

This REFERRAL AGREEMENT (“**Agreement**”) is a legal agreement between you and Intermedia.net, Inc., a Delaware corporation (“**Intermedia**”). This Agreement describes the terms and conditions under which Intermedia will offer you Commissions for marketing and promoting Intermedia Products to customers. As used in this agreement, “**you**” and “**your**” means the applicant.

BY CLICKING THE “I HAVE READ AND ACCEPT THE ABOVE TERMS AND CONDITIONS” CHECKBOX, YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND, AFTER DUE CONSIDERATION, HEREBY AGREE TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT. YOU REPRESENT AND WARRANT THAT YOU ARE NOT A LEGAL MINOR; THAT YOU ARE COMPETENT TO ENTER INTO BINDING CONTRACTS; AND THAT YOU ARE NOT DEPENDING ON ANY PROMISES OR STATEMENTS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. YOU AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING ARISING OUT OF THIS AGREEMENT. IF YOU ARE A COMPANY OR OTHER LEGAL ENTITY, THE PERSON WHO CLICKS THE “I HAVE READ AND ACCEPT THE ABOVE TERMS AND CONDITIONS” CHECKBOX HEREBY REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO BIND THE COMPANY OR OTHER LEGAL ENTITY TO THE TERMS OF THIS AGREEMENT.

1. REFERRAL PROGRAM PORTAL.

1.1 Use of the Program Portal. Intermedia may provide to you an online referral program interface (the “**Program Portal**”). Any use of the Program Portal is subject to policies that Intermedia may establish from time to time, including the policies located at <http://www.intermedia.net/legal>.

1.2 Your Information. You will provide requested information to Intermedia including contact and payment information, and will keep all information accurate and up-to-date through the Program Portal. You consent to Intermedia using the contact information you provide, including your email address, to contact you from time to time.

1.3 Referral Program Code. Intermedia will provide one or more unique codes to you (the “**Referral Code**”) which you may provide to customers in the form of an internet link, an alphanumeric identifier, or other formats determined by Intermedia.

1.4 Account Security. You will maintain the confidentiality and security of your Program Portal login credentials and will notify Intermedia immediately of any unauthorized access to your account, login credentials, Referral Code, or any other actual or potential breach of security involving the Program Portal or this Agreement.

2. INTERMEDIA PRODUCTS.

2.1 Definition. “**Intermedia Products**” means Exchange, SharePoint, Archiving, Lync, SecuriSync, Cloud Server, AppID, SIP Trunking, Hosted Phone System (HPBX), and individual services, along with all other products, services, software and documentation that may be installed, delivered, or deployed therewith; provided, however, that Intermedia may at any time in its sole discretion without notice to you offer additional products and services or modify, limit the availability of, or cease offering any or all products and services, including those expressly listed in this Section.

2.2 Grant of Rights. Intermedia hereby grants you a nonexclusive nontransferable license during the term of this Agreement to market and promote the Intermedia Products to prospective customers.

3. ADDITIONAL OBLIGATIONS.

3.1 You will not represent yourself as an agent or employee of Intermedia, nor make any promises, warranties, or agreements on behalf of Intermedia.

3.2 You will not send, cause, or contribute in any manner to any unsolicited bulk communications (including spam e-mail, text messages, or phone calls) in connection with Intermedia, Intermedia Products, or this Agreement.

3.3 You will not submit any person's contact information to Intermedia for the purpose of contact by Intermedia sales personnel unless that person has agreed to be contacted by Intermedia.

3.4 You will not misrepresent the features, capabilities, performance, specifications, prices, or other data about Intermedia Products.

3.5 If Intermedia in its sole discretion finds your marketing materials or your presentation of Intermedia or Intermedia Products unsuitable, you will withdraw such materials and presentation.

3.6 You will not violate any applicable law or regulation.

4. PAYMENT.

4.1 Commissions. For each agreement (i) executed between a customer and Intermedia (ii) for the sale or licensing of Intermedia Products, and (iii) for which the customer provides Intermedia with your Referral Code during the execution process (a "**Triggering Contract**"), Intermedia will pay to you the applicable payment, if any, specified by the then-current Commission Schedule (the "**Commission**"), provided that the Triggering Contract is not cancelled, repudiated, or otherwise terminated during the first 90 days after its execution (the "**Initial Period**"), and also provided that you remain in compliance with the terms of this Agreement. Nothing in this Agreement requires Intermedia to sell or agree to sell any Intermedia Product.

4.2 Commission Schedule. The schedule of commissions established from time to time by Intermedia in its sole discretion (the "**Commission Schedule**") will be available to you through the Program Portal.

4.3 Additional Payment Terms. Commissions will be paid in US dollars following the end of the Initial Period, to the payment account you specify through the Program Portal. Payments will be aggregated and paid on a monthly basis. All taxes and fees imposed in connection with Commissions will be solely your responsibility.

5. CONFIDENTIAL INFORMATION.

5.1 Definition. "**Confidential Information**" means any and all (i) information about Intermedia customers or prospective customers, including but not limited to their identities, contact information, account information, and personal information, (ii) Commission Schedules, (iii) the existence and amounts of discounts, fee reductions, or other special accommodations that may have been offered to or received by Intermedia customers or prospective customers, and (iv) information Intermedia provides to you that is marked as confidential. However Confidential Information does not include any information that is or becomes generally known to the public without any breach of your obligations hereunder, or that is received by you from a third party without breach of any obligation owed to Intermedia.

5.2 Protection of Confidential Information. You will not use or disclose to any third party any Confidential Information for any purpose outside the scope of this Agreement, except as authorized by Intermedia in writing or as required by law. You will use at least the same degree of care to protect the Confidential Information as you use to protect your own confidential information, but in no event less than reasonable care.

6. DISCLAIMER OF WARRANTIES.

6.1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, INTERMEDIA MAKES NO WARRANTIES WHATSOEVER TO YOU WITH REGARD TO THE INTERMEDIA PRODUCTS OR ANY OTHER PRODUCTS, SERVICES, SUPPORT, MATERIALS, OR ANY OTHER MATTERS RELATING TO THIS AGREEMENT. INTERMEDIA SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT THAT INTERMEDIA HAS ANY WARRANTY OBLIGATIONS RELATED TO INTERMEDIA PRODUCTS DESPITE THIS SECTION 6.1, SUCH WARRANTIES WOULD RUN TO THE CUSTOMER, NOT TO YOU.

7. INDEMNITY.

7.1 You will defend, indemnify and hold harmless Intermedia and its officers, directors, employees and agents from any claims, costs, loss, liabilities, or expenses (including reasonable attorney's fees) resulting from, relating to, or arising out of: (i) your provision of any warranty to any customer greater than the warranty provided in Intermedia's agreement with the customer, (ii) any unauthorized statements or representations you make to any customer or potential customer, or (iii) your performance of any services for any customer.

8. LIMITATION OF LIABILITY

8.1 EXCEPT FOR BREACH OF THE TERMS OF SECTION 5 (CONFIDENTIAL INFORMATION) AND OBLIGATIONS ARISING UNDER SECTION 7 (INDEMNITY), (I) NEITHER PARTY'S LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE INTERMEDIA PRODUCTS WILL EXCEED THE AMOUNTS PAID OR PAYABLE BY INTERMEDIA TO YOU UNDER THIS AGREEMENT DURING THE YEAR PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY, AND (II) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9. TERM AND TERMINATION.

9.1 Term. This Agreement will continue in full force and effect until terminated. Either party may terminate this Agreement for any reason or no reason by giving at least thirty (30) days prior notice to the other party.

9.2 Effect of Termination. Upon the termination of this Agreement, (i) the license set forth in Section 10.1 will terminate and you will immediately cease all uses of the Marks; (ii) you will promptly return to Intermedia or, if Intermedia so requests, promptly destroy all copies of Confidential Material and all materials supplied by Intermedia pursuant to this Agreement; and (iii) you will certify to Intermedia in writing that you have returned or destroyed all such Confidential Information and materials. Sections 5 through 11 of this Agreement will survive termination of this Agreement.

9.3 Commissions Payable After Termination. Notwithstanding termination of this Agreement, Intermedia will pay you Commissions in accordance with the terms of this Agreement for Triggering Contracts executed prior to termination of the Agreement, but only if you have provided current contact and payment information to Intermedia.

10. TRADEMARKS AND PUBLICITY.

10.1 License to Use Marks. Intermedia grants you a non-exclusive license during the term of this Agreement to use the Intermedia trademarks, service marks, trade names, logos, designs, brands, and names that Intermedia provides to you for use in promoting or marketing Intermedia Products

(collectively, the “**Marks**”), solely for the purpose of promoting and marketing Intermedia Products, and subject to branding guidelines that Intermedia may establish from time to time. You will not alter the Marks, remove the Marks from any materials provided by Intermedia, or use the Marks in any manner that would impair the reputation of Intermedia or the validity or value of the Marks, as determined in Intermedia’s sole discretion.

10.2 Restrictions. Other than the license granted in this Section, Intermedia reserves all right, title and interest in the Marks, and all use of the Marks will inure to the sole benefit of Intermedia. You will take no action inconsistent with Intermedia’s ownership of the Marks and will not challenge Intermedia’s rights in or attempt to register any of the Marks, or any other trademarks, service marks, trade names, product names, logos, designs, or other designations or brands owned or used by Intermedia or any mark confusingly similar thereto. If at any time you acquire any rights in or to, or any registration or application for, any of the Marks by operation of law or otherwise, anywhere in the world, you agree to assign and hereby assign such rights, registrations, or applications to Intermedia, along with any and all associated goodwill.

10.3 Marketing Materials. Intermedia may provide text or images to you for marketing purposes, which you may use solely to promote and market Intermedia Products.

10.4 Other use of Marks. You will not bid for or otherwise use any keyword or search term for use in search engines, linking or re-directing that (i) incorporates any Mark, or any variant or misspelling thereof, or (ii) infringes the intellectual property rights of Intermedia. You will not use any Mark in any domain name you register, or for any unlawful purpose.

10.5 Intermedia Rights. During the term of this Agreement, Intermedia may list you on Intermedia’s website as a referral program participant.

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

11. MISCELLANEOUS.

11.1 Modifications. Upon notice to you, Intermedia may update, amend, modify or supplement the terms and conditions of this Agreement from time to time on a going forward basis. You can review the most current version of this Agreement at <http://www.intermedia.net/legal>. If the changed Agreement materially modifies your rights or obligations, Intermedia may require you to indicate that you accept the changed Agreement, in which case the changes are effective only after your acceptance.

11.2 Independent Contractors. Neither party will have any authority, and neither party will represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other party. You are neither an agent of Intermedia nor a distributor of Intermedia Products. Except with Intermedia’s written permission, you will not make any representations or promises or provide any warranties related to Intermedia Products, nor will you enter into any agreement with a prospective customer on behalf of Intermedia. Each party is an independent contractor, and this Agreement will not be construed as creating a partnership, joint venture, agency, or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the acts or failures to act of the other party.

11.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of law principles. Any claim or suit arising out of or relating to this Agreement may only be brought in a court of competent jurisdiction

located in Santa Clara County, California. You agree to waive the right to trial by jury with respect to any proceeding arising out of this Agreement.

11.4 Notice. Intermedia may provide legal notices and communications to you by posting to your Program Portal account or by contacting you at any e-mail address, postal address or fax number that you have provided through the Program Portal. Notices to Intermedia must be mailed to Intermedia.net, Inc., Attn: Legal Department, 825 E. Middlefield Road, Mountain View, CA 94043, or such other address as may be designated on Intermedia's website for receipt of legal notice.

11.5 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, then the remaining provisions of this Agreement will nevertheless be given full force and effect.

11.6 Waiver. No waiver will be effective unless it is in writing signed by the parties. No waiver of any breach of this Agreement will be deemed a waiver of any other breach of this Agreement.

11.7 Assignment. You may not assign this Agreement or transfer any of your rights or obligations hereunder, including by operation of law, without the prior written consent of Intermedia. Intermedia may assign this Agreement or any of its rights and obligations hereunder without your consent. Any attempted assignment in violation of this Section 11.7 will be void. This Agreement will inure to the benefit of and will be binding upon the permitted successors and assigns of the parties.

11.8 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous representations, understandings, proposals, and agreements.