

## DELIVERY SERVICES AGREEMENT

**THIS DELIVERY SERVICES AGREEMENT** (together with all appendices, addenda, and schedules attached hereto, this "Agreement"), is executed at New Delhi as of [20<sup>th</sup> August, 2019], by and between:

**Delhivery Limited**, a company incorporated and existing under the provisions of Companies Act of 1956 having its registered office at **Unit Nos N24-N34, S24-S34; Air Cargo Logistics Centre-II, Opposite Gate 6 Cargo Terminal, IGI Airport, New Delhi – 110037**, (hereinafter referred to as "**Service Provider**" which means and include, unless repugnant to the context or meaning thereof mean and include its liquidators, successors, subsidiaries, affiliates, receivers and assigns) of the ONE PART;

**And**

[Nykaa], a company incorporated and existing under the provisions of Companies Act of 1956 and having its registered office at **A2, 4th Floor, Cnergy IT Park, Old Standard Mill Compound, Appasaheb Marathe Marg, Prabhadevi, Mumbai, Maharashtra 400025**, (hereinafter referred to as "**Merchant**" which means and include, unless repugnant to the context or meaning thereof mean and include its Affiliates, liquidators, successors, receivers and permitted assigns) of the OTHER PART.

"**Service Provider**" and "**Merchant**" are hereinafter individually and collectively referred to as "**Party**" and "**Parties**" respectively, as the context may require.

### WHEREAS

1. *Merchant is inter alia engaged in the business of different beauty and wellness product.*
2. *Service Provider is inter-alia engaged in the business of providing diversified logistics services and other services to selected merchants.*

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

### 1 DEFINITIONS:

Unless the context otherwise provides or requires, the following words and expressions used in this Agreement shall have the meaning as provided to them herein below:

- 1.1 '**Business Day**' means a day (other than Sunday, national holidays and bank holidays in the territory) on which nationalized banks are open in India for the conduct of banking business and comprising of normal working hours.
- 1.2 '**Confidential Information**' shall mean technical, financial and/or commercial information relating to a Party's businesses, facilities, products, techniques, solutions, or processes which is proprietary to a Party, or to its affiliated companies, disclosed or made available to one Party to by the other Party in any form whatsoever (including written or verbal disclosure, demonstration, sample, computer program, document or diagram) and this whether or not marked as "Confidential". Furthermore, Confidential Information includes such information that has been made available to either Party by third parties under an obligation of

confidentiality

- 1.3 **'Consignee'** means a person to whom the Shipment has to be delivered, as mentioned in the manifest shared by the Merchant.
- 1.4 **'Delivery and/ or Delivery Service'** means (a) collection of the Products by Service Provider from the location(s) agreed between the Parties; and (b) the delivery of such Products to the Customers at the location designated by the Customer and taking the receiver's confirmation signatures of receipt or (c ) any other services / products provided by the Service Provider in the course of its business operations; Delivery or its other grammatical variations shall be construed accordingly.
- 1.5 **'Delivery Personnel'** means the person engaged by Service Provider for the Delivery or Returns (as defined herein below) of the Shipments.
- 1.6 **'Freight'** means fees paid for shipments transported by water, land or air.
- 1.7 **'Shipment'** means all the products consolidated, packaged and/ or invoiced together or separately, and handed over to the Service Provider by the Merchant for Delivery.

2 **TERM:** This Agreement shall be effective on the date of the execution of this Agreement ("**Effective Date**"). The Agreement shall be valid, legal and binding from the Effective Date unless terminated by either Party in accordance with this Agreement.

3. **SCOPE OF DELIVERY SERVICES:** The Service Provider shall provide Delivery Services to the Merchant in accordance with the detailed scope of services given in Annexure – I ("Scope of Services").

4. **FEES:** The Fees shall be calculated as per the matrix set out in Annexure II.

The Parties mutually agree that the rate of diesel will be considered as per average of diesel prices across the 4 metros (Delhi, Mumbai, Chennai & Kolkata). The Diesel peg applicable will be XX INR / L as per the diesel rates on the date of execution of the agreement

There will be no freight change for increase / decrease by less than INR 3/L of the agreed diesel peg.

In case the diesel price change beyond INR 3/L, following fuel hike component will be applicable.

- For every Rs. 3/- increase / decrease of Diesel price from agreed diesel peg, there will be a corresponding increase / decrease of 2% in total freight rates

**Illustration:**

Diesel price peg (INR / L)	Current diesel price (INR/L)	Diff in diesel rates (INR/L)	Impact
90	92	2	No change (Less than INR 3/L change)
90	93	3	2% increase in freight rates (greater than or equal to INR 3/L change)
90	94	4	2% increase in freight rates (greater than INR 3/L change)
90	97	7	4% increase in freight rates (greater than INR 6/L change)

## **5 TERMS OF PAYMENT:**

- 5.1 The Service Provider shall issue an invoice to the Merchant at the beginning of each calendar month for the Delivery Services that have been rendered during the previous month with the terms of this Agreement. The Merchant shall make the payment to the Service Provider within 15 (fifteen) days from the date of submission of the invoice ("**Due Date**").
- 5.2 Merchant shall raise any dispute in the invoice within 07 (seven) days of receipt of invoice ("**Dispute Date**") and any disputes raised after the Dispute Date shall be considered invalid. Notwithstanding anything contained above, the Merchant shall in no circumstance withhold the Fees payable to the Service Provider on grounds of any dispute in the invoices. The Merchant expressly agrees not to withhold any undisputed amount on account of a dispute in the invoice. All such disputes if raised within the Dispute Date shall be mutually resolved by the Parties within 30 (thirty) days and all pending payments by either Party should be settled within 5 (five) days of the settlement of the dispute.
- 5.3 If the Merchant fails to make the payment of undisputed amounts against an invoice for any reason whatsoever, the Service Provider shall notify the Merchant of such delay/default and provide the Merchant 5 additional working days to rectify the default. If the default continues, the Service Provider reserves the right to suspend all services and lock the Merchant account in its system till all pending un-disputed amounts are cleared and also reserves the right to terminate the agreement with immediate effect. All delayed payments will be paid along with an interest amount of 18% p.a from the date this amount became due till actual realisation.
- 5.4 On delivery of the shipment, in case of any dispute regarding the delivery, the Merchant's personnel will be required to update the same on the POD provided. Any issues pertaining to the Delivery of the Shipment shall be noted on the POD at the time of handing over the shipment to the customer. It is further agreed between the Parties that the Merchant will not challenge and the Service Provider will not accept any dispute with regard to lost and/ or damaged Shipment and/ or lost or damaged POD, initiated by the Merchant post 72 hours of Shipment closure. No liability will arise on the Service Provider post this 72 hours period.
- 5.5 The Service Provider shall retain hard copies of proof of delivery (POD) for a period of 3 (three) months only. Further, if the Service Provider is unable to provide the hard copy of the POD for any reason whatsoever, including for requests from the Merchant raised post the aforementioned retention period, the Merchant agrees to accept E-POD/ indemnity bond in place of the hard copy of the POD. The liability of the Service Provider under such indemnity bond shall be limited to the agreed liability limit only.

## **6 ROUTING AND DELIVERY**

- 6.1 Service Provider will deliver to the recipient at the address indicated on the Waybill (hereinafter referred below), or to someone other than the person or entity named on the Waybill having apparent authority to accept the shipment in the name and on behalf of the recipient. There is no obligation to deliver a shipment to the recipient personally and Service Provider may deliver to someone other than the person named in the Waybill or to a person who produces a copy of the Waybill.
- 6.2 Service Provider reserves the right to route a shipment in any way it deems appropriate, using multi-modal transportation according to its own handling, storage and movement

methods and plans and by use of its business associates, co-loaders, co-couriers, franchisees or other Agents.

6.3 Sunday/holiday pick-up or delivery, if available, will be subject to a special handling fee.

6.4 Service Provider reserves the right to refuse, hold, cancel, postpone or return any shipment at any time if such shipment would in the opinion of Service Provider be likely to cause damage or delay to other shipments, goods or persons, or the carriage of which is prohibited by law or is in violation of any of these Conditions. The fact that Service Provider accepts a shipment does not mean that such shipment conforms to applicable laws and regulations or to the present Conditions.

## **7 WAYBILL**

7.1 Service Provider issues a non-negotiable Waybill duly acknowledging the receipt of the shipment from its Merchant. The Merchant acknowledges that the Waybill has been completed by the Merchant or by Service Provider on behalf of the Merchant. The Merchant shall ensure that the Waybill provided by Service Provider is signed by a person authorized to sign it on behalf of the Merchant and the Merchant will be bound by the signature of such person on the Waybill. The Waybill shall be prima facie evidence of the conclusion of the contract, of the acceptance of the goods and of these conditions of carriage.

7.2 The Merchant shall be responsible for the correctness of the particulars and statements relating to the goods inserted by the Merchant or on its behalf in the Waybill.

7.3 The Waybill shall be prima facie evidence of the weight or measure and other particulars of the goods and the number of packages stated therein. However; particulars relating to the quantity, volume and condition of the goods shall not constitute evidence against Service Provider except so far as they have been and are stated in the Waybill to have been checked by Service Provider in the presence of the Merchant.

## **8 OBLIGATIONS OF THE MERCHANT**

8.1 The Merchant shall ensure that the manifest shared for initiation of the Delivery Services is correct and complete in all respects.

8.2 The Merchant shall not book / handover or allow to be handed over any Shipment which is banned, restricted, illegal, prohibited, stolen, infringing of any third party rights, hazardous or dangerous or in breach of any tax laws or contains any cash, jewellery (excluding artificial jewellery), gold, silver, diamond, platinum, precious metals, precious stones, currency, bullion, letters and financial and security instruments ("Notified Goods") and Service Provider shall not be liable for the Delivery of any such Shipments. Without prejudice to the generality of the aforesaid, an indicative list of the banned or prohibited products is given in Annexure III. In cases where the Merchant is booking/handling over liquids or chemicals, the Merchant will share with the Service Provider the chemical compositions of the product along with the concentration of each component. Additionally, if the Merchant is booking/handling over any hazmat product in the Shipment, the Merchant will share with the Service Provider the composition and flammable categorization for each product. Further, in the event of a breach of the terms of this clause by the Merchant, the Service Provider shall not be held liable for any damage or loss, additionally, the Merchant shall indemnify, defend and hold harmless the Service Provider from and against any claims, demands, actions, liabilities, costs, interest, damages, penalties and/ or expenses of any nature whatsoever (including all legal and other costs, charges and expenses) incurred or suffered by the Service Provider due to such breach on part of the Merchant. The Merchant shall also be liable to pay the Service Provider an amount of INR 25,00,000 (Rupees Twenty-Five Lakhs) ("Penalty") per

instance if the Merchant books/hands over any Shipment containing Notified Goods to the Service Provider without intimating the Service Provider or by sharing an incorrect/inaccurate description of such Shipment with the Service Provider. The Service Provider will have the right to adjust the Penalty against any amount owed to the Merchant.

- 8.3 Each package within a shipment must be legibly and durably marked with the full name and complete postal address with the PIN Code and telephone number of both the Merchant and the recipient. Service Provider shall not be liable for non-delivery on account of incomplete or erroneous address being furnished by the Merchant.
- 8.4 It is the Merchant's obligation to ensure that all shipments entrusted to the Service Provider for carriage are prepared and packed adequately to ensure safe carriage with normal care in handling. Any article susceptible to damage as a result of any condition which may be encountered during handling or transportation by air, railway or road must be adequately protected by the Merchant by proper packaging and Service Provider shall not be liable for any damage or shortages occurring as a result of improper packing.
- 8.5 The Service Provider shall not be liable to pick-up a Shipment if the packaging is tampered or not proper.
- 8.6 Said To Contain Basis & Inspection: It is expressly understood by and between the Parties that all Shipments agreed to be delivered by the Service Provider are on "SAID TO CONTAIN BASIS" i.e. the Service Provider shall be under no obligation and is not expected to verify the description and contents of the Shipments declared by the Merchant on the docket and as such, the Merchant shall undertake and ensure to make proper, true, fair, correct and factual declaration on the docket regarding description and value of Shipments.
- 8.7 The Merchant shall provide all regulatory/ statutory approvals in electronic/ physical format as required by the Service Provider to perform Services under this Agreement. Service Provider will not be liable to verify any documentation provided by the Merchant. Liability for providing the correct and complete documentation will lie solely with the Merchant.

## **9 INSURANCE**

The Merchant hereby undertakes and agrees that it shall be responsible to take the insurance for the Shipment.

## **10 CONFIDENTIALITY:**

Both Parties shall keep confidential (and to ensure that its officers, employees, agents, affiliates, and professional and other advisers keep confidential) any Confidential Information. Both Parties shall not, and shall procure that none of their directors, officers, employees, agents, affiliates or professional advisers shall not, use Confidential Information for any purpose other than for the provision of Delivery Services and for performance under this Agreement. Notwithstanding anything to the contrary contained in the Agreement, any information which may be collected first hand by or is developed or generated by the Service Provider or its personnel, in the course of providing the delivery, logistics and transportation services, or may have been derived by the Service Provider for the limited purpose of optimization, improvement and development of its service and product offerings in the ordinary course of its business, is proprietary to the Service Provider and shall be considered as the Confidential Information of the Service Provider.

- a. Exceptions from Confidentiality Obligations:

- i. information which is independently developed by a Party or acquired from a third party to the extent that it is acquired otherwise than as a result of a breach of this Clause and with the right to disclose the same;
- ii. the disclosure of information to the extent required to be disclosed by any applicable law, any governmental authority to whose rules, orders or decrees a Party is subject, or other competent authority;
- iii. information which comes within the public domain (otherwise than as a result of a breach of this Clause).

If the Agreement terminates, the disclosing Party may by notice require the recipient Party to promptly destroy all Confidential Information, except that Confidential Information may be retained as required under applicable law or for internal audit or fraud prevention and security purposes.

**11 INDEMNITY:** The Service Provider agrees to indemnify, defend and hold the Merchant harmless from and against any and all direct and actual claims, liabilities, losses, costs, or damages arising out of (a) Service Provider's breach of its obligations hereunder subject to the agreed liability limit only; (b) services performed by the Service Provider hereunder subject to the agreed liability limit only and/ or (c) breach of applicable law.

The Merchant agrees to indemnify, defend and hold the Service Provider harmless from and against actual claims, demands, actions, liabilities, costs, interest, damages, penalties and/ or expenses of any nature whatsoever (including all legal and other costs, charges and expenses) incurred or suffered by the Service Provider due to any acts or omissions, breach of applicable law/statutory obligations and/ or customer/ third party claims solely attributable to the Merchant.

**12 TERMINATION:** Either Party may terminate this Agreement on the occurrence of any of the following events;

- 12.1 Immediately, if either Party is declared insolvent or bankrupt or is unable to pay its debts or makes a composition with its creditors or if either Party is dissolved or wound up compulsorily or if an order made or an effective resolution is passed for the winding up of the such Party.
- 12.1 Either party shall have the right to terminate this Agreement by giving a thirty (30) days prior notice of termination.
- 12.2 In case of non-payment of undisputed amounts within the agreed timelines, Service Provider will be permitted to terminate this Agreement effective immediately.
- 12.3 In case of a force majeure event, if the affected party is unable to fulfil its obligations excluding payment of the undisputed fees, for a continuous period of 15 days, the affected party will be in its right to terminate this Agreement effective immediately.
- 12.4 In the event of any termination of this Agreement, Merchant shall promptly and forthwith make payments of all the pending Fees, costs, expenses, amounts, if any, accrued or due to the Service Provider within 5 days of such termination.

### **13 UNDELIVERED OR UNCLAIMED SHIPMENTS**

- 13.1. A shipment shall be considered to be undeliverable if (i) the recipient's address is incomplete, illegible, incorrect or cannot be located, (ii) the recipient fails or refuses to accept delivery or sign or pay for delivery of any shipment (iii) the shipment would likely cause damage or delay to other shipments or goods, or injury to persons, (iv) the shipment contains prohibited items, (v) the shipment's contents or packaging are damaged to the extent that re-wrapping is not possible, (vi) the shipment is detained or

otherwise unable to clear local or State boundaries, (vii) if a recipient of a Cash on Delivery (COD) shipment fails or refuses on such delivery to pay the COD amount.

- 13.2. In case a shipment remains undeliverable or unclaimed, Service Provider shall serve a notice by registered mail upon the recipient or upon the Merchant, if the recipient is not available, requiring him to remove the goods within a period of 30 (thirty) days from the date of receipt of the notice and in case of failure to comply with the notice, Service Provider shall have the right to sell such shipment without any further notice to the recipient or the Merchant, as the case may be without incurring any liability whatsoever to the Merchant or recipient or anyone else. Service Provider shall, out of the sale proceeds so received, be entitled to retain a sum equal to the freight, storage and other charges due including expenses incurred for the sale and the surplus, if any, from such sale proceeds shall be returned to the recipient or Merchant, as the case may be.
- 13.3. In case a shipment remains undeliverable or unclaimed in accordance with Conditions 13.1.(vii) above, Service Provider shall not deliver the shipment to the recipient and shall return the shipment to the Merchant at the location where the shipment was first picked up. In this event, the Merchant will be liable to make all payments for carriage of the shipment and its return.

#### **14 LIMITATION OF LIABILITY:**

- 14.1 Under no circumstances will the Service Provider or any of its director, officer, employee, agent or contractor be liable to the Merchant for indirect, incidental, consequential, special or exemplary losses or damages arising from the Agreement, under tort, common law or under public policy, even if the Service Provider has been advised of the possibility of such damages, such as, but not limited to, loss of revenue, loss of goodwill or anticipated profits or lost business and be liable for any loss of data or any interruption of any property due to any cause.
- 14.2 The maximum liability of the Service Provider and the sole and exclusive remedy of the Merchant for the damage or loss or theft or misappropriation of any Shipment or cash caused due to gross negligence and willful misconduct or acts or omissions of the Service Provider shall be limited to INR 5,00,000 per Shipment or the actual amount of cash or the Shipment value shared in the manifest, whichever is lower.
- 14.3 If the Service Provider is unable to provide the hard copy of the POD, the Merchant agrees to accept e-pod/ indemnity bond for the purpose of invoicing. The liability of the Service Provider under such indemnity bond shall be limited to the agreed liability limit only.
- 14.4 The liability of the Service Provider for any loss or damage to a Product for an amount higher than INR 5,00,000 shall be limited to providing the Merchant with a Certificate of Fact ('COF') to enable to Merchant to claim the amount from its Insurance provider.
- 14.5 The Service Provider's payment of the agreed amount as prescribed in the relevant sub-clause and issuance of a COF to the Merchant, if applicable in terms of the relevant sub-clause, would be treated as a full and final settlement on part of the Service Provider towards the Merchant for the corresponding claim. Further, the Merchant irrevocably agrees that the Service Provider shall have no further liability towards it in respect to such claims.
- 14.6 The total aggregate liability of the Service Provider shall be limited to 25% (twenty five percent) of the Freight paid by the Merchant to the Service Provider during the preceding 1 (one) month.

## **15 NOTICES AND CONTRACT REPRESENTATIVES:**

Any notice provided for in this Agreement shall be in writing and shall be sent by postage, prepaid registered post with acknowledgement due or by recognized courier service, to the relevant party at its address set out below:

In the case of notices to Service Provider:

Legal Department, Delhivery Ltd, Plot 5, Sector 44, Gurgaon – 122002.

In the case of notices to the Merchant:

A2, 4th Floor, Cnergy IT Park, Old Standard Mill Compound, Appasaheb Marathe Marg, Prabhadevi, Mumbai, Maharashtra 400025

All notices shall be deemed to have been validly given on (i) the business day immediately after the date of transmission, if transmitted by email on the same day; or (ii) in case sub-clause (i) does not apply, the expiry of 7 (seven) business days after posting, if sent by post. Either Party may, from time to time, change its address or representative for receipt of notices provided for in this Agreement by giving to the other Party not less than 10 (ten) days' prior written notice.

## **16 ANTI-BRIBERY AND CORRUPTION COVENANTS:**

16.1 The Parties represent, warrant and undertake that:

(a) It has not and shall not offer, promise, give, encourage, solicit, receive or otherwise engage in acts of bribery or corruption in relation to this Agreement (including without limitation any facilitation payment), or to obtain or retain business or any advantage in business, and has and shall ensure to the fullest extent possible that its employees and agents and others under its direction or control do not do so. For the purposes of this clause, it does not matter if the bribery or corruption is: (i) direct or through a third party; (ii) of a public official or a private sector person; (iii) financial or in some other form; or (iv) relates to past, present, or future performance or non-performance of a function or activity whether in an official capacity or not, and it does not matter whether or not the person being bribed is to perform the function or activity to which the bribe relates, or is the person who is to benefit from the bribe. The Parties shall, immediately upon becoming aware of them, give the Service Provider all details of any non-compliance with this Clause;

(b) It shall comply with and not violate any applicable laws, including any sanction laws including those of India, and other laws relating to anti-money laundering, anti-bribery and corruption and other financial crimes;

(c) It shall ensure the performance of its obligations under this Agreement are provided in such a way as to enable the Parties and its group companies to comply with applicable laws;

(d) Neither it nor any of its group companies, its sub-contractors, or its affiliates is the target or subject of any sanction laws; and

(e) It shall notify the other Party if it becomes aware of any breach of any applicable laws, including any sanction laws, or of any action, investigation or proceeding brought against itself, any of its group companies, its sub-contractors or its affiliate, relating to any breach of any applicable law.



16.2 Service Provider is committed to conduct its business ethically and lawfully. Service Provider values its relationship with the Merchant and expects utmost integrity and transparency in all the dealings. To that end, Service Provider expects that the Merchant also values its relations with the Service Provider and will conduct its business ethically and lawfully. Throughout the term of this Agreement or any other document/ agreement/ arrangement between the parties, Merchant agrees that neither it shall offer or give or agree to give to any person/employee of the Service Provider any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other agreement or for showing or for bearing to show favour or disfavour to any person with a view toward securing a favourable treatment.

## **17 DATA PROTECTION**

- a. Parties agree to adhere by the relevant data protection laws. The Parties agree that by executing this Agreement, the Merchant gives the Service Provider the right to sub-contract the entire or part of the services to a third party as per the Agreement requirement. The Service Provider ensures the Merchant that despite such sub-contracting, the Service Provider alone will stand liable towards the Merchant for any breach. The Service Provider will take all steps reasonably necessary to ensure that Merchant's data is treated securely and in accordance with the Service Provider 's privacy policy available on the website [www.delhivery.com](http://www.delhivery.com). The Service Provider always verifies the third-party vendor's security practices and regularly conducts their security and privacy assessments prior to any form of engagement.
- b. These third parties may have access to Merchant's information only to perform the Services on the Service Provider 's behalf and are obligated not to disclose or use it for any other purpose whatsoever. Also, the Service Provider binds the third-party vendors in the contract to secure the Merchant's data by putting monetary liabilities and surveillance practices.
- c. The Service Provider is conscious of the information shared with it for the purpose of this Agreement and will only use the information (a) as per the terms of this agreement; (b) if required otherwise with regard to the processing procedures and requirements, as per the privacy policy available at [www.delhivery.com](http://www.delhivery.com).
- d. The Service Provider maintains administrative, technical and physical safeguards designed to protect the personal information Merchant provides against accidental, unlawful or unauthorised destruction, loss, alteration, access, disclosure or use. Exceptionally if any personal data is present on the package or letter, it may be visible to unauthorized individuals.
- e. Merchant's information, including personal data, may be transferred to and maintained on computers located outside of Merchant's state, province, country or other governmental jurisdiction where the data protection laws may differ than those from Merchant's jurisdiction. No transfer of the Merchant's personal data will take place to an organization or a country unless there are adequate controls in place including the security of Merchant's data and other personal information.
- f. Merchant acknowledges and agrees that it has taken explicit consent of the data subjects to share their personal data with the Service Provider and also on the means and purpose of processing of their personal data as set out under this Agreement. Seeking such consent of the data subject shall be the liability of the Merchant alone

## **18. SUB-CONTRACTING:**

The Parties agree that by executing this Agreement, the Merchant gives the Service Provider the right to sub-contract the entire or part of the services under this Agreement to any of the Service Provider's subsidiaries and/or affiliates.

## **19 INTELLECTUAL PROPERTY:**

19.1 Parties agree to not breach the Intellectual Property Rights of either Party. If Parties become aware of any such possible infringement during this agreement, the Party will immediately notify the aggrieved party of the same in writing.

19.2**Rights:** Nothing in this Agreement affects the Parties' Proprietary Rights/Intellectual Property (as defined below), in existence prior to the Effective Date. The Parties grant only the licenses and rights specified in this Agreement and no other licenses and/or rights, including those under patent, are granted. Parties agree not to do anything whatsoever which might impair the other Parties right, title or interest in or to the intellectual property and agrees that it shall not acquire or attempt to acquire any right, title or interest, license in or to, any of the other Parties Intellectual Property.

19.3**Trademarks/Trade Names:** Parties hereby acknowledge and confirm that all Proprietary Rights/Intellectual Property Rights relating to the trademarks, service-marks, copyrights, trade names, etc., including the Parties' corporate name or any part thereof (collectively referred to as "**Intellectual Property/Proprietary Rights**"), are owned by, licensed to, possessed by or belongs to the Party and nothing contained in this Agreement shall be deemed to authorize the other Party to use or give any rights with respect to one Party's Intellectual Property.

19.4**Use:** Parties shall not use in any manner whatsoever, any of the Intellectual Property, registered or unregistered, except as expressly authorized in writing by the other Party and restricted to the purpose and period established therein. Parties agree to comply with all requirements and specifications relating to the display and/or use of any logo, trademark, and copyright, relating to the Intellectual Property. Upon expiration or termination of this Agreement for any reason, Parties shall immediately cease and desist for all time, from any use of or reference to, the Intellectual Property and to any and all representations, direct or indirect, that they are working together.

19.5**Publicity:** Neither Party shall use the name, logo, trademarks or trade names of the other Party in press releases, promotional material, Stores lists, advertising, marketing, publicity or business-generating efforts, whether written or oral, without obtaining the prior written consent of the other Party.

## **20 MISCELLANEOUS:**

- i. **Governing Law and Dispute Resolution:** This Agreement shall be governed by the laws of India, for the time being in force and the courts at New Delhi shall have exclusive jurisdiction to preside over matters arising hereunder. The Parties shall first endeavour to resolve their disputes amicably within fifteen (15) days from the date on which the dispute was first notified. In the event, the Parties fail to resolve the dispute amicably, the dispute shall be referred to arbitration. The Parties agree to mutually appoint a sole arbitrator. The venue/seat of arbitration shall be New Delhi and the language of arbitration shall be English. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.
- ii. **Waiver:** No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the Parties hereto unless made in writing and duly signed by both the Parties.
- iii. **Severability:** In the event any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unaffected, and the invalid, illegal or unenforceable provision(s) shall be replaced by a mutually acceptable provision(s), which being valid, legal and enforceable, comes closest to the intention of the Parties underlying the invalid, illegal or unenforceable provision(s).
- iv. **Entirety:** This Agreement together with all Recitals, Appendices, Exhibits, Schedules, Attachments and Addenda attached hereto constitute the entire agreement between the Parties and

supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, between the Parties with respect to the subject matter hereof.

- v. **No assignment:** Service Provider must not assign, transfer, charge or otherwise encumber, create any trust over or deal in any manner with this Agreement or any right, benefit or interest under it, nor transfer, or novate any of Service Provider's obligations under it without the prior written consent of Delhivery.
- vi. **Successors:** This Agreement binds the successors and assigns of the respective Parties with respect to all covenants herein, and cannot be changed except by written agreement signed by both Parties.
- vii. **Compliance with Laws:** Each Party hereto agrees that it shall comply with all applicable local laws, ordinances and codes in performing its obligations hereunder. Further, each Party shall establish and maintain all proper records (particularly, but without limitation, accounting records) required by any law, code of practice or corporate policy applicable to it from time to time.
- viii. **Insider Trading:** Merchant, may, during its engagement with the Service Provider, whether before, and/or after entering into this Agreement, have access to certain Unpublished Price Sensitive Information ("UPSI") of the Service Provider. Consequently, the Merchant acknowledges and undertakes that neither it nor its subsidiaries, affiliates, directors, officers, employees, lawyers and accountants or other similar connected person ("**Merchant's Representatives**") shall indulge in any manner of 'insider trading' activities and shall further comply with the 'insider trading code' and 'insider trading regulations' as laid down by the Securities and Exchange Board of India (including the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015) and Service Provider from time to time.

Further, the Merchant shall ensure that neither it nor any of the Merchant's Representatives shall:

- (i) communicate, provide or allow access to any such UPSI to any person except where such communication is in furtherance of a legitimate purpose, performance of duties under this Agreement or discharge of legal obligations; and
- (ii) procure from or cause the communication by any insider of UPSI relating to the Service Provider or its securities listed on the stock exchanges except in furtherance of a legitimate purposes, performance of duties under this Agreement or discharge of legal obligations; and
- (iii) trade in the securities of the Service Provider when in possession of UPSI.

Further, in the event of a breach of the terms of this clause by the Merchant and/or any of the Merchant's Representatives, the Merchant shall indemnify, defend and hold harmless the Service Provider from and against any claims, demands, actions, liabilities, costs, interest, damages, penalties and/ or expenses of any nature whatsoever (including all legal and other costs, charges and expenses) incurred or suffered by the Service Provider and its directors or officers or employees due to such breach on part of the Merchant and/or the Merchant's Representatives

- ix. **Force Majeure:** Neither party shall be deemed to be in material breach of the Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations or loss of Shipments, other than the payment of money, under this Agreement, caused by an event or occurrence beyond its control or remedy (a "Force Majeure Event"), including, without limitation, Acts of God, natural disasters, acts of civil or military authority, government priorities, fire, floods, epidemics, quarantine, energy crises, strikes, wars, riots, terrorist acts or accidents, provided storage charges shall continue to accrue during the continuation of the Force Majeure Event. Immediately upon discovery of a Force Majeure Event, the affected Party shall immediately notify the other Party. The date for performance of any obligation under the Agreement which is delayed by a Force Majeure Event, shall be suspended for a period equal to the delay caused by such event, but in no event shall such suspension extend the Term (as hereinafter defined). If such Force Majeure Event results in a delay that continues for a period exceeding fifteen(15) days or more, the Parties shall meet in order to agree upon the

best solution under the circumstances including termination provided that any termination of the Agreement shall not relieve the Merchant of its obligation to pay any money due to the Service Provider as of the date of such termination. Further, Parties agree that during a force majeure event, Service provider will not incur any penalty/ liability for not meeting the agreed TATs/ SLA. The Service Provider will try and minimize the risk to the Merchant to the lawful and reasonable extent permissible.

IN WITNESS WHEREOF, authorized officers of the Parties hereto have duly executed this Agreement as of the date first above written.

Delhivery Ltd.		
Sign:		Sign: _____
Name:		Name:
Title:		Title:
DATED:		DATED:

## **ANNEXURE I: Scope of Work**

### **1. Delivery of the Shipments**

- a) The Service Provider will allocate and send Delivery Personnel to the location(s) mutually agreed with the Merchant on any Business Day as required by the Merchant to pick up the Shipments for providing Delivery Services.
- b) The Service Provider shall provide the Merchant a list of pin codes of the areas lying within the territory where the Service Provider will make the Delivery or Returns of the Shipments reasonably within the timeline from the time of collection of the Shipments from the mutually agreed locations of the Merchant; This list may be updated by the Service Provider from time to time.
- c) In the event the Service Provider is unable to deliver the Shipments to the Consignee, the Service Provider shall inform the Merchant regarding the same and initiate RTO of such Shipments at an additional cost as mentioned in Annexure II. All costs associated to the RTO movement will be borne by the Merchant.

### **2. E-PODs**

It is understood that at the time of delivering the Shipment in case of Delivery and/ or Returns, the Service Provider shall obtain the signature of the Consignee or his representative on a document which is referred to as a Proof of Delivery ("**POD**"). The Service Provider will not bear any liability on the Shipment once the same has been delivered to the Consignee. The Service Provider shall make available to the Merchant, any e-POD's as maybe required by the Merchant if such request is raised within 15 (fifteen) days of the date of delivery of the Product. The Service Provider will be under no obligation to provide proof of delivery of the Products beyond such period.

If the Service Provider is unable to provide the hard copy of the POD, the Company agrees to accept e-pod/ indemnity bond for the purpose of invoicing. The liability of the Service Provider under such indemnity bond shall be limited to the agreed liability limit only.

### **3. Demurrage**

In case of non-acceptance of Shipments by the Merchant or the Consignee, except for reasons such as damage of the product where such damage is attributable solely to the Service Provider, the Service Provider reserves the right to levy suitable demurrage charges as provided in Annexure II below, for extended storage of such products for any period exceeding 7 (seven) days from the date of the first Delivery attempt, and up to 30 (thirty) days from such date. However, if the Merchant fails to remove the products from the warehouse of the Service Provider beyond the 30 (thirty) day's time period, the Merchant shall expressly waive all rights over the products and the Service Provider shall be free to dispose of the said products in the most suitable manner.

## **ANNEXURE II: Commercials**

- 1) All Statutory Taxes, Cess, Levies (including Service Tax) will be extra as applicable and as per the prevailing rates.
- 2) The Merchant ought to provide in the manifest the correct dead-weight and volumetric dimensions of each shipment handed over to the service provider.

### **ANNEXURE III: List of banned or Prohibited Items**

#### **Dangerous Items**

- Oil-based paint and thinners (flammable liquids)
- Industrial solvents
- Insecticides, garden chemicals (fertilizers, poisons)
- Lithium batteries
- Magnetized materials
- Machinery (chain saws, outboard engines containing fuel or that have contained fuel)
- Fuel for camp stoves, lanterns, torches, or heating elements
- Automobile batteries
- Infectious substances
- Any compound, liquid or gas that has toxic characteristics
- Bleach
- Flammable adhesives
- Arms and ammunitions
- Dry ice (Carbon Dioxide, Solid)
- Pressurized Containers
- Narcotic Substances

#### **Restricted Items**

- Precious stones, gems, and jewellery
- Uncrossed (bearer) drafts / cheque, currency, and coins
- Poison
- Firearms, explosives, and military equipment.
- Hazardous and radioactive material
- Foodstuff (perishable) and liquor
- Any pornographic material
- Hazardous chemical item