

This Product Schedule (this “**Schedule**”) between Intermedia.net, Inc. (“**Intermedia**”) and customer (“**You**”) is effective immediately and is issued pursuant to and incorporates by reference the terms and conditions of the Master Service Agreement (the “**MSA**”) by and between Intermedia and You.

All capitalized terms in this Schedule shall have the same meaning as set forth in the MSA, unless defined herein. In the event of a conflict or inconsistency between the terms of the MSA and the terms of this Schedule, the latter shall supersede and govern.

#### 1. Intermedia Services

Intermedia reserves the right to modify or discontinue any feature or functionality of the Services, in whole or in part, at any time, provided that Intermedia shall provide notice to You within a reasonable time period prior to any modification or discontinuance that will affect Your use of the Services. You understand that the Services may be unavailable at times due to regularly scheduled maintenance. Intermedia shall use commercially reasonable efforts to schedule this maintenance during night, weekends or off-peak periods.

#### 2. Software

To the extent any APIs (including any data collection agent) or other Intermedia or third-party software (collectively “**Software**”) are provided to You in connection with the Services, and subject to the payment of all Services fees due hereunder, Intermedia grants to You a revocable, non-exclusive, non-assignable, non-transferable, and non-sublicensable limited right and license during the term of this Schedule to download, install and use the Software, including any updates and/or modifications thereto (“**Updates**”), and any accompanying documentation, solely in connection with the applicable Services, and only by authorized end users. You shall be solely responsible for the installation and use of the Software, and Intermedia shall have no obligation or responsibility with respect thereto.

#### 3. Use of Services or Software

The transmission of any messages or other material which constitutes an infringement of any copyright or trademark or a violation of any national security law or any law or regulation regarding the transmission of obscene, threatening, harassing, or other offensive messages, or the violation of any other applicable statutes or regulations in the United States or in other countries in which the Services are used, or the Software is downloaded, is prohibited and may result in the discontinuance of Services, termination of the Terms and appropriate legal action.

#### 4. Disclaimer of Warranties

NO THIRD PARTY SUPPLIER OF INFORMATION OR DATA SUPPLIED UNDER ANY INFORMATION FEATURE OF THE SERVICES MAKES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF SUCH INFORMATION OR DATA AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

#### 5. Technical Support

Intermedia agrees to provide You with Intermedia’s standard technical support services for the Software that it makes generally available to customers, which may include periodic distribution of Updates. As Updates and new versions of the Software are made available, Intermedia reserves the right to discontinue support for non-current releases and versions. Intermedia shall provide You with reasonable notice of any such discontinuance.

## **6. Export Control**

You shall not export, re-export, use, or divert the Services or the Software to or on behalf of (a) any country that is subject to U.S. economic sanctions administered by the US Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), including but not limited to Cuba, Iran, Sudan, Syria and North Korea; (b) the government of any OFAC-sanctioned country, wherever located; or (c) persons or entities identified as "Specially Designated Nationals" by OFAC, or entities that are owned or controlled by a Specially Designated National. You shall not distribute or supply the Services or the Software to any person if You have reason to believe that such person intends to export, re-export or otherwise transfer the Services or the Software to, or use the Services or Software in or for the benefit of, any such OFAC-sanctioned countries, governments, persons, or entities. You shall not use the Services or the Software in connection with the commission of terrorist acts or the design, development, production, or use of nuclear, biological, or chemical weapons; missiles; or unmanned aerial vehicles. You shall not export, re-export, or transfer the Services or the Software to any person or entity with knowledge or reason to know that any of the prohibited activities identified in this section are intended by such person or entity. At Your expense, You shall obtain any government consents, authorizations, or licenses required for You to exercise Your rights and to discharge Your obligations under this Schedule. Acknowledging that any data You may place on the Services or the Software may constitute an export of such data by You to one or more foreign jurisdictions, You shall not cause any such export of data in violation of the laws of the United States and/or such other foreign jurisdictions.

## **7. License Terms**

You (i) acknowledge that Intermedia's ability to provide the Services to You is contingent upon your continued compliance with certain terms and conditions and (ii) agree to the terms set forth on Appendix A attached hereto and all other policies, terms and agreements referenced therein.

## **8. Steps You Must Take for the Outlook Backup Service to Function Properly**

- a. *If You Use Intermedia's Outlook Backup Service in Conjunction with an Office 365 Email Account, You Must Grant Administrative Access to Your Microsoft Online Services Account (including Your Office 365 Account)*

If You use Intermedia's Outlook Backup Service in conjunction with an Office 365 email account, then, in order for Intermedia to perform the Services, You must grant administrative access to Intermedia to Your Microsoft Online Services account (including your Office 365 account). This provides Intermedia with broad rights to access Your account, including enabling Intermedia to access email content within Your account and create and export duplicate copies of that content. You will be required to acknowledge and agree to Microsoft's terms, conditions and disclaimers (which may be amended by Microsoft from time to time without notice) in connection with approving Intermedia's request to be granted administrative access rights with respect to Your account. The current form of such Microsoft terms, conditions and disclaimers is set forth on Appendix B attached hereto. Further, You agree that Intermedia will not be held responsible or made liable for any loss of personal data and/or damages caused in connection with or as a result of Intermedia's status as an administrator of Your Microsoft Online Services account or any actions performed by Intermedia in such role, unless such loss or damages are the direct result of Intermedia's gross negligence or willful misconduct. You may disable Intermedia's administrative access rights at any time through the Microsoft portal; however, Intermedia will be unable to provide the Services to You at any time that Intermedia does not hold administrative access rights to Your Microsoft Online Services account.

- b. *After You Order the Services, You Must Then Activate the Services in Intermedia's Administrative Control Panel*

After You order the Services, You will still need to activate the Services through Intermedia's administrative control panel. You will begin to be billed for the Services once You order the

Services, regardless of when and whether You activate the Services. Notwithstanding the fact that you have ordered the Services, no backups will run until this activation process has been completed. If You fail to successfully activate the Services, Intermedia will be unable to provide the Services to You. You agree that Intermedia will not be held responsible or made liable for any loss of personal data and/or damages caused in connection with or as a result of Your failure to properly activate the Services.

c. *You Are Solely Responsible for Determining the Frequency with Which the Backups Will Run and the Mailboxes that Will Be Subject to the Services*

As part of the activation process described above, You will be required to select the frequency with which You desire the Services (i.e., the backups) to be run on Your account (e.g., one-time, monthly, weekly). You are solely responsible for selecting such frequency. Intermedia assumes no liability or responsibility for Your failure to (i) successfully activate Your Services, (ii) schedule recurring backups (as opposed to a one-time backup) or (iii) capture all desired content due to Your selected frequency of backups (i.e., not running backups frequently enough).

You are solely responsible for determining which mailboxes will be included in the backups performed on Your account. If You fail to activate the Services for one or more mailboxes on Your account, backups will not be created for such mailboxes. In addition, the Services will not automatically apply to newly created mailboxes on Your account, unless You proactively configure the Services to apply to all newly created mailboxes. Otherwise, the default configuration is that the services will not apply to newly created mailboxes on Your account.

You agree that Intermedia will not be held responsible or made liable for any loss of personal data and/or damages caused in connection with or as a result of Your failure to properly set the frequency of the Services or Your failure to configure the Services so that they apply to all desired mailboxes.

## **9. Restrictions on Service**

Intermedia's Outlook Backup Service does not create a backup of any emergency mailboxes created in connection with Intermedia's Email Continuity Service. Any data that is contained only in an emergency mailbox (and not in the user's primary Office 365 mailbox) will not be backed up in connection with the Services until the first backup is run after such data has been copied back to the user's primary Office 365 mailbox (i.e., after the end of the applicable Office 365 outage).

## **10. Service Level Agreement**

Intermedia does not offer a separate Service Level Agreement for its Outlook Backup service.

## **11. Customer Pricing**

Details of Your Service-specific pricing can be accessed via the HostPilot® control panel or other Intermedia provided web portal.

*HostPilot and The Business Cloud are either registered trademarks or trademarks of Intermedia.net, Inc. in the United States and/or other countries. Microsoft and Office 365 are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.*

## **APPENDIX A. TERMS OF SERVICE**

By using Intermedia's Outlook Backup service (the "**Services**"), you are agreeing to the terms and conditions herein. Accordingly, please read them carefully.

### **End User License Agreement**

The Services are provided to you in part by Intermedia.net, Inc. ("**Intermedia**"). By using the Services, you are agreeing to the terms and conditions herein. Accordingly, please read them carefully.

#### **Using the Services**

1. In order to use the Services, you will be required to establish a user account (a "**User Account**"). To do so, you will need to provide us with certain information ("**Account Information**"). You agree that the Account Information you provide is true, accurate, current and complete. If any of your Account Information changes, you must update it by using the appropriate update mechanism once you are logged into your account.
2. You are solely responsible for all usage or activity on your User Account including, but not limited to, use of your User Account by any person who uses your Account Information, with or without authorization, or who has access to any computer on which your account resides or is accessible.
3. You agree to use the Services only for lawful purposes, and that you will not use the Services in any manner that interferes with its security, its normal operation or with any other user's use and enjoyment of the Services. You may not: (i) misuse the Services; or (ii) decompile, disassemble, decrypt, extract or otherwise attempt or assist others to reverse engineer or derive the source code related to the Services.
4. We reserve the right to suspend or stop providing the Services to you if you do not comply with these Terms of Service or if we are investigating suspected misconduct.

#### **Intellectual Property**

5. You acknowledge and agree that Intermedia or its licensors own all right, title and interest in and to the Services, and that these Terms of Service do not grant to you any right, title or interest in or to the Services, other than the limited ability to use the Services (subject to the terms and conditions herein). You may not remove, obscure, or alter any copyright or other legal notices displayed in or along with the Services.

#### **Indemnification**

6. You agree to indemnify Intermedia, and its affiliates, directors, officers, employees, agents, licensors, suppliers, content providers, and the like (collectively, the "**Affiliates**"), and to defend and hold each of them harmless, from any and all claims and liabilities (including legal fees) which may arise from your breach of these Terms of Service.

#### **Disclaimers and Limitation of Liability**

7. The Services display some content that is not Intermedia's. This content is the sole responsibility of the person or entity that makes it available to you through the Services. We are not responsible for any such content.
8. THE SERVICES ARE PROVIDED TO YOU ON "AS IS" BASIS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, INTERMEDIA

DOES NOT REPRESENT OR WARRANT THAT: (A) THE SERVICES WILL MEET YOUR REQUIREMENTS; (B) OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; OR (C) ERRORS OR OTHER DEFECTS IN THE SERVICES WILL BE CORRECTED. INTERMEDIA HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. IN NO EVENT SHALL INTERMEDIA OR ANY OF ITS AFFILIATES, BE LIABLE FOR ANY GENERAL, INCIDENTAL, DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR OTHER DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS OR ANY OTHER PECUNIARY LOSS) IN CONNECTION WITH ANY CLAIM, LOSS, DAMAGE, ACTION, SUIT OR OTHER PROCEEDING ARISING UNDER OR OUT OF YOUR USE OF, RELIANCE UPON, ACCESS TO, OR EXPLOITATION OF THE SERVICES, EVEN IF INTERMEDIA HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE.

#### **Dispute Resolution/Arbitration**

10. Any controversy, dispute, claim, or difference ("Claim") arises whatsoever between Intermedia and you will be referred to and determined by arbitration to the exclusion of the courts. If you have a Claim, you should give written notice to Intermedia at 825 East Middlefield Road, Mountain View, California 94043, attention: Legal Department. You agree to waive any right you may have to commence or participate in any class action against Intermedia related to any claim where such waiver is permitted. Where applicable, you also agree to opt out of any class proceedings against Intermedia.
11. These Terms of Service shall be governed by and construed in accordance with the laws and courts of the jurisdiction set forth in Your Master Service Agreement with Intermedia.

#### **Modifying and Terminating the Services**

12. You can stop using the Services at any time. Intermedia may also stop providing the Services to you, or correct, update, modify, enhance, or replace the Services from time to time.

#### **General**

13. All references in this Agreement to "Intermedia", "we", "us", "our" and like terms should be interpreted accordingly. The insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of these Terms of Service. These Terms of Service is the entire agreement between you and Intermedia with respect to the Services, and your use of same. Sections 6 through 11, and 13 shall survive any termination or expiration of these Terms of Service for any reason. You may not sub-license, transfer, sell or assign your User Account, and/or these Terms of Service to any third party. The parties have expressly required that these Terms of Service be set forth and executed in the English language.

## **APPENDIX B. MICROSOFT TERMS OF DELEGATED ADMINISTRATION**

By delegating administrative authority to your Microsoft Online Services account (including your Office 365 account) to Intermedia, you will agree to the terms and conditions herein (as they may be changed from time to time by Microsoft). Accordingly, please read them carefully.

### **Terms of Delegated Administration**

**Last updated: October 2010**

**WARNING:** If you choose to authorize a partner to be your delegated administrator, the partner will have full administrative access to **all your services and subscriptions**. This includes functions such as setting up mailboxes, adding or removing users and groups, or data migration.

#### **Note of caution regarding authorizing a delegated administrator**

If you (the "customer") opt to authorize a delegated administration partner, do so carefully. Microsoft provides customers who may not wish to perform certain administration functions on their Microsoft Online Services account(s) the ability to authorize a delegated administrator to perform these functions. Before doing so, you must read and agree to these terms.

#### **What functions may a delegated administrator perform?**

A person or entity authorized as a delegated administrator can perform all administrative operations related to a customer's Microsoft Online Services account(s), just as the customer would be permitted to do.

These administrative operations can include, but are not limited to, creation of user accounts, creation of e-mail boxes, or addition / deletion / editing / copying / archiving / transfer of data / transformation of data.

#### **What are some benefits of selecting a delegated administrator?**

Selecting a delegated administrator familiar with administering Microsoft Online Services accounts may free customer from having to learn to perform these functions itself and may enable customer to obtain support services from the delegated administrator.

#### **What are some risks of selecting a delegated administrator?**

Because a delegated administrator will have full administrative access to a customer's account, the delegated administrator will have access to all customer data.

Depending on the nature of the subscription or service, customer may suffer direct or indirect harm if the delegated administrator fails to provide certain functions for customer, e.g., if the delegated administrator does not perform timely backup of data or the delegated administrator does not timely provision new mailboxes for customer employees.

A delegated administrator could, because of its role, accidentally or intentionally harm customer through loss or misuse of customer's data. There is nothing in the system to prevent this.

Microsoft does not approve, monitor, or manage the delegated administrator.

If customer elects to de-authorize a previously authorized delegated administrator, Microsoft will make all reasonable attempts to do so promptly. However, this removal is not instantaneous and during this processing time the delegated administrator will continue to have full access to the customer's subscriptions.

#### **How do I disable a delegated administrator?**

You may disable a delegated administrator's access to your account at any time.

To disable a delegated administrator's access, see Remove a Delegated Administrator in the online Help.

#### **Additional terms**

The option to authorize a partner to perform delegated administration is for customer's convenience only. Customer is not obligated to select or authorize a delegated administrator and, if a delegated

administrator is selected, customer may de-authorize the delegated administrator at any time. Selection of a delegated administrator will not affect or alter the relationship between customer and any other partners (except to the extent such delegated administrator selection is to replace an existing delegated administrator).

The relationship between customer and a delegated administrator is defined by the separate oral or written agreement(s) between them. Microsoft has no involvement in the customer/delegated administrator relationship. In the event of an issue arising from a delegated administrator's services or failure to provide services, customer's sole recourse is with the delegated administrator.

Microsoft bears no responsibility whatsoever for acts or omissions of a delegated administrator. Customer's selection or non-selection of a delegated administrator will not alter the relationship between Microsoft and Customer as spelled out in the applicable agreement for Microsoft Online Services, except as stated in these Terms.

#### DISCLAIMER OF WARRANTIES

MICROSOFT DOES NOT ENDORSE AND MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES PROVIDED BY A PARTNER (IF ANY). WITHOUT LIMITING THE FOREGOING, MICROSOFT DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF CUSTOMER'S USE OF A PARTNER. ALL PARTNER SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND.

#### LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER MICROSOFT NOR ANY OF ITS AFFILIATES OR SUPPLIERS WILL BE LIABLE FOR DAMAGES (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING FROM OR IN CONNECTION WITH ANY ACT OR OMISSION BY A PARTNER PROVIDING SERVICES TO CUSTOMER.

Customer explicitly acknowledges that it:

- understands the partner it authorizes will have full administration privileges for customer's account, including the ability to access or migrate any or all of customer's data;
- understands that Microsoft is not responsible for any acts or omissions of the partner that customer has authorized; and
- has read and understands these terms.