



# INTERMEDIA®

## INTERMEDIA: ADVISOR AGREEMENT

**CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A LEGAL BINDING AGREEMENT WITH INTERMEDIA TECHNOLOGIES COMPANY LTD. ONLY AN AUTHORIZED REPRESENTATIVE OF ADVISOR MAY EXECUTE THIS AGREEMENT. IF ADVISOR DOES NOT ACCEPT THESE TERMS AND CONDITIONS, CLOSE THE BROWSER AND DO NOT PROCEED WITH MARKETING THE INTERMEDIA PRODUCTS.**

By accepting this Agreement between Advisor (defined below) and Intermedia Technologies Company Ltd. – 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 Technologies Company Ltd. and (ii) Intermedia’s Privacy Policy (collectively, this “Agreement”).

The Privacy Policy is expressly incorporated herein by reference and a current copy is located at <http://intermedia.co.uk/legal/legal.asp>.

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. If you do not have such authority, neither you nor Advisor may accept this Agreement or market or use the Services.*

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

“Access Information” means information that alone or together with other information, can provide access to any portion of Advisor’s Account, if Intermedia has enabled an interface to such Account, including but not limited to Advisor’s 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, Advisor’s Access Information will include any such information for each of its Users.

“Account” means any account for Advisor created with Intermedia in connection with this Agreement that relates to the marketing of Intermedia Products by Advisor and its Users.

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

“Advisor Commission” means the amount calculated in accordance with Exhibit A hereto.

“Advisor ID” means the unique ID provided by Intermedia to Advisor, or as otherwise specified by Intermedia from time to time, that Advisor may

provide to a prospective End User. The Advisor ID may be in the form of a code, an encrypted link or another form determined by Intermedia.

“Data” means all data submitted by Users to Intermedia in connection with this Agreement, including all Access Information, content, material, IP and similar addresses, Account information and Account-related settings.

“End User” means a purchaser or subscriber of Intermedia Products.

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

“Intermedia” means Intermedia Technologies Company Ltd. of 4<sup>th</sup> Floor Imperial House, 15 Kingsway, London WC2B 6UN.

“Intermedia Group” means Intermedia, any company of which it is a Subsidiary (its holding company) (as defined by section 1159 of the Companies Act 2006) and any Subsidiaries of the Company or any such holding company.

“Intermedia Products” means the Intermedia products and services identified on Exhibit A attached hereto and incorporated herein by reference.

“Triggering Contract” means the agreement between Intermedia and an End User under which Intermedia agrees to provide the End User with Intermedia Products, and which is accompanied by a valid Advisor ID during the agreement execution process.

“User” means any of Advisor’s employees, representatives, consultants or independent contractors to whom Advisor authorises to assist it in carrying out its duties under this Agreement.

### 1. GRANT OF RIGHTS; ACCOUNT INFORMATION.

1.1 Grant of Rights. Intermedia hereby grants to Advisor, subject to the terms and conditions of this Agreement, a non-exclusive, revocable, personal, non-transferable and non-assignable right to market the then-currently marketed version(s) of the Intermedia Products to prospective End Users. A breach of this Agreement by any User will be deemed to be a breach by Advisor.

**1.2 Account Information and Ownership.**

Advisor will maintain accurate Account information by providing updates to Intermedia promptly, but no later than three (3) business days, when any Account information requires change, including any relevant account contact information. Failure by Advisor, for any reason, to respond within three (3) business days to any inquiries made by Intermedia to determine the validity of information provided by Advisor will constitute a material breach of this Agreement. Advisor acknowledges and agrees, and expressly consents, that in the event of any dispute regarding access to or legal ownership of any Intermedia account, including Advisor's Account or an End User 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 Advisor's Account or an End User account, or any portion thereof. Advisor will reimburse Intermedia for any legal and other fees incurred with respect to any dispute regarding control or ownership of Advisor's Account or Data. Advisor acknowledges and agrees that (i) the legal owner of all Data on Advisor's Account is Advisor, 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 Advisor's Account and any related Data. Advisor will designate an individual within its respective organization to serve as the primary contact with the other party for all matters under this Agreement. Advisor may change such designee by providing notice of such change to Intermedia.

**1.3 Account Security and Activity.**

Advisor acknowledges and agrees that Advisor is solely responsible for (i) maintaining the confidentiality and security of Advisor's Access Information, and (ii) all activities that occur in connection with Advisor's Account, whether initiated by Advisor, by others on Advisor's behalf or by any other means. Advisor will notify Intermedia immediately of any unauthorised use of Advisor's Account, Access Information, Advisor ID or any other actual or potential breach of security. Advisor acknowledges and agrees that Intermedia will not be liable for any loss that Advisor may incur as a result of any party using Advisor's Access Information, either with or without Advisor's knowledge and/or authorization. Advisor further agrees that Advisor may be held liable for losses incurred by Intermedia or another party due to any party using Advisor's Access Information. Intermedia strongly recommends that Advisor and its Users keep 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 Advisor's Account, whether authorised by Advisor or not.

**2. ADVISOR REPRESENTATIONS AND DUTIES.****2.1 Obligations.** The Advisor will:

(a) act in good faith and use its best efforts to promote the Intermedia Products to prospective End Users;

(b) at all times conduct its business in a manner that will reflect favorably on the Intermedia Products and on the good name and reputation of Intermedia;

(c) (i) not send SPAM or unsolicited e-mails and communications (whether personalised or bulk, personal or commercial) related to this Agreement, Intermedia or any Intermedia Product and (ii) comply with all applicable laws;

(d) not make any promises or representations or give any warranties or guarantees in respect of the Intermedia Products except as expressly authorised by Intermedia in writing;

(e) not have any authority to enter into any agreement with a prospective End User on behalf of Intermedia;

(f) not enter into any agreement with Intermedia on behalf of any prospective or existing End User, including a Triggering Contract;

(g) accept reasonable sales and marketing direction from Intermedia in the marketing of Intermedia Products under this Agreement;

(h) provide Intermedia reasonable access to any and all of Advisor's records and documentation regarding the subject matter of this Agreement.

**3. INTERMEDIA DUTIES.**

**3.1 Materials.** Intermedia may from time to time, at its discretion, provide marketing materials in electronic or other medium to Advisor to advertise new Intermedia offerings.

**3.2 No Obligation to prospective End Users.** Intermedia will not be required to supply any Intermedia Product to any prospective End User or to enter into any Triggering Contract.

**4. RELATIONSHIP; NO AGENCY.** 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. 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. Advisor is neither a distributor nor an agent of Intermedia. The Intermedia Products will be available to an End User only through separate agreement between Intermedia and the End User. For the avoidance of doubt, Advisor acknowledges and agrees that any Triggering Contract will be between Intermedia and the relevant End User, with Intermedia having full contract approval and final pricing control. Advisor will not in any way modify or

alter the terms of the Triggering Contract directly or indirectly, orally or in writing.

## 5. PAYMENT.

5.1 Advisor Commission. Intermedia will pay Advisor an Advisor Commission in accordance with this Agreement, including this Section and Exhibit A.

5.2 Additional Terms. Advisor Commission accrued will be paid monthly to the Advisor in pounds sterling provided the Advisor has accrued at least £50 of Advisor Commission. If the Advisor Commission due to the Advisor in any given month is less than £50 the Advisor Commission due will roll over to the next month or until Advisor contacts Intermedia for payment.

5.3 VAT. Any Advisor Commission shall be exclusive of Value Added Tax ("VAT") which shall be paid by Intermedia at the appropriate rate and the Advisor shall be responsible for delivering a VAT invoice to Intermedia at the same time as its Advisor Commission accrues.

5.4 Exclusions. Advisor will not be entitled to receive, and Intermedia is not obligated to pay, any Advisor Commissions in any of the following cases: (i) the relevant End User is an existing or former customer of Intermedia; (ii) Intermedia comes into initial contact with the relevant End User through means other than through the execution of a Triggering Contract; (iii) the relevant End User has already been identified by Intermedia in its internal sales and marketing processes as an entity that Intermedia reasonably believes to be a potential candidate for the acquisition of Intermedia Products at any point within the three (3) months prior to the execution of the relevant Triggering Contract; (iv) the relevant Triggering Contract is executed by or for the direct use and benefit of Advisor, any of its Advisors or, if an individual, for Advisor's employer or its Advisors; or (v) the relevant End User did not provide the Advisor ID during the Triggering Contract execution process.

## 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. Advisor's Confidential Information will include Advisor's Data. Intermedia's Confidential Information will include the 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.

## 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 Use and Disclosure by Intermedia.

Notwithstanding the foregoing, Intermedia may use or disclose Advisor's Data (a) as expressly permitted in writing by Advisor, (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 Intermedia's services or prevent or address service or technical problems.

6.4 Authorization of Use and Disclosure. Advisor expressly authorises, acknowledges and agrees that Advisor's Data is subject to the Privacy Policy and that Intermedia may act in accordance with the Privacy Policy.

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

7.1 **Nothing in this Agreement shall exclude either party's liability for:**

- (a) death or personal injury caused by that party's negligence;
- (b) any indemnity under this Agreement; or
- (c) fraud or fraudulent misrepresentation.

7.2 **Except as expressly stated in this Agreement, Intermedia makes no warranties whatsoever to Advisor, express or implied, with regard to the products, services, support or any materials supplied to Advisor, including any secure links containing an Advisor ID, or any matter relating to this Agreement, and Intermedia specifically disclaims all warranties and conditions of merchantability and fitness for a particular purpose.**

7.3 **Subject to clause 7.1, (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 to Advisor under this Agreement, 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.**

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

**8. INDEMNITY.** Advisor agrees to fully defend, indemnify and hold harmless Intermedia from any claim or damages (including reasonable attorney's fees and costs) made against Intermedia, its officers, directors, employees and agents, as a result of negligence, misrepresentation, act or omission on the part of Advisor or otherwise resulting from this Agreement.

**9. TERM AND TERMINATION.**

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

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

**9.3** Upon the termination of this Agreement, Advisor 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 authorised representative of such party, that it has done so. The preamble, definitions, and Sections 6, 7, 8, 9 and 11 will survive termination of this Agreement for any reason. 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, both at law and in equity.

**10. PROMOTION AND PUBLICITY; USE OF MARKS.** Notwithstanding the foregoing or anything herein to the contrary, Intermedia is permitted during the Term of this Agreement to reference Advisor on any Intermedia Group website and in any Intermedia Group marketing materials as an Advisor partner of Intermedia. Except for the foregoing, neither party may issue a news release, public announcement, advertisement or any other form of publicity concerning this Agreement without the express prior written consent of the other party, in each instance. 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. Further, upon notice from Intermedia at its discretion, Advisor must immediately cease and desist using Intermedia materials, brand or trade name or marks. Advisor will not bid for or otherwise use (including the use by any third party) any keyword or search term for use in search engines, linking or re-directing that (i)

incorporates any trade name or mark, or any variant or misspelling thereof, of Intermedia, or (ii) infringes the intellectual property rights of any party. Advisor will not use any Intermedia trade name or mark (i) in its domain name or URL, meta tags, hidden text or source code or (ii) in connection with any SPAM or unsolicited e-mails (whether personalised or bulk, personal or commercial) or any unlawful purpose.

**11. MISCELLANEOUS.**

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

**11.2 Governing Law; Jurisdiction.** This Agreement shall be governed by, subject to, and construed in all respects in accordance with the English law without regard to its conflicts of law provisions and both parties consent to jurisdiction and venue in any and all disputes under this Agreement in the courts of England and Wales.

**11.3 Written Communications and Notice.** Advisor accepts that communication from Intermedia may be electronic. Intermedia may contact Advisor by e-mail or provide Advisor with information by posting notices on Intermedia's website or to Advisor's Account. Advisor agrees to this electronic means of communication and Advisor acknowledges that all contracts, notices, information and other communications that Intermedia provides to Advisor 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) by 10am on the second Business Day following the day on which it was despatched by first class mail postage prepaid, (iii) by 10am on the second business day after sending by confirmed facsimile, or (iv) by 10am on the first business day after sending by email or, if from Intermedia to Advisor, immediately upon online posting. Notices to Advisor may be addressed by Intermedia to any e-mail address, postal address or facsimile number registered with Intermedia, or through means of online posting to Advisor's Account (if applicable). Notices to Intermedia that are not expressly authorised by administrative control panel under this Agreement will be mailed to Intermedia Technologies Company Ltd., 4th Floor Imperial House, 15 Kingsway, London WC2B 6UN, Attn: Legal Department, or such other address as designated on Intermedia's website from time to time.

**11.4 Age and Capacity.** Advisor represents and warrants that the individual executing this Agreement on Advisor's behalf, and any person to whom Advisor grants access to its Account, has reached the older of (i) the age of eighteen and (ii) the age of majority in any such individual's jurisdiction, and that Advisor is not subject to a limitation on its ability to enter into this Agreement

11.5 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.

11.6 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.

11.7 Assignment. No benefit or duty of Advisor 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 this Agreement without Advisor's consent and without notice.

11.8 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 Act of God or the public enemy; riots and insurrections; war; terrorism; fire; strikes and other labour 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 labour, materials, energy, components or machinery; acts of civil or military authorities.

11.9 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. INTERMEDIA PRODUCTS**

Only those Intermedia products and services, including, but not limited to, Intermedia's Exchange, Sharepoint and OCS products and services, as may be modified by Intermedia from time to time, that Intermedia makes available for online purchases solely to End Users through its public-facing website.

**2. ADVISOR COMMISSIONS**

Upon signing up with Intermedia, an Advisor must choose between receiving One-Time Advisor Commissions or Recurring Advisor Commissions with respect to Triggering Contracts. This choice is irrevocable and may not be changed. Advisor Commission options and requirements are described below.

**One-Time Advisor Commission Option**

If Intermedia enters into a Triggering Contract with an End User that provided Advisor's Advisor ID to Intermedia during Intermedia's Triggering Contract execution process, then Intermedia will pay the Advisor an Advisor Commission equal to fifty percent (50%) of the Aggregate Net Monthly Recurring Fee for the combined first two (2) complete calendar months of the term of the Triggering Contract (the "2-Month Period"), where "Aggregate Net Monthly Recurring Fee" means the gross fees that Intermedia, in accordance with generally accepted accounting principles and regular, established Intermedia practices, recognises under a Triggering Contract on a recurring monthly basis for Intermedia Products, less Intermedia's costs for services 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 are expressly excluded from this calculation and (ii) Intermedia will not be obligated to pay an Advisor Commission with respect to a Triggering Contract that is terminated prior to the end of the respective 2-Month Period.

Intermedia's obligation to pay the Advisor Commissions to Advisor under the One-Time Advisor Commission option is contingent upon Intermedia receiving the applicable monthly recurring fee from the relevant End User with respect to both months of the 2-Month Period. Intermedia will pay Advisor Commissions that are due within thirty (30) days after the 2-Month Period.

**Recurring Advisor Commission Option**

If Intermedia enters into a Triggering Contract with an End User that provided Advisor's Advisor ID to Intermedia during Intermedia's Triggering Contract execution process, then Intermedia will pay Advisor an Advisor Commission equal to six percent (6%) of the Aggregate Net Monthly Recurring Fee for each calendar month, including the month in which the Triggering Contract is signed up, where the Triggering Contract remains an active Intermedia account as of the end of the last day of that respective calendar month. The initial Advisor Commission will not be considered earned until the Triggering Contract has completed two (2) complete calendar months of the term of the Triggering Contract (the "Initial Period"). "Aggregate Net Monthly Recurring Fee" means the gross fees that Intermedia, in accordance with generally accepted accounting principles and regular, established Intermedia practices, recognises under a Triggering Contract on a recurring monthly basis for Intermedia Products, less Intermedia's costs for services 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 are expressly excluded from this calculation and (ii) Intermedia will not be obligated to pay an Advisor Commission with respect to a Triggering Contract that is terminated prior to the end of the respective Initial Period.

Intermedia's obligation to pay the Advisor Commissions to Advisor under the Recurring Advisor Commission option is contingent upon Intermedia receiving the applicable monthly recurring fee from the End User with respect to all months of the Initial Period. Intermedia will pay Advisor Commissions that are due within thirty (30) days after the Initial Period, and subsequently within 30 days of the completion of each corresponding month where the fee is actually received by Intermedia.

**3. 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 customised pricing and fee arrangements on a case by case basis, at its discretion.