

This Product Schedule (the “**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 these Terms 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 has 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 its rights and to discharge its obligations under these Terms. 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 Email Continuity Service to Function Properly**

- a. *You Must Grant Administrative Access to Microsoft Online Services Account (including Your Office 365 Account)*

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 route Your email through Intermedia's email exchange (as further described below). 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 attached as 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.

You will also be required to acknowledge and agree to Microsoft's terms, conditions and disclaimers in connection with approving Intermedia's request to be granted administrative access rights with respect to Your account, the current form of which is attached as Appendix B attached hereto.

*b. You Must Point All MX Records (for Your Office 365 Accounts) to Intermedia*

In order for Intermedia to perform the Services, You must point the mail exchange (MX) record for each applicable Office 365 account to Intermedia, so that all incoming mail to such accounts is first sent to Intermedia. This provides Intermedia with broad rights to access Your account, as all of Your content will be delivered to Intermedia, then delivered by Intermedia to the intended recipient account. If You fail to successfully point all applicable MX records to Intermedia, 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.

*c. Each End User Must Provide Intermedia with Alternate Email or Phone Number Contact Information*

Intermedia will send each End User a message requesting that they provide their alternate email or phone number.

Intermedia requires End Users to provide alternate contact information to submit current, different alternate contact information for themselves. This enables Intermedia, in the event of an interruption to an End User's Office 365 Service, to inform the End User (a) to access their backup email account created by the Service and (b) when their Office 365 service is back up and running.

If an End User fails to provide such information to Intermedia, Intermedia will be unable to provide the Services to such End User. However, You will be charged for such Services upon the commencement of Your order of such Services, regardless of when or whether Your End Users provide such information to Intermedia. Intermedia strongly recommends that You inform Your End Users that they will be receiving a message from Intermedia, that such request is legitimate, and that each such End User must respond to Intermedia with the requested information.

*d. You Must Review Your Email Security System to Ensure that Intermedia is an Authorized Sender to Your Accounts*

In Intermedia's Email Continuity Service, all of Your End Users' inbound and outbound emails will be routed through Intermedia before they are delivered to the applicable End User's mailbox. Intermedia will filter any incoming email for viruses and Spam using Intermedia's Advanced Email Security (AES) Service. Intermedia strongly recommends that Intermedia's AES is the only email security service that You use with respect to inbound emails to accounts for which You purchase Intermedia's Email Continuity Services. However, if You do choose to use additional third-party security services on any such account (i.e., any security service provided by anyone other than Intermedia), You must "white-list" Intermedia within such third-party security service(s) as an authorized sender to the applicable account(s). You agree that Intermedia will not be held responsible or made liable for any loss of (or loss of access to) data and/or damages caused in connection with or as a result of Intermedia's filtering of emails in connection with the Email Continuity Service, unless such loss or damages are the direct result of Intermedia's gross negligence or willful misconduct.

Intermedia will hold any filtered email (suspected spam or viruses) in a quarantine folder for up to thirty (30) days from receipt. You or Your End User can release such quarantined mail by logging into Intermedia's Customer Portal or by selecting messages from the daily "Spam Quarantine" report received by Your End Users.

## 9. Restrictions on Usage

Intermedia's Email Continuity Service involves the creation by Intermedia of a separate emergency mailbox, solely for use as a backup in the event that Your primary Office 365 service becomes unavailable (the "**Emergency Mailbox**"). Use of the Emergency Mailbox, by You, Your End User or any other party, as a primary mailbox is strictly prohibited. If an Emergency Mailbox is used or accessed by You, Your End User or any other party authorized by You or such End User, other than as an emergency backup mailbox in connection with a loss of availability of the primary Office 365 service, You will be charged Intermedia's then-current standard rate for such mailbox, as if it were a primary Microsoft Exchange mailbox.

## 10. Restrictions on Service

Any Emergency Mailbox created in connection with the Email Continuity Service will only contain historical email data for the then-preceding 30 days. Accordingly, in the event that the Email Continuity Service is used in connection with an Office 365 outage or other loss of availability, You and Your End Users will only have access to past sent and received emails from the preceding 30 days.

## 11. Service Level Agreement

Use of the Email Continuity Service alongside an active O365 mailbox (so long as both services are maintained in good standing) is designed to provide End Users with access to an email service at all times.

Intermedia does not offer a separate Service Level Agreement for Email Continuity for Office 365, except as set forth in this Section 11.

Subject to Your valid submission of a Service Availability Credit request and the other conditions herein, if Service Availability under Your Account for any calendar month is below 99.999%, Intermedia will issue a credit ("**Service Availability Credit**") in accordance with the following schedule:

<b>Service Availability</b>	<b>Amount of the refund as a percentage of monthly fee for Email Continuity Service</b>
99.0% to 99.999%	3% of monthly fee credited
98.0% to 98.99%	5% of monthly fee credited
95.0% to 97.99%	10% of monthly fee credited
90.0% to 94.9%	25% of monthly fee credited
89.9% or below	2.5% credited for every 1% of lost availability up to the maximum total penalty limit

If the subscription period for the Email Continuity Service is less than one (1) calendar month, the Service Availability Credit will be adjusted on a pro rata basis.

To request a Service Availability Credit, (a) Your Account must be in good standing with Intermedia, (b) You must open a technical support ticket in the administrative control panel reporting an apparent Service interruption within seventy-two (72) hours of the event, and (c) You must send an email or written Service Availability Credit request to the billing department at [billing@intermedia.net](mailto:billing@intermedia.net) in the month immediately following the month for which You are requesting a Service Availability Credit. Service Availability Credit requests must include Your Account name or Account number and the dates and specific times for which You are requesting Service Availability Credits.

"**Service Availability**" is defined as the availability of an Emergency Mailbox for applicable Users under Your Account, for use in accordance with the terms of this Schedule, provided that Your Account is active

and enabled. Loss of Service Availability caused by (i) issues beyond Intermedia's reasonable control, including, without limitation, denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, Internet availability, SYN attacks, and other events or any other Force Majeure Event, or (ii) other issues addressed in this Section 11, will be excluded from Service Availability calculations.

## **12. Customer Pricing**

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

## **13. Global Directory Services**

You agree (a) to allow Intermedia and its agents and subcontractors to collect and obtain consent from You and Your End Users for collection of Your and their credentials ("**Digital Credentials**"), including digital certificates, and (b) to the extent that You choose to collect such Digital Credentials yourself, (i) to provide certain Azure and other account and mailbox credentials for applicable O365 accounts, (ii) to use such Digital Credentials for the purpose of giving customers that subscribe to Email Continuity Service offered by Intermedia the ability to deliver such Service, and (iii) You have obtained all necessary consents from such End User(s) to provide such Digital Credentials to Intermedia and for Intermedia to use such Digital Credentials in connection with the delivery of such Service.

*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 the Email Continuity 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. IN ANY EVENT, INTERMEDIA'S TOTAL MAXIMUM AGGREGATE LIABILITY UNDER THESE TERMS OF SERVICE OR ARISING FROM YOUR USE OF, RELIANCE UPON, ACCESS TO, OR EXPLOITATION OF THE SERVICES, SHALL BE LIMITED TO \$10.

#### **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.