regulations, such as the U.K. Bribery Act and the U.S. Foreign Corrupt Practices Act, as amended;

(d) will accept reasonable sales and marketing direction from Intermedia in marketing Intermedia Products;

(e) will maintain and provide Intermedia reasonable access to any and all of Advisor's records and documentation regarding the marketing of Intermedia Products and performance under this Agreement;

(f) has the legal right to enter into and perform the obligations set forth in this Agreement;

(g) will not misrepresent the features, performance specifications or other

components of Intermedia's services or any agreements, including but not limited to Master Service Agreements, Service Level Agreements, Schedules, and the Privacy Policy, covering Intermedia's services; and

(h) will use, share, safeguard and destroy PII only in accordance with Section 6 of this Agreement, and will notify Intermedia of any breach of PII in accordance with Section 6 of this Agreement.

### 3. INTERMEDIA PRODUCTS.

3.1 Ownership; Modifications. Ownership of the Intermedia Products and any software made available in connection with the Intermedia Products, is retained by Intermedia or its licensors. Intermedia retains the right to modify any features of the Intermedia Products in its sole discretion or may cease offering a particular Intermedia Product at any time in its sole discretion. Advisor shall have no rights arising from any such change to the Intermedia Products.

3.2 Training. Intermedia may, in its sole discretion, provide training to Advisor with respect to the Intermedia Products.

### 4. AUTHORITY; INDEPENDENT CONTRACTORS.

Neither party will have any authority, and neither party will represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other party. Advisor is neither a distributor of Intermedia Products nor an agent of Intermedia. Advisor will not: (i) make any representations or promises or provide any warranties related to the Intermedia Products except with the express written permission of Intermedia, (ii) enter into any agreement with a prospective End User on behalf of Intermedia, (iii) enter into, or attempt to enter into, any agreement with Intermedia on behalf of any prospective or existing End User, including a Triggering Contract, or (iv) modify, or attempt to modify, the terms of the Triggering Contract directly or indirectly, orally or in writing. Each party is an independent contractor, and this Agreement will not be construed as creating a partnership, joint venture, agency, or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party.

### 5. PAYMENT.

5.1 Advisor Commission. Intermedia will pay Advisor applicable Advisor Commissions, subject to Advisor's compliance with the terms and

conditions of this Agreement, in accordance with Exhibit A.

5.2 Triggering Contracts. Intermedia will not be required to supply any Intermedia Product to any prospective End User or to enter into any Triggering Contract. Triggering Contracts will be between Intermedia and the relevant End User, with Intermedia having full contract approval and final pricing control.

5.3 Payment Disputes. In the event of any dispute between Intermedia and Advisor, or between Advisor and a third party, that relates to (i) the determination of whether a contract is a Triggering Contract, (ii) the determination as to whether an Advisor Commission is payable to Advisor, (iii) Intermedia accounts or (iv) Intermedia products and services, Intermedia may resolve such dispute in its sole discretion. Advisor will notify Intermedia of any dispute relating to any Advisor Commissions paid or payable to Advisor by notifying Intermedia's customer service department in writing (for email and data services, contact [csr@intermedia.net](mailto:csr@intermedia.net); for voice and unified communications services, contact [voicesupport@intermedia.net](mailto:voicesupport@intermedia.net)) within sixty (60) days of the date the disputed Advisor Commissions were or should have been paid. Advisor waives all rights to dispute any Advisor Commissions not disputed by written notice as required above. Advisor agrees that in any such dispute: (a) Intermedia's records will control, and (b) Advisor will supply Intermedia with any information or documentation reasonably requested by Intermedia for the purpose of resolving such dispute.

5.4 Additional Payment Terms. All taxes imposed in connection with the payment of any Advisor Commission will be the responsibility of Advisor. Advisor Commissions payable hereunder will be made via ACH (Automated Clearing House) in US Dollars. It is Advisor's responsibility to timely and accurately complete and submit to Intermedia the ACH Vendor Payment Authorization Form included as part of this Agreement, as well as to notify Intermedia in writing of any changes to such information by submitting an updated copy of such form. Advisor Commissions are paid monthly and only when Advisor's account has reached a minimum Advisor Commission due of one hundred dollars (\$100.00). Accounts with a balance of less than the minimum will not be paid that month. The unpaid balance will roll over to the subsequent month until the accrued Advisor Commissions payable to such account equal at least one hundred dollars (\$100.00). Intermedia will have no obligation to pay any

Account Commission prior to Advisor providing Intermedia a fully completed Form W-9 (or substitute form if so required by applicable law), which may be completed and submitted online through Intermedia's Advisor Portal.

## 6. CONFIDENTIAL INFORMATION.

6.1 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. Subject to the exclusions set forth below, Intermedia's Confidential Information will include the source code comprising Intermedia Products (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. Confidential Information will not include information provided to Intermedia by Advisor that is Advisor Data or that is defined as "Information" in Intermedia's Privacy Policy, and the collection, use, storage and disclosure of any such information shall be solely governed by Intermedia's Privacy Policy. Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Section 6 shall, under any circumstances, restrict Intermedia from contacting End Users of Intermedia Products for any purpose, at any time during the term or following termination of expiration of this Agreement.

6.2 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.

## 6.3 Advisor's Use and Handling of PII.

(a) Advisor will only use PII for non-marketing and administrative purposes unless informed in writing by Intermedia of the subset of PII that can be used for marketing purposes.

(b) Under no circumstances will Advisor share PII with any person or entity other than Intermedia or the End User.

(c) Advisor will implement acceptable physical, technical and managerial safeguards to protect the integrity of any PII that Advisor accesses. All reasonable precautions shall be taken to secure PII from entities and individuals who do not specifically have authorized access. Apart from the End User, the only parties with authorized access are the Advisor and Intermedia.

(d) Breach Notification. Advisor shall promptly notify Intermedia of any breach, impermissible use, or disclosure ("Breach Event") of PII within twenty-four (24) hours of any such Breach Event. Written notification of the Breach Event shall be provided to [compliance\\_security@intermedia.net](mailto:compliance_security@intermedia.net).

(e) Destruction of PII. All PII accessed or stored by Advisor, in any form or on any media, shall be destroyed by Advisor upon the occurrence of one of the following events: (i) at the request of Intermedia within the timeframe specified by Intermedia in its request (or, if no timeframe is identified by Intermedia in its request for destruction, then within three (3) business days of Advisor's receipt of such request); (ii) if there is a Material Gross Breach, in which case Advisor will destroy PII within twenty-four (24) hours of such Material Gross Breach; or (iii) within five (5) business days following termination of this Agreement for anything other than a Material Gross Breach. Destruction shall be accomplished by physical destruction, securely overwriting data or other means of irretrievably deleting PII in accordance with industry standards ("Destruction"). Advisor shall provide written notice to Intermedia at the address identified in Section 6.3(d) that it has complied with this Section 6.3(e) within five (5) business days of Destruction unless an earlier date is requested by Intermedia.

## 7. WARRANTY; DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.

7.1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, INTERMEDIA MAKES NO WARRANTIES WHATSOEVER TO ADVISOR, EXPRESS OR IMPLIED, WITH REGARD TO THE INTERMEDIA PRODUCTS, OR



OTHER PRODUCTS, SERVICES, SUPPORT OR ANY MATERIALS SUPPLIED TO ADVISOR, OR ANY MATTER RELATING TO THIS AGREEMENT. INTERMEDIA SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2 Except with regard to a party's indemnity obligation set forth in this Agreement, (i) neither party's liability in connection with the Intermedia Products, this Agreement, or any other matter relating to this Agreement will exceed the amounts paid and/or payable by Intermedia to Advisor under this Agreement in the three (3) month period prior to the event giving rise to such liability, and (ii) in no event will either party be liable to the other party for any 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 other party has been advised of the possibility of such damage.

7.3 The parties have entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and the limitations and disclaimers form an essential basis of the bargain between the parties.

#### 8. INDEMNITY.

Advisor agrees to fully defend, indemnify and hold harmless Intermedia, its officers, directors, employees and agents, from any claim or damages (including reasonable attorney's fees and costs) that (a) results from Advisor's or an Authorized Representative's failure to comply with Section 6, Material Gross Breach, negligence, misrepresentation, acts or omissions or (b) otherwise results from the activities contemplated by this Agreement.

#### 9. TERM AND TERMINATION.

9.1 Term. This Agreement will continue in full force and effect unless terminated as provided herein.

9.2 Termination. Intermedia may terminate this Agreement upon notice to Advisor. Advisor may terminate this Agreement upon sixty (60) days' notice to Intermedia.

9.3 Effect of Termination. Upon the termination of this Agreement, Advisor will promptly return to Intermedia or (at 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, and certify to Intermedia in writing, signed by a duly authorized representative of such Advisor, that it has done so return or destroyed all such materials and information. The preamble, definitions, and Sections 3.1, 4, 6, 7, 8, 9 and 11 will survive termination of this Agreement. Termination of this Agreement by either Intermedia or Advisor 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, either at law and in equity.

#### 10. USE OF MARKS; OWNERSHIP; PUBLICITY.

10.1 License to Use Marks. During the term of this Agreement, Advisor is hereby granted a non-exclusive license to use Intermedia's trademarks, service marks, trade names, the Intermedia Product name, logos, designs and other designations or brands used by Intermedia in connection with the Intermedia Products (collectively, the "Marks") subject to the terms and conditions of this Agreement, including any additional branding guidelines for Advisors that Intermedia may publish from time to time. Such license is expressly limited to uses by Advisor necessary or appropriate in connection with its performance pursuant to this Agreement and as set forth in any general instructions issued by Intermedia or as expressly permitted by Intermedia in writing. Advisor will not alter the Marks in any way or remove the Marks from any materials provided by Intermedia. Subject to the provisions of this Section 10, Advisor may indicate its relationship to Intermedia and refer to the Intermedia Products by using the Marks provided that such references are truthful and not misleading and Intermedia is designated as the owner of the Marks.

10.2 No Other Rights to Marks. Intermedia reserves the right to disallow any use of the Marks which would, in Intermedia's reasonable opinion, harm the validity or value of the Marks. Upon expiration or termination for any reason of this Agreement, the license set forth in this Section 10 will immediately terminate. Other than the license to use the Marks granted in this Section 10, Advisor is granted no other right, title or interest in the Marks. Advisor acknowledges Intermedia's ownership of and right in and to the Marks, and agrees that any and all use of the Marks will inure to the sole benefit of Intermedia. Advisor will take no action inconsistent with Intermedia's ownership of the Marks and will not challenge Intermedia's rights in or attempt to register any of the Marks, or

any other trademarks, service marks, trade names, product names, logos, designs, and other designations or brands owned or used by Intermedia or any mark confusingly similar thereto. If at any time Advisor acquires any rights in or to, or any registration or application for, any of the Marks by operation of law or otherwise, it agrees to assign, and hereby does assign, such rights, registrations, or applications to Intermedia, along with any and all associated goodwill.

**10.3 Marketing Materials.** Intermedia may from time to time, at its discretion, provide marketing materials for Intermedia Products to Advisor either through Intermedia's portal or through other means. Advisor may use such marketing materials for the purposes set forth herein or as expressly permitted by Intermedia in writing. The marketing materials provided to Advisor may only be used solely in connection with Advisor's obligations hereunder and may not be used to market any non-Intermedia Product.

**10.4 Other Use of Marks.** Advisor will not bid for or otherwise use (including the use by any third party on behalf of Advisor) any keyword or search term for use in search engines, linking or re-directing that (i) incorporates any Mark, or any variant or misspelling thereof, or (ii) infringes the intellectual property rights of Intermedia or any third party. Advisor will not use any Mark: (a) in any domain name registered by Advisor, or (b) in connection with any SPAM or unsolicited e-mails (whether personalized or bulk, personal or commercial), or (c) for any unlawful purpose.

**10.5 Intermedia Rights.** Intermedia may reference Advisor on Intermedia's website and in its marketing materials as an Advisor partner of Intermedia during the term of this Agreement.

**10.6 Other Publicity.** Except as set forth in this Section, neither party may issue a news release, public announcement, advertisement or any other form of publicity concerning this Agreement without the express prior written approval of the other party.

## **11. MISCELLANEOUS.**

**11.1 Modifications.** Intermedia may update, amend, modify or supplement the terms and conditions of this Agreement on a going forward basis from time to time upon notice to Advisor. Except as otherwise specified by Intermedia, all such changes are effective upon Intermedia's giving of notice of the changed Agreement. Advisor can review the most current version of this Agreement at <http://www.intermedia.net/legal>. In connection with

any such update, amendment, modification or supplement to this Agreement, Intermedia may (in its sole discretion) require you to provide consent by accepting the changed Agreement. In such event, if you do not accept the changed Agreement within the required time period designated by Intermedia, Intermedia may immediately terminate the Agreement then in effect between the parties. Disputes arising under the Agreement will be resolved in accordance with the Agreement in effect at the time the dispute arose.

**11.2 Governing Law; Jurisdiction; Forum; Attorneys' Fees.** This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws or its principles. Any claim or suit arising out of or relating to this Agreement may only be brought in any court of competent jurisdiction located in Santa Clara County in the State of California. If Intermedia prevails in an action to enforce this Agreement, including, without limitation, any action by Intermedia for the recovery of fees due hereunder, Advisor will pay Intermedia's reasonable attorneys' fees and costs associated with such action. Advisor agrees to waive the right to trial by jury with respect to any proceeding related to or arising out of this Agreement.

**11.3 Written Communications and Notice.** Advisor accepts that communication from Intermedia may be electronic, and that Intermedia may provide certain notices under this Agreement to Advisor by e-mail or through posting to Advisor's account or to the Intermedia website. Advisor agrees that these electronic communications are effective as notice. All other notices, permissions and approvals hereunder will be in writing. Notices to Advisor may be addressed by Intermedia to any e-mail address, postal address or facsimile number registered with Intermedia and associated with Advisor's account. Notices to Intermedia must be mailed to Intermedia.net, Inc., 100 Mathilda Place, Suite 600, Sunnyvale, CA 94086 Attn: Legal Department, or such other address as designated for notice on Intermedia's website.

**11.4 Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, then the remaining provisions of this Agreement will nevertheless be given full force and effect and be interpreted as broadly as possible to give full effect to the intentions of the Parties in entering into this Agreement.

**11.5 Waiver.** No waiver by Intermedia of any breach by Advisor 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.

11.6 Assignment. Advisor may not assign this Agreement or otherwise transfer any of its rights and obligations under this Agreement without the prior written consent of Intermedia. Intermedia may assign this Agreement or transfer any of its rights and obligations under this Agreement, without consent of Advisor. Any attempted assignment in violation of this Section 11.6 will be void and of no force and effect. Subject to the foregoing, this Agreement will inure to the benefit of and will be binding upon the permitted successors and assigns of the parties.

11.7 Force Majeure. Intermedia will not be in default or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of the Agreement due to any causes beyond its reasonable control, which causes include but are not limited to Acts of God or the public enemy; riots and insurrections; war; terrorism; fire; strikes and other labor difficulties (whether or not the party is in a position to concede to such demands); embargoes; judicial action; lack of or inability to obtain export permits or approvals, necessary labor, materials, energy, components or machinery; or acts of civil or military authorities.

11.8 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous representations, understandings, proposals, and agreements. Continued performance of the activities contemplated by this Agreement constitutes continued acceptance of this Agreement, including any and all modified terms. These terms will bind and benefit the successors and heirs of the parties.

## EXHIBIT A

### 1. DEFINITIONS AND TERMS

“Aggregate Net Monthly Recurring Fee” means the gross fees that Intermedia, in accordance with generally accepted accounting principles and regular, established Intermedia practices, recognizes under a Triggering Contract on a recurring monthly basis for the applicable Intermedia Products, less Intermedia’s costs for service fees, sales tax and gross receipts tax amounts imposed by any competent taxing authority. For the avoidance of doubt, (i) non-recurring fees paid to Intermedia (which, for the Intermedia Contact Center service, includes usage fees) and (ii) any local, state or federal taxes, regulatory recovery fees, regulatory compliance fees, administrative charges or surcharges, 911 fees (such as emergency service surcharges), or any other excise tax or fees paid to Intermedia, are all expressly excluded from the calculation of the Aggregate Net Monthly Recurring Fee.

“Initial Period” means the first four (4) complete calendar months that are completed of the term of the applicable Triggering Contract.

“Intermedia Data Products” means all Intermedia Products, other than O365 Products and Intermedia Voice-Related Products. AnyMeeting and SecuriSync are each classified as “Intermedia Data Products” for purposes of this Agreement (excluding the basic versions of SecuriSync and AnyMeeting that are included with a standard user package of Intermedia Unite, which, as described below, are classified as Intermedia Voice-Related Products for purposes of this Agreement). O365 Apps, when sold on a standalone basis or together with Intermedia’s hosted Exchange, shall be classified as an “Intermedia Data Product” for purposes of this Agreement.

“Intermedia Products” means all products and services that Intermedia makes available for purchase by End Users through Intermedia’s public-facing website or through distributors, resellers or other distribution partners, including, but not limited to, Intermedia Unite, Intermedia Contact Center, AnyMeeting, Intermedia’s hosted Exchange, email archiving, email backup, Hosted PBX (Phone System), SIP Trunking, SecuriSync, SharePoint, Lync/Skype for Business, Intermedia AppID and Cloud Server; provided, however, that, notwithstanding the foregoing, the term “Intermedia Products” shall not include Intermedia’s web hosting offering, which offering is governed by a separate Web Hosting Advisor Agreement between Advisor and Intermedia. Intermedia may place territorial restrictions on the marketing of Intermedia Products. For commission rates for specific Intermedia Products (which may be different from the general commission rates set forth herein), please check the product release notes for the applicable Intermedia Product.

“Intermedia Voice-Related Products” means the following Intermedia Products: Intermedia Unite (including the basic versions of SecuriSync and AnyMeeting that are included with a standard user package of Intermedia Unite), Intermedia Contact Center, SIP Trunking, Hosted PBX 2.0 (Phone System) and individual telephony-related services.

“O365 Products” means the Office 365 suite of Microsoft services, including without limitation (a) Office 365 packages and associated Microsoft add-ons, (b) Office 365 applications, such as Microsoft Word, Excel and PowerPoint (“O365 Apps”), but only when sold together with, or as part of, Office 365 packages or Microsoft 365, and (c) Microsoft 365 and associated Microsoft add-ons.

### 2. ADVISOR COMMISSIONS FOR SALES OF INTERMEDIA PRODUCTS

#### (a) Intermedia Data Products

If an End User enters into a Triggering Contract for Intermedia Data Products during the term of this Agreement, and the End User provides Advisor’s Advisor ID to Intermedia at the time of execution of the Triggering Contract, then Intermedia will pay Advisor an Advisor Commission equal



to eight percent (8%)\* of the Aggregate Net Monthly Recurring Fee for the applicable Intermedia Data Products for each calendar month, including the month in which the Triggering Contract is signed, where such Triggering Contract remains an active Intermedia account as of the end of the last day of that particular calendar month.

(b) Intermedia Voice-Related Products

If an End User enters into a Triggering Contract for Intermedia Voice-Related Products during the term of this Agreement, and the End User provides Advisor's Advisor ID to Intermedia at the time of execution of the Triggering Contract, then Intermedia will pay Advisor the following Advisor Commissions:

(i) One-time payments

Intermedia will make one-time payments of the following amounts to Advisor:

*Intermedia Unite Users/Licenses, Intermedia Contact Center, and SIP and Hosted PBX 2.0 Lines:* Advisor will earn a one-time payment of twenty-five dollars (\$25) per (i) each License Unit (as defined below) for Intermedia Unite and for Intermedia Contact Center, (ii) each line for Intermedia Hosted PBX 2.0, and (iii) each call path for Intermedia SIP Trunking sold and installed to an End User. (Advisor should check with Advisor's Sales Support team for additional promotional compensation that may be assigned to Advisor's sales.) The term "License Unit" means (a) per user, for customers purchasing the applicable service on a per user basis, or (b) per subscription, for customers purchasing the applicable service on a subscription basis.

(ii) Recurring Payments

Intermedia shall pay the following recurring Advisor Commissions to Advisor with respect to such Triggering Contract:

- (A) If the Aggregate Net Monthly Recurring Fee for the Intermedia Voice-Related Products is less than or equal to Three Thousand Five Hundred Dollars (\$3,500), then Intermedia will pay Advisor an Advisor Commission equal to ten percent (10%) of the Aggregate Net Monthly Recurring Fee for the applicable Intermedia Voice-Related Products for each calendar month, including the month in which the Triggering Contract is signed, where such Triggering Contract remains an active Intermedia account as of the last day of such calendar month.
- (B) If the Aggregate Net Monthly Recurring Fee for the Intermedia Voice-Related Products is greater than Three Thousand Five Hundred Dollars (\$3,500) but less than or equal to Ten Thousand Dollars (\$10,000), then Intermedia will pay Advisor an Advisor Commission equal to fifteen percent (15%) of the Aggregate Net Monthly Recurring Fee for the applicable Intermedia Voice-Related Products for each calendar month, including the month in which the Triggering Contract is signed, where such Triggering Contract remains an active Intermedia account as of the last day of such calendar month.
- (C) If the Aggregate Net Monthly Recurring Fee for the Intermedia Voice-Related Products is greater than Ten Thousand Dollars (\$10,000), then Intermedia will pay Advisor an Advisor Commission equal to twenty percent (20%) of the Aggregate Net Monthly Recurring Fee for the applicable Intermedia Voice-Related Products for each calendar month, including the month in which the Triggering Contract is signed, where such Triggering Contract remains an active Intermedia account as of the last day of such calendar month.

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\* Effective for all new customer accounts created on or after March 12, 2014. For customer accounts created prior to March 12, 2014, sales of Intermedia Data Products (regardless of the date of such sale) will be subject to the commission rate and terms in effect as of the applicable date of account creation.

(c) O365 Products

If an End User enters into a Triggering Contract for O365 Products during the term of this Agreement, and the End User provides Advisor's Advisor ID to Intermedia at the time of execution of the Triggering Contract, then Intermedia will pay Advisor the following Advisor Commissions:

(i) One-time payments

Intermedia will make one-time payments of the following amounts to Advisor:

Advisor will earn a one-time payment equal to one (1) times the Aggregate Net Monthly Recurring Fee for the O365 Products in the first month of purchases under a Triggering Contract for O365 Products.

3. TERMS AND TIMING OF ADVISOR COMMISSIONS

Intermedia will pay Advisor Commissions to Advisor under each Triggering Contract following the applicable Initial Period, it being understood that (a) no payment will be due to Advisor with respect to a Triggering Contract until the applicable Initial Period has been completed; (b) the initial Advisor Commissions for a Triggering Contract will not be considered earned until the applicable Triggering Contract has completed the applicable Initial Period; and (c) if Intermedia voluntarily pays any Advisor Commissions prior to the end of the applicable Initial Period, and if the applicable Intermedia Product is returned or otherwise canceled for any reason prior to the end of the applicable Initial Period, then Intermedia reserves the right to recover (including, without limitation, through demanding repayment from Advisor or through offsets against future Advisor Commission payments) any Advisor Commissions paid by Intermedia with respect to such purchase. For the avoidance of doubt, Intermedia will not be obligated to pay any Advisor Commissions with respect to a Triggering Contract that is terminated prior to the end of the respective Initial Period. For clarity, any previously paid commission payments will be adjusted to reflect any customer chargebacks, bad debt, write-offs or service credits incurred by Intermedia.

Intermedia will pay Advisor Commissions that are due, within thirty (30) days after the Initial Period, and within thirty (30) days after each subsequent month. Intermedia will be obligated to pay Advisor Commissions from recurring payments under a Triggering Contract following the termination of this Agreement, at the commission rate in place as of the date of such termination, for the period of time that the applicable End User (i) remains a customer in good standing with Intermedia and (ii) continues to purchase Intermedia Products originally purchased under an accepted Triggering Contract, except in the event of termination of this Agreement for Material Gross Breach, in which case Intermedia's obligation to continue making Advisor Commission payments to Advisor shall immediately terminate on the date of such breach. Intermedia's obligation to pay the Advisor Commissions to Advisor with respect to a Triggering Contract is contingent upon Intermedia receiving the applicable monthly recurring fee from the End User.

4. FEES FOR NON-GENERALLY AVAILABLE PRODUCTS AND SERVICES

For those Intermedia products and services which cannot be licensed directly through Intermedia's website but which require the intercession of an Intermedia sales representative, Intermedia will offer customized pricing and fee arrangements on a case by case basis, at its sole discretion.

5. GENERAL

Intermedia reserves the right to change, define and/or interpret, in its sole discretion, the terms of the Advisor Commissions payable to Advisor (including without limitation, calculations of any metrics used herein, Advisor's eligibility for the commission, deal-specific changes to the commission structure (including without limitation different commission percentages and/or maximum commission payments) due to the large size or special pricing of the transaction, or any other term hereof).



**INTERMEDIA**

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### ACH VENDOR PAYMENT AUTHORIZATION FORM

This form is used for Automated Clearing House (ACH) payments. The information being collected on this form will be used by Intermedia.net, Inc.'s office to transmit payment data, by electronic means, to a vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payment through the ACH Payment System. Recipients of the payments should bring this information to the attention of their financial institution when presenting this form for completion. **Recipients should also request to be notified immediately regarding any change occurring at the financial institution that may delay or prevent the receipt of scheduled payments.**

#### ***VENDOR INFORMATION***

COMPANY NAME: \_\_\_\_\_

PARTNER NAME / ID: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

CONTACT EMAIL: \_\_\_\_\_

FEDERAL I.D. #: \_\_\_\_\_

#### ***FINANCIAL INSTITUTION INFORMATION***

BANK NAME: \_\_\_\_\_

BANK ADDRESS: \_\_\_\_\_

ACH ROUTING NUMBER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

TYPE OF ACCOUNT: ☐ CHECKING ☐ SAVINGS

\_\_\_\_\_  
**SIGNATURE & TITLE OF REPRESENTATIVE**

(\_\_\_\_\_)\_\_\_\_\_  
**PHONE NUMBER**

**Please complete this form with ORIGINAL signatures:**

- (1) Retain the original for your records
- (2) Email completed form to ap@intermedia.net and crp@intermedia.net