



# INTERMEDIA®

## INTERMEDIA - MASTER SERVICE AGREEMENT SHARED EXCHANGE HOSTING

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

By clicking “I Accept and Continue” as described with Section 12 hereof – You agree to be bound by all of the terms and conditions of (i) this Master Service Agreement with Intermedia Technologies Company Ltd. and (ii) the following:

- The attached Appendix A: Microsoft Software Use – Terms and Conditions and Appendix B: Research in Motion Use – Terms and Conditions,
- Intermedia’s Privacy Policy (the “Privacy Policy”);
- Intermedia’s Service Level Agreement (the “SLA” or “Service Level Agreement”), and
- Intermedia’s Acceptable Use Policy (the “AUP”), (collectively, this “Agreement”).

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

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

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

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

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

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

“Applicable Law” means any applicable foreign, federal, state or other laws, rules, regulations or interpretations of relevant Governmental Authorities.

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

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

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

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

“Intermedia” means Intermedia Technologies Company Ltd., a company registered in England with company number 6350460 and whose registered office is at 4th Floor Imperial House, 15 Kingsway, London W2CB 6UN, United Kingdom.

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

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

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

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

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

### **1. SCOPE; ACCESS; SECURITY.**

1.1. Access to Services. Subject to and in accordance with the terms of this Agreement, Intermedia grants You a non-exclusive, non-sublicensable, nontransferable, non-assignable, revocable licence for the term of this Agreement to access and use the Services only by Your Users for internal business purposes only. You agree to comply with the terms and conditions of this Agreement and with all applicable Intermedia procedures and policies that further

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

1.2. Account Information and Ownership. You agree to maintain accurate Account information by providing updates to Intermedia promptly, but no later than five (5) business days, when any of Your Account information requires change, including any relevant Account contact information. Failure by You, for any reason, to respond within five (5) business days to any inquiries made by Intermedia to determine the validity of information provided by You will constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any Intermedia account or any portion thereof, including Your Account, Intermedia will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, Intermedia may immediately suspend, alter or terminate any relevant account, including Your Account, or any portion thereof. You will reimburse Intermedia for any legal and other fees incurred with respect to any dispute regarding control or ownership of Your Account or Your Data or the same of another Intermedia customer. You acknowledge and agree that (i) the legal owner of all Data on the Account is You, the counterparty to this Agreement, and not any individual User, including any Account contact registered with Intermedia, regardless of any administrative designation (e.g., "Administrator," "Billing Contact," "Owner," etc.) and (ii) Intermedia may request any documentation it requires to establish ownership and rights to Your Account and any related Data; provided that any User with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

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

**2. TERM AND TERMINATION.**

2.1. Term. The Agreement term is either the Initial Term or Renewal Term (each, a "Term") as defined herein.

(a) Monthly Plan Agreement Term. For a Monthly Plan with Intermedia, the Initial Term is the period from the date of Your initial payment or acceptance of this

Agreement, whichever occurs earlier, through the remainder of that calendar month. A Renewal Term for a Monthly Plan is defined as one calendar month beginning at the end of the Initial Term and each subsequent calendar month thereafter.

(b) 6 Month Extended Plan Agreement Term. For a 6 Month Extended Plan with Intermedia, the Initial Term is the period from the date of Your initial payment or acceptance of this Agreement, whichever occurs earlier, through the remainder of that calendar month and continuing through the next six (6) calendar months (for example, a 6 Month Extended Plan that begins on 14th April will continue until 31st October), unless the parties have agreed in writing to a longer term. A Renewal Term for a 6 Month Extended Plan is defined as the six-month period beginning at the end of the Initial Term and each subsequent six-month period thereafter.

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

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

2.2. Termination by You.

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

(b) 6 Month Extended Plan or 12 Month Extended Plan (each an "Extended Plan"). For an Extended Plan, if Service Availability (as defined in the SLA) drops below 80% for a period of 2 consecutive months or more and/or if Intermedia is not able to restore more than 120 hours of Exchange Data (as defined in the SLA) except when such drop in Service Availability or inability to restore Exchange Data is caused (whether directly or indirectly) by any Force Majeure Event (as defined in Section 14.6 below), then You may terminate this Agreement by following the termination procedure located within the "Account" section of the administrative control panel prior to the beginning of any Renewal Term. Intermedia will refund (or refrain from charging You) the monthly fees for the month in which you terminate the Services under this Section 2.2(b) and Intermedia will not charge You monthly fees for any month following the month in which you terminate the Services under this Section 2.2(b).

2.3. Termination by Intermedia.

(a) 15-Day Termination. Intermedia may terminate this Agreement for any reason by providing fifteen (15) calendar days notice. If Intermedia terminates this

Agreement pursuant to this Section 2.3(a), (i) for a Monthly Plan, if the effective termination date occurs prior to the end of the then-current Term, Intermedia will refund (or refrain from charging You) the pro rata monthly fees for the month in which Services terminate and (ii) for an Extended Plan, Intermedia will refund (or refrain from charging You) the monthly fees for the month in which Services terminate. For either a Monthly Plan or an Extended Plan, if Intermedia terminates this Agreement pursuant to this Section 2.3(a), Intermedia will not charge You monthly fees for any month following the month in which Intermedia terminates this Agreement.

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

(i) Any material breach of this Agreement by You, as determined by Intermedia in its sole discretion, including, but not limited to, failure to make any payment when due, violation of the AUP or any other Intermedia policy or procedure applicable to the Services as notified to You from time to time;

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

(iii) Any non-material breach of this Agreement by You which remains uncured beyond ten (10) calendar days from notice by Intermedia.

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

(d) No Refunds: Further Payment Due. If Intermedia terminates this Agreement pursuant to Section 2.3(b), (i) Intermedia will not refund to You any paid fees and (ii) You will be liable for any payment that would have been due had You terminated pursuant to section 2.2.

2.4. Following Termination. Termination will not cancel or waive any fees owed to Intermedia or incurred prior to or upon termination. You agree that Intermedia may charge such unpaid balance to Your Account on file or otherwise bill You for such unpaid balance. Upon termination, You must promptly uninstall all software provided by Intermedia in connection with the Services. All of Your Data may be irrevocably deleted within fourteen (14) calendar days of termination, including but not limited to, databases, contacts, calendars, e-mail, website content, Exchange Data and any other Data hosted by Intermedia. It will be solely Your responsibility to secure all necessary Data from Your Account prior to termination. Intermedia will not be responsible or otherwise liable for any loss of Your Data or any damages arising from the deletion of Your Data following termination of the Services.

### 3. FEES, BILLING, TAXES, CHARGES.

3.1. Fees. The fees initially charged upon ordering any Service will be effective for the Initial Term and each Renewal Term of this Agreement, provided, that Intermedia will have the right to increase these fees at any time upon

thirty (30) calendar days notice to You. If You do not agree with such fee increase, You will have the right to terminate this Agreement immediately upon notice, provided, that such notice of termination must be received within thirty (30) calendar days of date of notice of the fee increase. All payments made to Intermedia shall be in GBP.

3.2. Billing and Payment Arrangements. Intermedia will bill You monthly for all recurring and any applicable one-time fees in that month, including but not limited to interest, cheque paying programme fees and returned cheque fees. Intermedia shall make a VAT invoice available to you monthly.

#### 3.3. Payment by Automated Means.

(a) You may view and print an invoice for Your Account using the administrative control panel made available to You. On or about the first day of each month, Intermedia will apply the current monthly charges to Your automated payment method, the relevant information of which You entered on the billing information page in the administrative control panel. Payment by automated means includes any form of automated payment accepted by Intermedia from time-to-time, including credit card, debit card, direct debit or other means.

(b) You must provide Intermedia with valid automated payment information as a condition to receive or use the Services. You are responsible for and agree to update Intermedia with any changes to Your billing and/or automated payment information (e.g. new or updated credit card, credit card expiration date or other payment account information). **By providing Intermedia with the automated payment information, You authorise Intermedia to charge Your automated payment account for any amounts arising from or relating to the Services without further authorisation from You.** It is Your responsibility to keep Your automated payment information up-to-date. If charges to Your automated payment account fail, Intermedia will email a warning to Your Account billing contacts.

(c) If Intermedia is unable to successfully process Your payment by automated means by the seventh (7th) calendar day of the month for which the payment is due, then Intermedia, without limiting its remedies under this Agreement, may charge You interest on the overdue amount at the rate of 4% per annum above HSBC Bank plc's base lending rate from time to time. Such interest shall accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest immediately on demand. Notwithstanding the provisions of this paragraph, Intermedia may at its discretion claim in the alternative interest under the Late Payment of Commercial Debts (Interest) Act 1998. You will pay all collection costs incurred by Intermedia (including, without limitation, reasonable attorney's fees).

#### 3.4. Payment by Cheque.

(a) If You apply for and are accepted into Intermedia's cheque paying programme, Intermedia will issue You an invoice within the first five (5) calendar days of each calendar month. Each invoice will include an invoice processing fee of GBP 15.00 (fifteen pounds sterling). Payment by cheque must be received by the fifteenth (15<sup>th</sup>) calendar day of each month. Acceptance into and continued participation in Intermedia's cheque paying programme will be at Intermedia's sole discretion.

(b) Should Your cheque not be honored, a cheque fee in the amounts of GBP 12.00 (twelve pounds sterling) will be charged to Your Account. In addition, Intermedia may require You to pay by banker's draft or BACS transfer or other means determined by Intermedia.

(c) If Intermedia does not receive payment by the fifteen (15th) calendar day of the month for which the payment is due, then Intermedia, without limiting its remedies under this Agreement, may charge You interest on the overdue amount at the rate of 4% per annum above HSBC Bank plc's base lending rate from time to time. Such interest shall accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest immediately on demand. Notwithstanding the provisions of this paragraph, Intermedia may at its discretion claim in the alternative interest under the Late Payment of Commercial Debts (Interest) Act 1998. You will pay all collection costs incurred by Intermedia (including, without limitation, reasonable attorney's fees).

3.5. Fees for Excess Use. You will monitor and maintain Your Accounts within all Intermedia-specified limits and in a manner that does not disrupt the activities of Intermedia and other Intermedia customers and users. If Your usage exceeds the limits for Your Account or may disrupt the activities of other Intermedia customers, You agree that Intermedia may immediately, in its sole discretion, (i) charge You for such excess usage via Your automated payment account, or by invoice if You have been accepted into Intermedia's cheque paying programme, (ii) upgrade You to a plan or increase the limits on Your Account to address this excess usage, and/or (iii) suspend Your Account or terminate Your Account upon notice To You. Usage and associated charges for excess usage will be determined based solely upon Intermedia's collected usage information. Unused monthly allotments will not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You will be responsible for the new costs and fees.

3.6. Taxes. In addition to Intermedia's charges, You will be liable for all Value Added Tax and (without limitation) all other indirect and sales taxes related to the fees and charges charged to you under this Agreement.

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

3.8. Bill Disputes. You will notify Intermedia of any dispute relating to charges billed to Your Account by submitting written notice to Intermedia within sixty (60) days of the date the disputed charges appeared on Your Account. The existence of a dispute will not relieve You from paying any and all amounts billed hereunder. You waive all rights to dispute any charges not disputed by written notice as required above.

3.9. Electronic Billing and Documentation. All billing and other documentation regarding the Services may be provided electronically ("Electronic Documentation"). You acknowledge and agree that You are able to view all Electronic Documentation and consent to receiving Electronic Documentation and decline to receive hard copies of any such materials.

#### 4. USE OF THE SERVICES.

4.1. Internal Use. You will use the Services for Your own internal business, non-residential and non-personal use. You acknowledge and agree that You will not allow any third party, including Your vendors and service providers, to access or use the Services.

4.2. Restricted Activities. You will not (A) use any Service for any purpose outside the Service's intended scope, features, and function set, (B) use any Service for third-party training, (C) use any Service as an application service provider or service bureau, (D) use any Service for timesharing or rental, (E) use any Service to design software or other materials or services with similar or competitive functionality for any purpose, including distribution to third parties, (F) except with respect to Your Data, duplicate any portion of the Services or display, distribute, publish, or otherwise disclose any Service; (G) use any of the Services to interface with any other service or application that is outside the scope of intended use; (H) decompile, disassemble, or otherwise reverse engineer any portion of the Services; (I) without prior written consent of Intermedia, make any modification or interface to any Service that is not specifically authorised by Intermedia; and (J) resell or sublicense any portion of the Services, and any purported resale or sublicense will be void. You may not access the Services for purposes of monitoring their performance, availability, or functionality, or for any other benchmarking or competitive purposes, without Intermedia's prior written consent. You may not, without Intermedia's prior written consent, access the Services if You are a direct competitor of Intermedia.

4.3. Applicable Law. You acknowledge and agree that access and use of the Services may be restricted or limited as a result of Applicable Laws and that You will not use, or allow the use of the Services in contravention of, and will comply with, any Applicable Law. You represent that You and Your Users are not named on any Government Authority list of persons or entities prohibited from receiving exports, and (ii) You will not permit Users to access or use Services in violation of any export embargo, prohibition or restriction. You acknowledge and agree that that it is Your sole responsibility to use the Services in a lawful manner.

#### 5. YOUR DATA.

5.1. Submission of Your Data. Any Data You provide to Intermedia in connection with the Services must comply with the AUP. Attempting to place or transmit, or requesting placement or transmission, of Data that does not comply with the AUP will be a material breach of this Agreement. Intermedia may, in its sole discretion, reject or remove Data that You have used or attempted to use with respect to the Services. Any Data used with respect to the Services by or through You will be free of any and all malicious code, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the Services or Intermedia's servers. You hereby represent and warrant to Intermedia that You have the right to use any patented, copyrighted, trademarked, proprietary or other material in connection with Data that You use, post, or otherwise transfer or transmit with respect to the Services.

5.2. Public Disclosure of Data. You are solely responsible for ensuring that You do not accidentally make

any private Data publicly available. Any Data made public may be publicly accessible through the internet and may be crawled and indexed by search engines or other third parties. By making any Data publicly available on any of the Services You affirm that You have the consent, authorisation or permission, as the case may be from every person who may claim any rights in such Data to make such Data available in such manner.

5.3. Data Takedown. By making any Data publicly available in the manner aforementioned, You expressly agree that Intermedia will have the right to block access to or remove such Data made available by You, if Intermedia receives complaints, inquiries or notices concerning any illegality or infringement of rights in such Data. You expressly consent to determination of questions of illegality or infringement of rights in such Data by the agent designated by Intermedia for this purpose.

5.4. Filtering. Intermedia may employ various filtering methods to reduce unwanted content, such as SPAM e-mail, from reaching Your Intermedia Account. You acknowledge and agree that such methods may prevent legitimate content from reaching Your Account and that Intermedia will not be liable therefor.

5.5. Control. Intermedia is not obligated to exercise control over the content of information, including Your Data, passing through Intermedia's network except any controls expressly provided in this Agreement.

**6. CONFIDENTIALITY AND PRIVACY.**

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. Your Confidential Information will include Your Data. Intermedia's Confidential Information will include the Services (and any portion thereof), the terms and conditions of this Agreement and all related Service order forms, 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, (i) 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, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement.

6.3. Use and Disclosure by Intermedia. Notwithstanding the foregoing, Intermedia may use or disclose Your Data (a)

as expressly permitted in writing by You, (b) as expressly provided in this Agreement, including (i) in accordance with the Privacy Policy (as if such Data were "Information" as defined under the Privacy Policy), and (ii) to access Your Data to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters. **You expressly consent to the foregoing use and disclosure.**

**7. BETA OFFERINGS.**

**The SLA does not apply to any Beta Offerings. Notwithstanding anything else set forth in this agreement, Intermedia does not make any representations or warranties regarding any Beta Offering or the integrity of any data stored in connection with any Beta Offering. You are strongly discouraged from using any Beta Offering in connection with sensitive data.** Intermedia may change or terminate any Beta Offering in its sole discretion without notice and does not represent or warrant the result of any such action. Intermedia may convert any Beta Offering to a paid service upon notice to You in Intermedia's sole discretion. To avoid incurring increased charges following such a conversion, You must terminate (i) the individual converted service (if possible) by contacting Intermedia as directed in the conversion notice, or (ii) if You subscribe to no other services under Your Account, the entire Account, pursuant to section 2 of this Agreement.

**8. LIMITED WARRANTY; LIMITATION ON LIABILITY; THIRD-PARTY SERVICES.**

8.1. THIS SECTION 8 SETS OUT THE ENTIRE FINANCIAL LIABILITY OF INTERMEDIA (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS, CONSULTANTS, SUBCONTRACTORS, PARTNERS, VENDORS AND LICENSORS) TO YOU IN RESPECT OF:

- (A) ANY BREACH OF THE CONTRACT;
- (B) ANY USE MADE BY YOU OF THE SERVICES, THE DELIVERABLES OR ANY PART OF THEM; AND
- (C) ANY REPRESENTATION, STATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) ARISING UNDER OR IN CONNECTION WITH THE CONTRACT.

8.2. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES THE LIABILITY OF INTERMEDIA:

- (A) FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE; OR
- (B) FOR ANY DAMAGE OR LIABILITY INCURRED BY YOU AS A RESULT OF FRAUD OR FRAUDULENT MISREPRESENTATION BY INTERMEDIA.
- (C) ANY OTHER LOSS OR LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.

8.3 INTERMEDIA AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, VENDORS AND LICENSORS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMISSIBLE IN LAW ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

YOU HEREBY AGREE THAT THE TERMS OF THIS AGREEMENT SHALL NOT BE ALTERED DUE TO CUSTOM OR USAGE OR DUE TO THE PARTIES' COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT.

8.4 SUBJECT TO SECTION 8.2:

(A) INTERMEDIA SHALL NOT BE LIABLE FOR:

- 1) LOSS OF PROFITS; OR
- 2) LOSS OF BUSINESS; OR
- 3) DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; OR
- 4) LOSS OF ANTICIPATED SAVINGS; OR
- 5) LOSS OF OR CORRUPTION OF DATA OR INFORMATION; OR
- 6) ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES.

(B) INTERMEDIA'S TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN ANY TWELVE MONTH PERIOD IN CONNECTION WITH THE PERFORMANCE, OR CONTEMPLATED PERFORMANCE, OF THIS CONTRACT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE HIGHER OF (1) TEN THOUSAND POUNDS AND (2) THE TOTAL FEES PAID BY YOU IN THE PERIOD OF TWELVE MONTHS ENDING ON THE DATE OF THE FIRST INCIDENT IN SUCH TWELVE MONTH PERIOD GIVING RISE TO A CLAIM, SUBJECT TO THE SERVICE LEVEL AGREEMENT.

8.5 YOU EXPRESSLY AGREE THAT YOUR SOLE REMEDY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE, OR CONTEMPLATED PERFORMANCE, OF THIS CONTRACT OR THE PROVISION OF SERVICES HEREUNDER SHALL BE AGAINST INTERMEDIA AND YOU FOREGO ANY RIGHT TO SUE OR OTHERWISE SEEK LEGAL REMEDY AGAINST INTERMEDIA'S SUBSIDIARIES, PARENT COMPANY, AFFILIATES, EMPLOYEES, AGENTS, PARTNERS, VENDORS, LICENSORS OR SUB-CONTRACTORS.

8.6 Other Liability. None of the Intermedia Parties is responsible to You for any warranty provided by Intermedia.

8.7. Third-Party Services. Intermedia may link to or offer Third-Party Services on Intermedia's website or otherwise through the Services. **Any purchase, enabling or engagement of Third-Party Services, including but not limited to implementation, customisation, consulting services, and any exchange of Data between You and any Third-Party Service, is solely between You and the applicable Third-Party Service provider and is subject to the terms and conditions of such Third-Party Service provider. Intermedia does not warrant, endorse or support Third-Party Services and is not responsible or**

**liable for such Services or any losses or issues that result as Your use of such services.** If You purchase, enable or engage any Third-Party Service for use in connection with the Services, You acknowledge that Intermedia may allow providers of those Third-Party Services to access Your Data used in connection with the Services as required for the interoperation of such Third-Party Services with the Services. You represent and warrant that Your use of any Third-Party Service signifies Your independent consent to the access and use of Your Data by the Third-Party Service provider, and that such consent, use and access is outside of Intermedia's control. Intermedia will not be responsible or liable for any disclosure, modification or deletion of Data resulting from any such access by Third-Party Service providers.

**9. OWNERSHIP AND CONTROL.**

9.1. No Transfer. Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any Service provided to You, including without limitation any copyright, trade secret and vested or potential trademark and patent rights, is solely the property of Intermedia and its vendors and licensors. As between You and Intermedia, all materials distributed by Intermedia in connection with the Services will at all times remain the property of Intermedia, and upon the request of Intermedia or upon termination of this Agreement, You will promptly return any and all such materials.

9.2. Control. Intermedia will have sole and complete control over, and reserves the right at any time to make changes to, the configuration, appearance, content and functionality of the Services. In addition, Intermedia reserves the right, at any time, without prior notice, to the exercise of its sole discretion to suspend or terminate any Service for the protection of the security and integrity of the Services or other business, technical or financial considerations as determined by Intermedia.

9.3. Feedback Licence. Intermedia will have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual licence to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You and Your Users to Intermedia or any Intermedia Party.

9.4. Porting. You acknowledge and agree that, as between You and Intermedia, any telephone or other access numbers or destination or origination points provided by Intermedia in connection with the Services (such as fax service) are the property of Intermedia and may not be ported out or otherwise transferred or modified ("Intermedia Numbers"). Further, You acknowledge and agree that You will promptly compensate Intermedia for any expenses relating to your attempted port of any Intermedia Number.

**10. HARDWARE, EQUIPMENT, AND SOFTWARE.**

You are responsible for and must provide all hardware, software, services and other components necessary to access and use the Services. Intermedia makes no representations, warranties, or assurances that Your hardware, software, services and other components will be compatible with any Service. Intermedia reserves the right to change or upgrade any equipment or software that it uses to provide the Services without notice to You. Intermedia will install security patches, updates, upgrades and service packs

("Updates") as it determines in its sole discretion, and reserves the right, but not the obligation, to roll back any Updates. Updates may change system behavior and functionality and as such may negatively affect the Services used by You. Intermedia cannot foresee nor can it be responsible or liable for service disruption or changes in functionality or performance due to Updates. Intermedia is not responsible or liable for issues that may arise from incompatibilities between Your Data and use of the Services and any Update or hardware or software change or configuration, regardless of whether discretionary or requested.

**11. INDEMNIFICATION.**

You will defend, indemnify, save, and hold Intermedia and the Intermedia Parties harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against them that may arise or result from Your use of the Services, Your breach of this Agreement, Your negligence or willful misconduct, or any of Your own services or products.

**12. HOW THE CONTRACT BETWEEN US IS FORMED, WRITTEN COMMUNICATIONS AND MODIFICATION OF TERMS.**

12.1. How the Contract between us is formed. Your order constitutes an offer to Intermedia to buy a Service and Your offer is made under the terms and conditions of this Agreement when you click the "I Accept and Continue" button. All orders are subject to acceptance by Intermedia, and Intermedia will confirm such acceptance to You by online acceptance which You will see confirming that the Service has commenced (the "Service Confirmation"). The contract between us under this Agreement (for the purposes of this Section 12, the "Contract") will only be formed once this Service Confirmation has occurred or once you begin using any Service. The Contract will relate only to those Services whose commencement Intermedia has confirmed in the Service Confirmation. Intermedia will not be obliged to supply any other Services which may have been part of Your order until the commencement of such Services has been confirmed in a separate Service Confirmation or once You begin using those other Services.

12.2. Written Communications and Notice. Applicable laws require that some of the information or communications Intermedia send to you should be in writing. You accept that communication from Intermedia will be electronic wherever possible. Intermedia will contact You by e-mail or provide you with information by posting notices on our website and/or to Your Account. For contractual purposes, You agree to this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that Intermedia provides to You electronically comply with any legal requirement that such communications be in writing. This condition does not affect Your statutory rights. 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 upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email or posting to our website or to Your Account (provided e-mail or posting will not be sufficient for notices of termination or an indemnifiable claim). Notices to You will be addressed to any e-mail address, postal address or facsimile number registered with Intermedia, or through

means of online posting through the Services. Notices to Intermedia that are not expressly authorised by administrative control panel under this Agreement may be mailed to Intermedia's General Counsel at its principal place of business: Intermedia Technologies Company Ltd., 4th Floor Imperial House, 15 Kingsway, London WC2B 6UN United Kingdom, or such other address as designated on Intermedia's website from time to time

12.3. Modification of Terms. Intermedia may update, amend, modify or supplement the terms and conditions of this Agreement from time to time by giving You notice by email or posting to the Services. Such changes will take effect not less than 15 (fifteen) calendar days after the day the email is sent or notice is posted to the Services unless you give Intermedia notice to terminate by following the termination procedure located within the Account section of the Administrative Control Panel within such 15 (fifteen) calendar day period, in which event Intermedia shall refund or not charge You the monthly fees for the month in which Services terminate. Any such modification may be made without the consent of any third party beneficiaries of this Agreement. You can review the most current version of this Agreement at any time at: (<http://intermedia.co.uk/legal/legal.asp>).

**13 Data Protection.**

13.1 Data Protection Definitions. In this Agreement, the following definitions shall apply:

- "Data Controller" has the meaning set out in section 1(1) of the Data Protection Act 1998;
- "Data Processor" has the meaning set out in section 1(1) of the Data Protection Act 1998;
- "Data Subject" means an individual who is the subject of Personal Data;
- "Personal Data" has the meaning set out in section 1(1) of the Data Protection Act 1998; and
- "Processing" and "process" have the meaning set out in section 1(1) of the Data Protection Act 1998.

13.2 Designations. Intermedia and You acknowledge that for the purposes of the Data Protection Act 1998, You are the Data Controller and Intermedia is the Data Processor in respect of any Personal Data.

13.3 Permissions. Intermedia shall process the Personal Data only in accordance with Your instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by You.

13.4 Reliability. Intermedia shall take reasonable steps to ensure the reliability of any of its employees and sub-contractors who have access to the Personal Data.

13.5 Applicable Laws. Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

13.6 Measures. Intermedia warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

- 1) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- 2) the nature of the data to be protected;

including, but not limited to, the following security measures: storing Personal Data on secure servers behind firewalls; restricting access to such servers to authorised personnel only, encrypting credit card details and administrative control panel passwords and only permitting access to such servers through a secure channel; and

(b) take reasonable steps to ensure compliance with those measures.

13.7 Directions. You acknowledge that Intermedia is reliant on You for direction as to the extent to which Intermedia is entitled to use and process the Personal Data; consequently Intermedia will not be liable for any claim brought by a Data Subject arising from any action or omission by Intermedia to the extent that such action or omission resulted directly or indirectly from Your instructions.

13.8 Third Party. Intermedia may authorise a third party (sub-contractor) to process the Personal Data provided that the sub-contractor's contract is on terms which provide substantially the same protections as those set out in Sections 13.4, 13.5 and 13.6 of this Agreement.

13.9 Transfer. You acknowledge that Intermedia may, pursuant to a sub-contract in accordance with Section 13.8 arrange for the processing of Personal Data to take place outside the European Economic Area and consents to any transfer and processing of data in accordance with such sub-contract.

**14. MISCELLANEOUS.**

14.1. Governing Law; Jurisdiction; Forum; Attorneys' Fees. This Agreement will be governed by and construed in accordance with the laws of England and Wales. You submit to the non-exclusive jurisdiction of the English courts.

14.2. Age and Capacity. You hereby represent and warrant that each User has reached the older of (i) the age of eighteen and (ii) the age of majority in the User's jurisdiction, and that You are not subject to a limitation on Your ability to enter into this Agreement.

14.3. 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.

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

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

14.6. Force Majeure. Except for monetary obligations, this Agreement and Your obligations hereunder will not be affected or impaired because Intermedia is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of Force Majeure Event and Intermedia's obligations under this Agreement will be suspended by any such Force Majeure Event. "Force Majeure Event" is any cause beyond Intermedia's reasonable control or anticipation, including, without limitation, acts of war, acts of god, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet or other reason that is beyond Intermedia's reasonable control or anticipation.

14.7. Survival. The preamble, "Definitions" and Sections 2, 3, 4, 5, 6, 8, 9, 11, 12, 13 and 14 of this Agreement will survive termination.

14.8. Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and Intermedia with respect to the Services. You understand and agree that Intermedia and You intend to include, as the sole third party beneficiaries of this Agreement, (a) Intermedia's vendors and licensors and, in the event of any breach of this Agreement, Research in Motion Limited ("RIM"), with all rights and remedies available as if RIM and such vendors and licensors were a party to this Agreement and (b) the Intermedia Parties, all of whom may claim the benefit of Section 8.

**APPENDIX A. MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS**

This document (hereinafter, “Appendix A”) concerns Your use of Microsoft software, which includes computer software provided to You by Intermedia as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually or collectively “Licensed Products”). Intermedia does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Intermedia needs to inform You. Your right to use the Licensed Products is subject to Your agreement with Intermedia, and to Your understanding of, compliance with and consent to the following terms and conditions, which Intermedia does not have authority to vary, alter or amend.

**1. DEFINITIONS.**

For purposes of this Appendix, the following definitions will apply:

“**Client Software**” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone”, or other electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a server.

“**Redistribution Software**” means software described in Paragraph 6 (“Use of Redistribution Software”) below.

**2. OWNERSHIP OF LICENSED PRODUCTS.**

The Licensed Products are licensed to Intermedia from an affiliate of the Microsoft Corporation (“Microsoft”). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of Licensed Products or any intellectual property rights to You.

**3. COPYRIGHT, TRADEMARK AND PATENT NOTICES.**

You must not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Licensed Products. You must include Microsoft’s copyright notice on any labels or documentation (including online documentation) for Intermedia’s products that include the Licensed Products. You have no right under this Agreement to use any Microsoft logos in any manner whatsoever. Whenever a Licensed Product is first referenced in any written or visual communication, You must use the appropriate trademark, Licensed Product descriptor and trademark symbol (either ™ or ®), and clearly indicate Microsoft’s (or Microsoft’s suppliers’) ownership of such marks. For information on Microsoft trademarks, including a listing of current trademarks, see <http://www.microsoft.com/trademarks>. You must not undertake any action that will interfere with or diminish Microsoft’s (or Microsoft’s suppliers’) right, title and/or interest in the trademark(s) or trade name(s). At Microsoft’s or Intermedia’s request, You must provide Microsoft with

samples of all of Your written or visual materials that use a Licensed Product name.

**4. ANTI-PIRACY.**

You must not engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. You may not distribute or transfer Licensed Products to any party that You know is engaged in these activities. You must report to Microsoft any suspected counterfeiting, piracy or other intellectual property infringement in computer programmes, manuals, marketing materials or other materials owned by Microsoft, its Affiliates and/or its licensors as soon as You become aware of it. You will cooperate with Microsoft in the investigation of any party suspected of these activities.

**5. USE OF CLIENT SOFTWARE.**

You may use the Client Software installed on Your Devices by Intermedia only in accordance with the instructions, and only in connection with the services, provided to You by Intermedia. The terms of this Appendix A permanently and irrevocably supersede the terms of any Microsoft End User Licence Agreement that may be presented in electronic form during Your use of the Client Software.

**6. USE OF REDISTRIBUTION SOFTWARE.**

In connection with the services provided to You by Intermedia, You may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO INTERMEDIA, WHICH TERMS MUST BE PROVIDED TO YOU BY INTERMEDIA.** Microsoft does not permit You to use any Redistribution Software unless You expressly agree to and comply with such additional terms, as provided to You by Intermedia.

**7. COPIES.**

You may not make any copies of the Licensed Products; provided, however, that You may (a) make one (1) copy of Client Software on Your Device as expressly authorised by Intermedia; and (b) You may make copies of certain Redistribution Software in accordance with Paragraph 6 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of Your agreement with Intermedia, upon notice from Intermedia or upon transfer of Your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the Licensed Products.

8. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.
  9. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute Licensed Products to any third party, and You may not permit any third party to have access to and/or use the functionality of the Licensed Products.
  10. **TERMINATION.** Without prejudice to any other rights, Intermedia may terminate Your rights to use the Licensed Products if You fail to comply with these terms and conditions. In the event of termination or cancellation, You must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of their component parts.
  11. **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY INTERMEDIA AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.
  12. **PRODUCT SUPPORT.** Any product support for the Licensed Products is provided to You by Intermedia and is not provided by Microsoft or its affiliates or subsidiaries.
  13. **NOT FAULT TOLERANT.** THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE Licensed Products COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
  14. **EXPORT RESTRICTIONS.** The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Licensed Products, including U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issue by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- DISCLOSURE OF INFORMATION.** You hereby consent to Intermedia providing information regarding Your Account to Microsoft to the extent it is required to do so under the terms of its licence agreement with Microsoft.
15. **LIABILITY FOR BREACH.** In addition to any liability You may have to Intermedia, You agree that You will also be legally responsible directly to Microsoft for any breach of these terms and conditions.
  16. **OWA ACCESS RESTRICTIONS.** You acknowledge and agree that if You have an Outlook Web Access-only (OWA-only) Account (Basic SAL licence), You are restricted from and will not use shared folders, shared calendars, shared contacts, shared tasks and public folders with respect to such access.

**APPENDIX B. RESEARCH IN MOTION USE –TERMS AND CONDITIONS**

This Appendix is required as a result of Your use of Research in Motion Limited (“RIM”) software, hardware and services as well as any printed or electronic documentation or associated media provided by Intermedia (the “RIM Products”) and is in addition to the terms and conditions of the Master Service Agreement. Intermedia does not own the RIM Products and the use thereof is subject to certain rights and limitations of which Intermedia needs to inform You. Your right to use the RIM Products is subject to Your agreement with Intermedia, and to Your understanding of, compliance with and consent to the following terms and conditions. Intermedia in no way represents or acts as an agent of RIM in the provision of the Hosted BES Software or any other RIM Product.

5. **DEFINITIONS.** Capitalized terms used herein but not otherwise defined will have their respective meanings set forth in the Master Service Agreement. For purposes of this Appendix, the following definition will apply:

“**BBSLA**” means the BlackBerry Software License Agreement that relates to a copy of BlackBerry Server Software, a RIM Product.

“**End User**” solely for the purpose of this Appendix will mean any of Your employees, consultants or independent contractors to whom You grant permission to access the Hosted BES Software.

“**End User Data**” means any information or data of any kind that personally identifies (or that can be used, together with other information or data, to personally identify) an End User.

6. **Use.** Each End User is prohibited from using the RIM Products for any purpose other than the internal business or personal purposes of the End User. You will be responsible for each End User’s compliance with this Appendix.

7. **BBSLA.** You agree to RIM’s current BBSLA (<http://na.blackberry.com/eng/legal/bbsla.jsp> or request a copy from Intermedia), which is incorporated by reference herein, with respect to Your and End Users’ access to the RIM Products. You acknowledge and agree that to the extent that You or Your End Users access the Hosted BES Software, the Hosted BES Software is part of the Customer’s BlackBerry Solution, defined as “Your BlackBerry Solution” under the BBSLA.

8. **Exclusion of Liability.** IN NO EVENT WILL RIM AND RIM’S AGENTS BE LIABLE TO ANY END USER FOR, ANY INDIRECT, ECONOMIC, SPECIAL, PUNITIVE, COMMERCIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, DAMAGES CAUSED BY DELAYS, OR A FAILURE TO REALIZE EXPECTED SAVINGS) DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS APPENDIX OR THE END USER’S USE OF THE RIM PRODUCTS, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD WAS DISCLOSED TO THE PARTIES.

9. **Application of Limitations, Exclusions and Disclaimers.** The limitations, exclusions and disclaimers set out in the Master Service Agreement and this Appendix will apply: (a) whether an action, claim or demand arises from a breach

of warranty or condition, breach of contract, tort (including negligence), strict liability or any other kind of civil or statutory liability connected with or arising out of the Master Service Agreement, this Appendix or the RIM Products; and (b) to RIM and to RIM’s affiliated companies as well as to RIM and to RIM’s affiliated companies’ directors, officers, employees, and independent contractors. Some jurisdictions do not allow limitation or exclusions of certain types of damages and/or of implied conditions or warranties. **NOTWITHSTANDING ANYTHING IN THE MASTER SERVICE AGREEMENT OR THIS APPENDIX, THE LIABILITY OF INTERMEDIA AND ITS LICENSORS TO YOU WILL BE LIMITED AND EXCLUDED AT LEAST TO THE SAME EXTENT AS THE LIMITATIONS AND EXCLUSIONS OF LIABILITY PROVISIONS CONTAINED IN THE BBSLA.**

10. **Termination for Breach.** In the event that You or any End User breaches the Master Service Agreement, including without limitation, any provision of this Appendix, Intermedia will have the right, in its sole discretion, to immediately terminate the Master Service Agreement or to terminate the portion of the Services to which such breach pertains.

11. **Automatic Termination.** Upon termination of Intermedia’s Master Alliance Agreement with RIM and any portion of the applicable license terms (including the BBSLA), this Appendix will automatically terminate.

12. **Liability.** As a condition of Intermedia’s ability to provide access to the RIM Products to End Users, End User will be liable to Intermedia for any and all damages caused as a result of any breach of the Agreement by such End User without limitation or exception.

13. **End User Data.** You hereby consent, and consent on behalf of Your End Users, to Intermedia providing End User Data to RIM solely for the purpose of Intermedia providing Services to You and RIM providing Services to Intermedia.