

INGRAM MICRO CLOUD VENDOR PROGRAM AGREEMENT

Last Updated: March 8, 2019

THIS INGRAM MICRO CLOUD VENDOR PROGRAM AGREEMENT (the “**Agreement**”), entered into effective as of the date on which You accept this Agreement (the “**Effective Date**”), is by and between Ingram Micro Inc., a Delaware corporation (“**Ingram Micro**”, “**We**”, “**we**”, “**Our**”, “**our**”, “**Us**” or “**us**”), and you and/or the entity you represent (“**You**”, “**Your**” or “**User**”). Ingram Micro and You may be individually referred to herein as a “**Party**” and collectively referred to as the “**Parties.**”

This Agreement includes the terms and conditions governing Your use of Ingram Micro’s Cloud Vendor Portal website (the “**Site**”) and Your use and receipt of services described in this Agreement (the “**Services**”).

BY USING THE SITE AND THE SERVICES, YOU ACKNOWLEDGE AND AGREE TO THIS AGREEMENT AND YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BE LEGALLY BOUND BY THIS AGREEMENT AND TO LEGALLY BIND YOUR COMPANY TO THIS AGREEMENT. THE TERMS “YOU” AND “YOUR” SHALL REFER TO YOUR COMPANY AND TO YOU IN CONNECTION WITH YOUR USE AS A USER ON BEHALF OF YOUR COMPANY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH ANY OF THESE TERMS AND CONDITIONS, NEITHER YOU NOR YOUR COMPANY MAY USE THE SITE OR ANY SERVICE.

BY USING THE SITE AND THE SERVICES YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND INTEND TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND NOTICES CONTAINED HEREIN, AS WELL AS THE OTHER TERMS, POLICIES, CONDITIONS, AND NOTICES DESCRIBED ON, OR THAT YOU EXPRESSLY AGREE TO WHILE USING, THE SITE (THE “**ADDITIONAL TERMS**”), WITH THE SAME EFFECT AS IF YOU HAD SIGNED THIS AGREEMENT.

The Additional Terms are incorporated herein by reference and as such, all references to this Agreement include reference to the Additional Terms. If You do not accept this Agreement or the Additional Terms, You are not permitted to use the Site or the Services.

1. INGRAM MICRO CLOUD VENDOR PROGRAM

VENDOR PORTAL SERVICE. Ingram Micro’s vendor portal service as described more fully herein and on the Site (“**Vendor Portal Service**”) is a Service that allows You to register certain of Your cloud related products and services (“**Products**”) in Ingram Micro’s Product Catalog (the “**Catalog**”).

MARKETING SERVICES. We may provide You, through the Vendor Portal Service, certain marketing resources, tools, and services including, but not limited to, email capabilities and content marketing tools (collectively, “**Marketing Services**”) to better support Your business and marketing activities. Some Marketing Services may be provided by third parties We select. All use of the Marketing Services are subject to the terms and conditions governing Your use of the Site.

Additionally, You represent and warrant to Us that Your use of the Marketing Services will comply with all applicable laws and regulations. You are responsible for determining whether Our Marketing Services are suitable for You to use in compliance with any regulations including, but not limited to, the Health Insurance Portability and Accountability Act, Gramm Leach Bliley Act, CAN-SPAM Act, European Union’s General Data Protection Regulation, Canada’s Anti-Spam Legislation, or other laws. If You are subject to any regulations and You use Our Marketing Services, then You agree that We will not be liable to You or any other third party if Our Marketing Services do not meet those requirements. You may not use Our Marketing Services for any unlawful or discriminatory activities, including acts prohibited by the Federal Trade Commission Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, or other laws that apply to commerce.

If You are located in the European Economic Area (EEA) or send emails to anyone in the EEA, You represent and warrant to Us that in creating your email distribution list, sending emails utilizing our Marketing Services, and collecting information as a result of sending emails, You:

1. Will clearly describe in writing how You plan to use any personal data collected, including for Your use of the Marketing Services.
2. Will get express consent to process personal data utilizing the Marketing Services and will identify Us as a third-party service provider.
3. Will comply with an appropriate and legally enforceable privacy policy that is conspicuously posted.
4. Have complied, and will comply, with all regulations, as well as data protection, electronic communication, and privacy laws that apply to the countries where You are sending any form of email through the Marketing Services.
5. Have collected, stored, used, and transferred all data relating to any individual in compliance with all data protection laws and regulations. You have the necessary permission to allow Us to receive and process personal data and send communications to that individual on Your behalf.
6. Have implemented appropriate technical and organization controls to protect any personal data collected and processed.
7. Agree to indemnify and hold Us harmless from any losses, including attorney fees, that result from Your breach of any part of these warranties.

ENROLLMENT. You must apply with Ingram Micro to be authorized to use the Site and to receive the Services. Ingram Micro may accept or reject any applicant in its sole discretion. To enroll we may require you to pay certain fees, which will be described herein and/or on the Site. The Site and Services are only available to Users who are authorized to form legally binding contracts under applicable laws in the jurisdictions in which the Site and Services are offered.

REGISTRATION AND DISTRIBUTION. Products that meet the requirements described in the Agreement may be submitted to Ingram Micro for consideration by Ingram Micro for registration in the Catalog. Ingram Micro may accept or reject the registration of any Products in the Catalog in its sole discretion. Ingram Micro may also register Your Products in Our directory upon Your participation in Our marketing programs. We may, at Our option, effect payment of such marketing funds by way of deduction from invoice or invoice You accordingly. Registration by Ingram Micro of Products in the Catalog or the CloudBlue Catalog does not mean such Products will be distributed by Ingram Micro or will be made available for ordering by Ingram Micro's customers. If You would like Ingram Micro to distribute Your registered Products You must enter into a separate distribution agreement with Us that will govern Our distribution relationship.

RESTRICTIONS ON USE OF THE SERVICES. You may not use or otherwise access the Services in a manner that exceeds Your authorized use. If You exceed Your authorized use of the Services, then, You will promptly notify Us and immediately: (a) disable or correct impermissible use; or (b) purchase additional Services to correspond to actual use. You agree that We may review Your use of the Services and You will provide Us with reasonable assistance to verify Your compliance with this Agreement. We may suspend or terminate Your use of the Services immediately upon written notice of non-compliance identified in such review, in addition to exercising any other rights or remedies We may have at law or in contract.

2. GRANT OF USE RIGHTS; OWNERSHIP; CUSTOMER RESTRICTIONS

SERVICES AND SITE. Provided You comply with the terms of this Agreement, Ingram Micro hereby grants You a limited, non-exclusive, non-assignable, and nontransferable right during the term of this Agreement to access and use the Services and the Site as permitted in accordance with the Agreement.

DOCUMENTATION. Ingram Micro hereby grants You a limited, nonexclusive, non-assignable, and nontransferable right during the term of this Agreement to access and use any documentation relating to the operation and use of the Services and Site that We provide to You for the sole purpose of using the Services and Site as permitted in accordance with the Agreement (“**Documentation**”).

OWNERSHIP. You acknowledge and agree that the Site, the Services, and the Documentation contain proprietary and confidential information of Ingram Micro, its licensors or other third parties that is protected by applicable intellectual property rights and other laws. Except as expressly provided herein, as between You and Us, all rights, title, and interest in and to the Site, the Services, and the Documentation, and all intellectual property rights therein, are owned exclusively by Ingram Micro or Our licensors. Except as expressly provided herein, We do not grant You any rights, express or implied, or ownership in the Site, the Services, or the Documentation.

3. CONFIDENTIALITY

CONFIDENTIALITY OBLIGATIONS. Each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under this Agreement, all proprietary or confidential information disclosed or made available by the other party pursuant to this Agreement that, if disclosed in written or tangible form, is labeled confidential or proprietary, or if disclosed in oral or intangible form, is identified as confidential or proprietary at the time of disclosure or should be understood to be confidential by a reasonable person under the circumstances (“**Confidential Information**”). In the case of Ingram Micro, all proprietary or other information relating to the Site or the Services disclosed or made available by Ingram Micro, including without limitation the Vendor Portal Services, will be deemed Confidential Information of Ingram Micro, whether or not so labeled or identified. The receiving party will protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. The Confidential Information will only be disclosed to the receiving party’s employees and contractors who are bound by obligations of confidentiality and non-use no less restrictive than this Agreement.

EXCEPTIONS. These obligations will not apply to information which is publicly available other than through unauthorized disclosure by the receiving party, is known by the receiving party at the time of disclosure as evidenced in writing, is rightfully obtained by the receiving party from a third party who has the right to disclose it, or which is required by law, government order or request to be disclosed by the receiving party (in which case such party must use its best efforts to give the disclosing party notice of the requirement so that disclosure can be contested by the disclosing party and receiving party agrees to seek to obtain (or to cooperate with disclosing party in obtaining) confidential treatment of such information.

4. SUPPORT

We will provide You with certain limited technical support (“**Technical Support**”) for your use of the Site and the Services. Technical Support will be limited to the Site and the Services and will include the following:

- Vendor Portal Service functionality questions
- Troubleshooting Vendor Portal Service account
- Vendor Portal Service defect verification and reporting
- Enhancement and feature request submission

Technical Support does not include anything not expressly provided herein, nor does it include the following:

- Support for anything other than the Site or the Services

- System/server administration activities
- Development, design and/or consultancy services
- Third party application, system or product support
- Issues resulting from hardware malfunction, abuse or unauthorized use
- Training, customizations, integration and any issues arising from non-standard usage of the Site or the Services
- CloudBlue platform related issues

You must create separate tickets for each individual issue or question, as it is difficult to trace the status of the original problem when independent issues are mixed in a single ticket. A "one ticket - one issue" method helps Our technical support team to process support requests in a more efficient way.

5. RESTRICTIONS; RESPONSIBILITIES

RESTRICTIONS. Except as expressly provided herein, You must not (and must not permit others to): (a) license, sublicense, sell, resell, rent, lease, loan, transfer, distribute, time share or grant a security interest in the Site, the Services, or the Documentation, or make any of them available for access by third parties, including without limitation, in the manner of a service bureau or hosted application; (b) create derivative works based on or otherwise modify the Site, the Services, or the Documentation; (c) disassemble, reverse engineer or decompile the Site or the Services; (d) access the Site, the Services, or the Documentation in order to develop a competing product or service; (e) include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from or using the Site, the Services, or the Documentation; (f) interfere with the integrity of the Site, the Services, or the Documentation in any manner; (g) remove or modify a copyright or other proprietary rights notice on or in the Site, the Services, or the Documentation; (h) use the Site or the Services to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the express permission of the owner; (i) use the Site or the Services to cause physical injury to the property of another; (j) use the Site or the Services to violate any applicable laws; (k) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Site or the Services; (l) use the Site or the Services to temporarily or permanently remove, copy, add, modify, halt or disable any computer data, computer programs or computer software from a computer or computer network without authorization; (m) use the Site or the Services to cause a computer to fail or malfunction, regardless of how long the failure or malfunction persists; or (n) access the Site or the Services by any means other than through the interface provided by Ingram Micro.

CERTAIN RESPONSIBILITIES. You are responsible for, without limitation, the following: (a) Your use of the Services and the Site; (b) appointing key designated support contacts for purposes of contacting Ingram Micro with regard to support questions and/or technical issues and ensuring that such contact information is current with Ingram Micro; (c) the lawfulness of Your acts and omissions; (d) using the Services and Site encryption feature, if and when made available to You, for any of Your data containing sensitive information; (e) using the Site and the Services within the permitted scope and only in accordance with the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which Ingram Micro authorizes the use of the Services; (f) using the Site and the Services only in accordance with the Documentation; and (g) ensuring that all of the information You provide or make available to Ingram Micro while using the Site or Services is up to date and accurate at all times.

SECURITY OF ACCOUNT CREDENTIALS. Any user name and password we provide to you may be used only during the term to access the Site or to use the Services. You are solely responsible for maintaining the security of your user name and password. You may not disclose your password to any third party and You are solely responsible for any use of or action taken under your user name and password. If your password is compromised, you must immediately change your password.

6. CONTENT AND MARKS

By submitting media or information such as text, photos, audio or videos, or any other content to the Site or through the Services (collectively, “**Content**”), You represent and warrant that such Content does not infringe upon any third party intellectual property right or personal rights, including, but not limited to, patent, copyright, trademark, trade secret, privacy or other intellectual or proprietary right. You will also ensure that Your Content complies with all applicable laws and Additional Terms and does not contain any sexually explicit, defamatory or obscene materials.

If Ingram Micro becomes aware of any Content provided or posted by You in connection with the Site or the Services that could be infringing on a third party’s intellectual property rights or in a manner that breaches this Agreement, Ingram Micro will be authorized to initiate an investigation and, subject to compliance with applicable laws, may remove or block your Content.

If Ingram Micro receives a claim from a third party complainant with the applicable copyright or trademark registration number, a copy of the underlying copyrighted work along with Your materials and/or a good faith declaration, signed under penalty of perjury, that: (a) the material is the property of the complainant; or (b) the work has been copied and that use of the material is not defensible, then Ingram Micro, in its sole and absolute discretion, may, at any time, restrict Your access to the challenged material. Ingram Micro will notify You of the copyright infringement allegation and will allow You to respond to the allegation(s). You agree that Ingram Micro shall have no liability, directly or indirectly, to third parties for any of Your infringing materials nor to You for any cautionary measures taken by Ingram Micro as described herein.

Ingram Micro responds to notices of alleged copyright infringement in accordance with the U.S. Digital Millennium Copyright Act (DMCA). If You believe that Your work has been exploited in a way that constitutes copyright infringement, You may contact Ingram Micro through the contact information provided below.

You will not use the name, trademarks or logos of Ingram Micro, its affiliates or any third party without the prior written approval of the respective party. All content included on the Site or the Services such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Ingram Micro or its licensors and is protected by United States and international copyright laws. The compilation of all content on the Site and in the Services is the exclusive property of Ingram Micro and protected by U.S. and international copyright laws.

You grant Ingram Micro and its affiliates a limited and non-exclusive license to use the Content for the purposes described herein including, without limitation, to register the Products in the Catalog. You will provide Ingram Micro with written guidelines, if any, governing such use.

7. TERM AND TERMINATION

The Agreement will commence on the Effective Date and will remain in force until terminated as provided herein or until Your use of the Site or the Services end. When the Agreement is terminated or expires, You must stop using the Site and the Services immediately.

If Ingram Micro determines, in its sole and absolute discretion, that You may have used the Site or Services in an unauthorized manner or otherwise breached this Agreement, Ingram Micro may in its discretion temporarily or permanently prevent You from using the Site and Services, cancel the Services without a refund and, if appropriate, pursue legal action against you. In addition, You may be subject to civil or criminal penalties and/or injunctive relief.

Ingram Micro may also terminate this Agreement and any Service at any time for any reason, or no reason for convenience, without providing any advance notice to You and without incurring any liability.

Any provision of this Agreement required by its construction or that by their nature should apply beyond their terms shall survive termination, including, but not limited to, the warranty disclaimer, the indemnity provisions, the limitations of liability and term and termination.

8. AMENDMENT

Ingram Micro may at any time modify the terms and conditions of this Agreement, or any part thereof, or may impose new conditions to use of the Site and Services. Except as otherwise stated herein, any modification to this Agreement shall be effective immediately after it initially is posted on the Site. Use of the Site and Services after any such modification will be conclusively deemed acceptance of such modification. If any modification is unacceptable to You, You may terminate this Agreement, subject to the terms and conditions contained herein. The Agreement may not otherwise be amended except in writing signed by You and by an authorized representative of Ingram Micro.

9. PRIVACY

PERSONAL DATA. You and Ingram Micro acknowledge and agree to comply with the applicable data protection and privacy legislation ("**Data Protection Laws**"). In this regard, You and Ingram Micro certify and agree to comply with the applicable Data Protection Laws when using, handling, disclosing, transferring, sharing or processing in any way and for any purpose, any information about an identified or identifiable individual of the other party ("**Personal Data**"), including each party's employee. You and Ingram Micro acknowledge and agree that all Personal Data shared and processed by and between the parties is considered confidential Information and subject to the confidentiality obligations set out in this Agreement. With respect to any and all data, including, but not limited to Personal Data, You represent and warrant that (a) all such Personal Data is Your sole property or has been provided by You to Ingram Micro in accordance with Your privacy policy and Data Protection Laws; and (b) You have obtained all necessary consents required to transfer the Personal Data to Ingram Micro, including outside the European Economic Area.

DATA PRIVACY. Subject to Data Protection Laws, Ingram Micro may provision the Site and/or provide the Services from any Ingram Micro or Ingram Micro partner facility anywhere in the world (including, without limitation the USA) and may, at any time, transfer the provision of the Site and/or provide the Services from one Ingram Micro or Ingram Micro partner facility to another.

PRIVACY STATEMENT. Ingram Micro's collection, use, storage, processing, disclosure and deletion of Personal Data (as defined in the Privacy Statement) provided by You through the Site or the Services is governed by the privacy statement located at <https://corp.ingrammicro.com/privacy-statement.aspx> or such other place as may be updated by Ingram Micro from time to time ("**Privacy Statement**").

10. INDEPENDENT DEVELOPMENT

Ingram Micro may develop, license, resell, market or distribute products or services that perform the same or similar functions as, or otherwise compete with, the Products. Except as otherwise agreed in writing by Ingram Micro, Ingram Micro will be free to use any information, suggestions or recommendations You provide to Ingram Micro through the Site or the Services or otherwise pursuant to this Agreement for any purpose, subject to any applicable patents or copyrights.

11. THIRD PARTY SOFTWARE AND SERVICES

As part of the Site or the Services, You may be allowed to use certain software (including related documentation) or services provided by third party licensors. Such third party software and third party services are neither sold nor distributed to You and You may use it solely as part of the Site and the Services subject to any terms and conditions as made available by the third party, including, but not limited to, warranties (if any), ownership of intellectual property and permitted uses.

You agree that the terms of use for any third party software and third party service will exclusively be as set forth by the applicable third party. While Ingram Micro may at its sole discretion facilitate resolution of disputes between You and third parties, You agree that Ingram Micro is not responsible nor liable for any services or software provided by third parties.

12. NO WARRANTY; DISCLAIMERS

TO THE EXTENT PERMITTED BY LAW, THE SITE AND THE SERVICES ARE PROVIDED TO YOU "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR NON-INFRINGEMENT.

INGRAM MICRO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE REGARDING MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. THIRD PARTY SERVICES AND SOFTWARE, IF ANY, ARE PROVIDED AS-IS, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED; ANY WARRANTY FOR THIRD PARTY SERVICES AND SOFTWARE ARE PROVIDED, IF AT ALL, BY THE THIRD PARTY VENDOR FOR SUCH SERVICES AND SOFTWARE.

INGRAM MICRO MAKES NO REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SITE, THE SERVICES OR THE DOCUMENTATION WILL COMPLY WITH APPLICABLE LAWS.

INGRAM MICRO MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES THAT YOU WILL GENERATE SALES BY REGISTERING YOUR PRODUCTS IN THE CATALOG.

13. INDEMNIFICATION

You agree to defend, indemnify and hold harmless Ingram Micro, its affiliates, and their respective directors, officers, shareholders, employees, agents, licensors and advisors ("**Indemnified Parties**"), from and against any claim, demand, liability, damage, losses, judgments, suit, action, or cause of action, costs and expenses (including, without limitation, reasonable legal fees) arising directly or indirectly out of or relating to: (a) Your use of the Site or the Services; (b) Your breach of any provision of the Agreement; (c) Your publication or use of Content that infringes the intellectual property rights of any third party, including, but not limited to, patent, copyright, and trade secret rights; (d) any action taken by Ingram Micro in investigating a suspected violation of the Agreement or as result or finding that a violation has occurred; and (e) costs associated with document production, depositions, interrogatories and related demands arising out of private third party, governmental or regulatory claims in connection with Your use of the Services or the Site to the extent Ingram Micro is not a target.

You will not settle any claim against the Indemnified Parties unless such settlement completely and forever releases the Indemnified Parties with respect thereto or unless the Indemnified Parties provide their prior written consent to such settlement. In any action that You provide defense on behalf of the Indemnified Parties, the Indemnified Parties may participate in such defense at its own expense by counsel of its choice.

14. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT IN NO EVENT SHALL THE INDEMNIFIED PARTIES BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR INCOME, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF THE INDEMNIFIED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY).

YOU SPECIFICALLY ACKNOWLEDGE THAT THE INDEMNIFIED PARTIES ARE NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, THE INDEMNIFIED PARTIES WILL HAVE NO LIABILITY TO YOU FOR ANY CONTENT DOWNLOADED FROM THE SITE OR THE SERVICES.

YOU AGREE THAT THE AGGREGATE LIABILITY OF THE INDEMNIFIED PARTIES TO YOU FOR ANY AND ALL CLAIMS UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING UNDER THESE TERMS OR FROM ANY OF INGRAM MICRO OR AFFILIATE POLICIES OR THE USE OF THE SITE, THE CONTENT, OR THE SERVICES IS LIMITED TO USD\$100.

15. GENERAL PROVISIONS

ASSIGNMENT. You may not assign Your rights or obligations, whether by operation of law or otherwise without Ingram Micro's prior written consent, and any such act by You will be void. Ingram Micro may assign this Agreement without Your consent.

NOTICE. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email, except that email shall not be sufficient for notices of termination or regarding a claim. Notices to You will be sent to Your email address that Ingram Micro has on file. It is important that You address is up to date. Notices to Ingram Micro must be sent to:

Email: cloudteam@ingrammicro.com

and

By mail to the following address:
Ingram Micro Legal Department
3351 Michelson Drive, Suite 100
Irvine, CA 92612-0697

FORCE MAJEURE. Ingram Micro will not be liable or responsible to you, nor be deemed to have defaulted under or breached this Agreement, and will be excused from performance in the event of any failure or delay in fulfilling or performing any term of this Agreement or its performance of the Services, when and to the extent such failure or delay is caused by or results from acts beyond Ingram Micro's reasonable control, including without limitation: domain name server or instant messaging issues, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, by requirement of law, regulation, order or other governmental action, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological

contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions.

NO WAIVER. Ingram Micro will not be considered to have waived any of its rights or remedies described in this Agreement unless such waiver is in writing and signed by an authorized representative of Ingram Micro. No delay or omission by Ingram Micro in exercising Ingram Micro rights or remedies will impair or be construed as a waiver. Any single or partial exercise of a right or remedy by Ingram Micro will not preclude further exercise of any other right or remedy. Ingram Micro's failure to enforce the strict performance of any provision of the terms and conditions in this Agreement will not constitute a waiver of Ingram Micro's right to subsequently enforce such terms and conditions.

RELATIONSHIP OF THE PARTIES. You and Ingram Micro are independent contractors to each other. Nothing in the Agreement will be interpreted to create a partnership, joint venture, agency, fiduciary or trustee relationship. You will not have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of Ingram Micro. Ingram Micro may at any time subcontract any or all of Ingram Micro obligations hereunder to any third party.

GOVERNING LAW; VENUE; TIME FOR BRINGING ACTION. This Agreement will be governed by, subject to, and interpreted in accordance with the laws of the State of California USA, without regard to conflict of laws principles. You hereby irrevocably consent to the nonexclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Orange County, California, for the purposes of adjudicating any action or proceeding to enforce the Agreement. To the extent permitted by law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply. No cause of action arising under or relating to this Agreement may be brought by You more than one year after it first occurs.

CONSTRUCTION. The Services shall be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Terms and all related documents be drafted in English at the express wishes of the parties.

ENTIRETY. This Agreement, together with any referenced terms, conditions and policies, are the final and entire agreement between You and Ingram Micro and supersede all prior or contemporaneous oral or written agreements, representations, understandings, undertakings and negotiations. In the event of any conflict between this Agreement and any referenced and/or attached documents these terms and conditions shall govern unless such referenced and/or attached document is signed or electronically agreed to by both authorized representatives of each party and manifests a clear intent to override this Agreement.

SCHEDULE A – CONNECT ORDER PROCESSING SERVICE TERMS

Ingram Micro's Connect Order Processing Program ("COP") is a Service that allows You to view, manage and provision orders for Your Products using the Site.

A-1 ORDER INFORMATION, CHANGES AND PROVISIONING

ORDER INFORMATION AND CHANGES. We will make information about orders placed by Our customers ("**Orders**") for your Products available on the Site. You may be given an opportunity to change certain Order information or add information to the Order. You will only make changes to Order information that You are authorized to make and will only add information to Order information that you are authorized to add. You are responsible for any such changes and additions and You will ensure that the Order information at all times remains accurate, complete and valid.

PROVISIONING. You may be given an opportunity to accept Order information and indicate using the Site whether the Order was provisioned. You will only provision valid and authorized Orders and You will not provision invalid or unauthorized Orders. You are responsible for all Orders that are accepted and provisioned by You. You must provision or reject all Orders within 24 hours, Monday through Friday, excluding legal holidays. Any exceptions to this 24-hour provisioning requirement must be requested by You in writing and must be provided by Ingram Micro in writing.