

SERVICES AGREEMENT

This Services Agreement (“**Agreement**”) is made and executed at New Delhi on this 27TH day of September 2023.

BY AND BETWEEN

Ecom Express Limited “erstwhile known as Ecom Express Private Limited” (CIN No. U63000DL2012PLC241107), a company, incorporated under the provisions of The Companies Act, 1956 and having its Registered Office at Ground Floor, 13/16 min, 17 min, Samalka, Old Delhi-Gurugram Road, Kapashera, New Delhi-110 037, India , and corporate office at Unit No. 1, 10th Floor, Ambience Corporate Tower-II, Ambience Island, NH-8, Gurgaon – 122002, Haryana, hereinafter referred as “**Ecom Express/Service Provider**” (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its associates, heirs, executors, administrators, successors and permitted assigns) **OF THE ONE PART.**

AND

AYA NUTRITIONS, an entity bearing PAN No. **CDNPA4263R** ,having its Registered Office at Second, **123, SAHASPUR ALI NAGAR, JOYA , AMROHA UTTAR PRADESH 244222** India, through its authorized signatory ZAINUL ABADEEN as Annexure- A-0 to this Agreement and hereinafter referred as “**Shipper**” and (which expression shall unless it be repugnant to the context or meaning thereof and be deemed to mean and include its associates, heirs, executors, administrators, successors and permitted assigns) **OF THE OTHER PART**

“**Ecom Express**” and “**Shipper**” shall hereinafter be individually referred to as “**Party**” and collectively referred to as the “**Parties**”

WHEREAS:

- i. **Ecom Express** is a courier services company, having requisite expertise, skill and infrastructure to render courier services to its customers;
- ii. **Shipper** is inter alia engaged in the business of ecommerce and is desirous of availing the courier services of **Ecom Express** as per the terms mutually agreed between the Parties;
- iii. **Ecom Express** has agreed to render its services on a “**principal to principal**” basis to the **Shipper** and in consideration of Service Fees which shall form paramount consideration towards the scope reflected under this Agreement; and

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- iv. For mutual interest and benefits, the Parties hereto are desirous of recording the terms and conditions of their understanding under this Agreement.

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 DULY ACKNOWLEDGED BY THE PARTIES CONSTITUTING THEIR BINDING OBLIGATIONS HEREUNDER, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS - In this Agreement, the following terms, to the extent not inconsistent with the context thereof, shall mean as follows:

- a. "Agreement" shall mean this agreement, including the recitals, schedules, appendices, annexures and exhibits and any amendments made thereto from time to time in accordance with the terms of this agreement;
- b. "Applicable Law(s)" shall include all applicable statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives including any amendments thereto and orders of any governmental authority or self-regulatory agency, statutory authority, tribunal, board, court or recognised stock exchange of any applicable jurisdiction;
- c. "Confidential Information" shall mean all such non-public information that a disclosing Party identifies and designates as being proprietary or confidential to the other Party. Confidential information shall specifically include: (a) information disclosed in relation to the business affairs of a disclosing Party including legal, financial, marketing, operations related information disclosed to the other party in confidence; (b) Addressee information, in relation to the Shipper; (c) documents, data; (d) Services and related process(s) in relation to the Service Provider; and (e) any other related information, trade secrets and information designated as confidential by the disclosing party from time to time;
- d. "Services" shall mean the services provided by Ecom Express, as outlined under Clause 2;
- e. "Consignee/Addressee" is the end customer of Shipper to whom the Shipment gets delivered or is picked up from.

2. SCOPE OF SERVICES

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Subject to the terms and conditions contained in this Agreement, it is hereby agreed between the Parties that:

- i. **Ecom Express** based on the instructions of **Shipper** shall render “**Courier Services**” to **Shipper** which shall be deemed to mean and include (i) In case of **Forward Carriage**: picking up of the shipments from the designated address notified by **Shipper** and delivering the same to the designated address of consignee as shall be communicated by **Shipper** to **Ecom Express** from time to time. It shall include in respect of orders marked as Cash On Delivery shipment (“**COD order**”): (a) remittance of the cash payment (*as per collectable value declared for COD order*) made by the consignee, to the account of **Shipper** as per mutually agreed remittance schedule between the Parties or (b) in respect of said COD order turning to be e – COD order upon availment of e – COD option by consignee in respect thereof (“**E- COD Order**”/ “**E – COD Shipment**”): remittance of the payment made by consignee using POS Device, to the account of **Shipper** as per mutually agreed remittance schedule between the Parties; or (ii) In case of **Reverse Pick Up**: picking up of the shipments from the consignee's doorstep and delivering the same to the designated addresses notified by **Shipper** to **Ecom Express**; or (iii) in case of **Return**: causing return to the origin at the notified address by the **Shipper** of the undelivered shipments, as per the terms of the Agreement;
- ii. **Ecom Express** shall pickup and deliver shipments on Said To Contain Basis as per the requirements of and designated address notified by **Shipper** to **Ecom Express** from time to time. For the purpose of this Agreement “**SAID TO CONTAIN BASIS**” shall mean that **Ecom Express** shall be under no obligation, or be responsible or liable to verify the description, quality, quantity, specifications or the contents of the shipments handed over to **Ecom Express** in any manner whatsoever. The **Shipper** shall undertake to make proper, true, fair, correct and factual declaration regarding description and value of Products. Further, the **Ecom Express** shall not be responsible in any way whatsoever for the merchantability of the Product;
- iii. **Ecom Express** shall provide web based tracking solutions for shipments carried in its network (“**API Portal**”).
- iv. **Ecom Express** shall in advance assign its Air Waybill number series (“**AWB**”) to the **Shipper** for allocation of each such AWB to the order assigned by the **Shipper** to **Ecom Express** under this Agreement. **Shipper** shall validate each such AWB to its Order Reference Number captured on the shipment, for assignment of Order by the **Shipper** to **Ecom Express** under this Agreement. AWB allocated by the **Shipper** to each such Order assigned by the **Shipper** to **Ecom Express**, shall be deemed to be due authorization accorded by the **Shipper** to **Ecom Express** to perform the concerned Courier Services in respect of the same, as per the terms of the Agreement. Further the orders assigned by **Shipper** with AWB validated of **Ecom Express** shall be subject to all the terms and conditions mentioned under this Agreement and the same shall be binding on the **Shipper**;

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- v. **Ecom Express** shall depending upon the relevant status code, make a maximum of 3 attempts as specified hereunder, over a period of seven days from the date of first out-scan from the concerned **Ecom Express** delivery/ pick up center:
- (i) in case of Forward Carriage: - attempt to deliver the shipment; or
 - (ii) in case of Reverse Pick Up: - attempt to pick up the shipment from the notified address of the consignee;
- vi. **Ecom Express** shall update the status of attempts made for delivery but turned out to be unsuccessful along with reasons thereof on its API Portal through API link push, auto generated NDR/ MIS reports or via email communication issued by **Ecom Express** to **Shipper** in respect of the same. In case where no alternate instructions of **Shipper** is received by **Ecom Express** within a period of 48 hours of unsuccessful attempt updated by **Ecom Express** to **Shipper**, **Ecom Express** reserves its right at its sole discretion to:
- i. in case of Forward Carriage: - Return the shipment to its origin; or
 - ii. in case of Reverse Pick Up: - refrain from making any further pick up attempt from the address of consignee notified by the **Shipper** to **Ecom Express**.
- In case where the alternate instructions of **Shipper** is received by **Ecom Express** within the said prescribed timelines, **Ecom Express** shall, subject to the maximum attempts as specified under clause 1(v) of this Agreement, attempt delivery/ pick up, as the case may be, pursuant to which **Ecom Express** at its sole discretion shall return/ refrain from making any further attempt, as the case may be. The service fee shall be applicable on all return shipments which shall be billed as per applicable freight and other charges, charged by **Ecom Express** as in case of Forward Shipments;
- vii. **Ecom Express** shall inform the **Shipper** with the list of undelivered shipments along with reasons thereof periodically vide system generated auto email sent to the **Shipper** and/ or as per the system update on API Portal or on its other such dashboards. Details of any specific shipment and/ or electronic copy of POD shall be furnished by **Ecom Express** to the **Shipper** provided however a written requisition concerning the same is furnished by **Shipper** to **Ecom Express** within a period of 45 days from the date of physical hand over/ booking of the shipment with **Ecom Express**; and
- viii. **Ecom Express** recommends insurance of all shipments carrying anything of value at the **Shipper**'s cost.

3. REPRESENTATIONS, OBLIGATIONS AND WARRANTIES OF THE SHIIPPER:

The **Shipper** acknowledges, represents and warrants that:

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- i. it is an entity duly and legally established, organized and validly existing under the laws of India;
- ii. it has full corporate power and authority to execute and deliver this Agreement in accordance with its terms and to perform all its duties and obligations arising or created under or pursuant to this Agreement and all requisite corporate approvals, as applicable, have been obtained by it prior to the execution of this Agreement;
- iii. the execution of this Agreement and delivery and performance by it of its obligations hereunder do not and shall not violate or conflict in any manner with or result in a breach or default under applicable laws of India or any of its duties or obligations under any agreement, understanding or arrangement, written or oral, to which it is a party;
- iv. It shall ensure that the Invoice affixed on the shipment bears complete requisite order details as is required under GST law towards the sale of the shipment including sale and sellers complete details and GSTIN; , Collectable Value in case of COD (Cash on Delivery) shipment with routing Delivery Centre code and bar coded Air Waybill Number assigned by **Ecom Express**. In no case **Ecom Express** shall be liable to verify the content of the Invoice and/ or correctness of the particulars specified therein. Further the Invoice and/ or packaging of the shipment shall also specifically provide that for any return, COD including E - COD or other refunds and/ or any sale related issues concerning the shipment including but not limited to the contents, quality, specifications, appearance or aesthetics, or quantity of the shipment, the Consignee is required to contact the **Shipper**/ Seller only and **Ecom Express** shall bear no liability in respect of the same;
- v. The **Shipper** shall ensure that orders assigned to **Ecom Express** including in respect of COD/ E-COD order and/ or Collectable Value thereof is in conformity with all applicable laws including but not limited to tax laws, RBI norms, Legal Metrology Act etc.;
- vi. In respect of E – COD option availed by consignee, the role of **Ecom Express** is limited to facilitation of POS Device as a courier service provider to the consignee for making payment therefrom to the **Shipper** against delivery of COD shipment and it is further acknowledged, represented and warranted by **Shipper** that neither **Ecom Express** nor payment transit gateway operator shall be liable or responsible for any fraudulent, dubious, suspicious or unauthorized transaction being conducted by the consignee therefrom. **Ecom Express** is in no case a beneficiary or merchant to the said payment transaction nor is an operator, administrator nor manager of the payment transit gateway which is solely and exclusively being managed and operated by third party service provider;

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- vii. It shall ensure that shipment handed over to **Ecom Express** is adequately and suitably packed considering the nature of the shipment in a tamper proof carriage worthy packaging, amenable to reasonable handling during transit and is adequate to withstand the normal rigors, jerks and jolts of transportation hazards or the like encountered during transit. In any case **Ecom Express** shall not be liable for any damage/ shortages/ wrinkle caused to the shipment due to insufficient/ unsuitable or inadequate packaging thereof. Further it is acknowledged by the **Shipper** that **Ecom Express** shall not be liable for any damage to the shipment in case where only external packaging is damaged but the contents of the shipment is in good order;
- viii. The shipment shall be handed over to **Ecom Express** in a tamper proof and transit-carriage worthy packaging along with the legible Order Form properly affixed on the shipment/package;
- ix. It shall not book / handover or allow to be handed over any shipment to **Ecom Express** which is banned, restricted, illegal, prohibited, contraband, stolen, spurious or fake, infringing of any third party proprietary rights, hazardous, dangerous or in breach of any tax or statutory laws and further is not a currency, bullion, letters, financial and security instruments. In any case or event, **Ecom Express** shall not be responsible and/ or be liable for any claim, loss, damage, theft, misappropriation or consequences arising out of contents of any such shipments being handed over to **Ecom Express** under this Agreement even if **Ecom Express** or its Delivery Personnel has the knowledge of the same. At no point in time does **Ecom Express** takes any liability or warrant that any particular shipment to be delivered is capable of carriage without infringing the law of any state of the country from/ to or through which the product(s) may be carried;
- x. It is expressly understood and acknowledged by the **Shipper** that **Ecom Express** is a mere Courier Service Provider to the **Shipper** and or its authorized sellers and not in any other capacity, whatsoever it may be called and as such shall not be liable whatsoever for any sale related issue (including but not limited to Taxes thereon), third party actions, claims of any type or nature, issues or disputes pertaining to COD including e - COD or other refunds or pertaining to defective quality, quantity, specifications, and aesthetics of the product being sold by **Shipper**/ its seller to the consignee. It is further clarified and agreed by the Parties that **Ecom Express** is NOT performing any activity or job or providing service on behalf of which tantamount to it being a Seller, Buyer or Retailer and or Stockist, Agent (including merchantile agent or collection agent), Distributor or Dealer OR by any like names and conventions related to Trade or business etc. The complete activity performed by **Ecom Express** under this Agreement is as a mere "Courier Service Provider" and based on specific instructions given by the **Shipper** as part of the services scope and procedures defined and from time to time;

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- xi. The shipment handed over by the **Shipper** to **Ecom Express** shall be on a “**SAID TO CONTAIN BASIS**” and it is further expressly represented and warranted by the **Shipper** that **Ecom Express** shall not be liable for the issues related to refund, contents, quality, quantity, specifications, packaging, restrictions and sale of the product/shipment;
 - xii. **CONSIGNEE GRIEVANCE:** For consignee related grievances or disputes pertaining to the shipment or its sale including but not limited to its return, defects, quality, quantity, aesthetics, COD or other refund related or any other sale related issue concerning the shipment, the **Shipper** shall:
 - a. ensure to provide contact number along with the name and designation of the concerned grievance redressal officer of the **Shipper** on its website, packaging or invoice to redress the grievance of the consignee promptly; and
 - b. In case where any such dispute or grievance conveyed to **Ecom Express** by consignee, is communicated by **Ecom Express** to the **Shipper**, the **Shipper** shall ensure to resolve the same promptly with the consignee. The **Shipper** shall on demand indemnify, compensate, defend and hold **Ecom Express** harmless against any actions and disputes arising against **Ecom Express** in connection with the same.
4. **SERVICE FEE AS FREIGHT AND OTHER CHARGES (Rates) SHALL BE AS PER ANNEXURE-A AND SERVICABLE LOCATION LISTING OF Ecom Express SHALL BE SUCH AS COMMUNICATED TO Shipper VIDE EMAIL COMMUNICATION FROM TIME TO TIME**
- i. In respect of E – COD shipment, E – COD charges as provided under “**Annexure-A**” shall apply based on mode of payment opted by consignee at the time of delivery of COD shipment to the consignee, the details of which shall be shared by **Ecom Express** with **Shipper** along with invoice raised by **Ecom Express** upon **Shipper** in terms of clause (5) of this Agreement.
 - ii. Further it is agreed between the Parties that COD shipment which is picked up during the month in respect of which the invoice is raised but delivered during the subsequent month under E – COD order, shall be billed as per COD charges during said billing month/period and differential amount arising on account of applicable e- COD charges shall be adjusted in subsequent month billing;
 - iii. The Rates shall be exclusive of applicable Goods & Service tax(s) and applicable tax/cess(s) which shall be charged over and above the said stipulated Rates

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- iv. **VALIDITY OF RATES:** The Rates shall be valid unless mutually revised by the Parties. The Parties agree to revise rates by a minimum of 7% every year to take care of increase in operating cost inputs and general inflation.
- v. **CHARGEABLE WEIGHT:** Rates shall be charged on the basis of Dimensional Weight or Actual Weight, whichever is higher as per the calculation provided in the Annexure – A.

5. PAYMENT TERMS:

Subject to the terms and conditions hereunder stipulated in this Agreement, it is hereby agreed between the Parties that:

- i. In consideration of Courier Services rendered by **Ecom Express** under this Agreement, **Ecom Express** shall raise monthly bills upon **Shipper** at the beginning of each calendar month for the orders assigned by **Shipper** during the immediate past calendar month and as per the rates stipulated under **Annexure A** of this Agreement (*including the amendments thereof*);
- ii. **Shipper** shall release the invoiced amount within a maximum period of 10 days from the date of the Invoice raised by **Ecom Express** upon **Shipper**;
- iii. Discrepancies if any related to Invoice shall be duly notified in writing by **Shipper** to **Ecom Express** within 5 days of the receipt of the soft copy of the Invoice along with reasons supporting the same;
- iv. Delay in Payments beyond prescribed timelines shall attract interest @ 2% per month. This right is in addition to any other rights and remedies available to **Ecom Express** under this Agreement, in law or in equity; and
- v. In case where the aforesaid invoiced amount is not being paid along with interest within 30 days from the due date, **Ecom Express** reserves its right at its sole discretion to suspend the Courier Services and/ or terminate the Agreement on immediate basis and further advising the **Shipper** to pick up/ arrange to pick up the shipments at their own cost or expense in such an eventuality.

6. DUTIES AND TAXES:

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- i. **Shipper** shall be responsible and/ or ensure compliance of applicable statutory obligations including taxes, levies, assessments or demands pertaining towards sale or transit of the shipments handed over to **Ecom Express** under this Agreement; and
- ii. In case where **Ecom Express** is required to pay any statutory taxes, charges or levies attributable on the part of/ or on behalf of **Shipper**/ its Sellers or any such taxes, charges, penalties or levies are imposed on **Ecom Express** due to breaches attributable on the part of **Shipper**/ its Sellers, **Ecom Express** shall be entitled to claim reimbursement of the same based on documentary proof furnished by **Ecom Express** to **Shipper** and **Shipper** hereby agrees to pay such charges on demand or within a maximum period of 7 days from the date of demand raised by **Ecom Express** upon **Shipper** in connection with the same. Additional Service/ clearance charge @ 5% on such levies and taxes paid shall apply.
- iii. In addition to the Service Fee, the Shipper shall also pay the complete amount towards applicable taxes reflected in the invoice, including, but not limited to Goods and Services Tax, to the exception of tax deducted at source (TDS) which shall be deducted as per the applicable provisions of Income Tax Act, 1961. The Shipper will share the certificate of deduction within the prescribed statutory timeline.
- iv. Shipper undertakes to provide all necessary information and documents pertaining to the Shipper, including, but not limited to GSTIN, billing location, GST registration certificates and such other documents that may be required, from time to time in writing, by Ecom Express to ensure statutory compliances as applicable under Goods and Services Tax laws including rules, regulation made thereunder and notifications, circulars, etc. issued from time to time ("GST Laws"). Any tax liability arising against Ecom Express due to furnishing of incorrect registration number shall be solely borne by Shipper. If the Shipper fails to furnish GST registration number, then the Shipper will be treated as unregistered and Ecom Express will not be responsible to issue a revised or new invoice with correct GSTIN number post 30 (Thirty) days of issuing of such invoices.
- v. The Shipper acknowledges and agrees that Shipper will adhere and ensure compliance with all the applicable GST Laws, including, but not limited to issuing of E-way bill, pasting of the GST compliant tax invoice on top of the shipment etc. In case any liability arises on Ecom due to non-compliance by the Shipper, Ecom Express shall not be responsible to bear the liability and the Shipper agrees to pay such liability on demand by Ecom Express within 7 (seven) days of issue of the invoice or debit note.
- vi. Shipper shall request Ecom Express in writing for any modification pertaining to statutory compliance data submitted by Ecom Express to statutory authority against the Services provided under this Agreement. Ecom Express shall not be responsible for any GST loss to the Shipper on account of furnishing of incorrect information if Shipper does not intimate Ecom Express for the mismatch within the statutory time period for making the changes in the details submitted on the GST portal.

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- vii. Both Parties acknowledge and agree that in event of any enquiry, scrutiny, audit, assessment of other tax proceedings is initiated against either Party in respect to the Services provided, both the Parties shall fully cooperate and support by furnishing the relevant information and documents related to the Services provided under this Agreement on timely manner.

7. LIMITATION OF LIABILITY:

- i. Notwithstanding anything contained under this Agreement and subject to the terms stipulated hereunder this clause, it is hereby expressly agreed between the Parties that the maximum liability of **Ecom Express** for any loss or damage caused to shipments, for any reason whatsoever including but not limited to any acts whatsoever by **Ecom Express** or its employees, agents, assigns, or other representatives and as attributable to have occurred by and while in the transit network of **Ecom Express**, shall be strictly governed as per the terms mentioned hereunder:
- a. The maximum liability of **Ecom Express** per shipment/ AWB lost or damaged shall be limited to Rs. 2,000/- or the declared value, whichever is lower. By acceptance of credit note issued by **Ecom Express** in favor of **Shipper** under this provision, the **Shipper** agrees to unconditionally and irrevocably relinquish and revoke all title, rights and interest in respect of said lost or damaged shipment/ AWB, vesting all such rights, title and interest under the same in favor of **Ecom Express** and further authorizing **Ecom Express** with absolute rights and discretion to dispose it off in the manner **Ecom Express** deems fit and that **Shipper** shall have no objection whatsoever in respect of the same; and
- b. **Ecom Express** may at the request of **Shipper** tendered in writing to **Ecom Express**, issue Loss/Damage/Shortage certificate ("**Certificate of Fact**"/"**COF**") with the sole purpose of enabling the **Shipper** to lodge an insurance claim with its Insurer. **Shipper** agrees and acknowledges that COF issued by **Ecom Express** to **Shipper** pursuant to request of **Shipper** shall not be construed to be admission of any liability or claim, in any manner, whatsoever on the part of **Ecom Express** and **Ecom Express** shall be discharged of all liabilities or claims, if any, arising out of shipment on receipt of COF by **Shipper**
- c. It is agreed between the Parties that the **Shipper** is not entitled to claim both COF and credit note for the same claim.
- d. No claims shall be entertained by **Ecom Express** for any damages cause to liquid and fragile shipments under this Agreement. Further, in case of any ambiguity, this clause shall prevail over any other clause in this Agreement.

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- ii. **Ecom Express** shall not be liable in any event for any indirect, incidental, consequential, special or exemplary losses or damages arising from the Agreement under tort, common law or under public policy, even if such party has been advised of the possibility of such damages, such as including but not limited to loss of revenue, loss of goodwill or profits or anticipated profits or lost business, any loss of data etc.;
- iii. Any such claim giving rise to any liability stipulated in this clause shall be subject to mutual verification by the Parties;
- iv. All claims as to loss shall be duly notified in writing by **Shipper** to **Ecom Express** within **30 days** from the date of physical hand over of the shipment/ booking of shipment by **Shipper** with **Ecom Express** failing which **Shipper** shall be deemed to have waived off its right in connection with the same. Further, all claims as to damage to the shipment shall be duly notified by **Shipper** to **Ecom Express** in writing within 24 hours of receipt of shipment from **Ecom Express**. Further it is being acknowledged by the **Shipper** that no liability shall accrue upon **Ecom Express** in case where only external packaging is damaged but the contents of the shipment are in good order; and
- v. Notwithstanding anything contained in this Agreement, it is acknowledged by the **Shipper** that **Ecom Express** shall not be liable for any delays / shortage/ loss/ damage/ non delivery of the Shipment arising/ occurring due to the reasons not attributable to **Ecom Express** and/ or beyond its reasonable control such as Force Majeure events, government actions including detention, seizure/ interception/ insufficient/ incorrect-incomplete address/erroneous particulars marked on the Invoice due to which the Shipment remains undelivered and for any other factors not attributable to **Ecom Express**.

8. REMITTANCE OF COD SHIPMENT VALUE COLLECTED will be as per Annexure-A.

- i. The **Shipper** shall in case of COD order, duly authorise **Ecom Express** to pick up Collectable Value from consignee against delivery of the COD shipment and in case of E - COD option availed by consignee, the **Shipper** shall duly authorise **Ecom Express** to facilitate POS Device to consignee so as to enable the consignee to make payment therefrom to the Shipper against delivery of COD shipment being purchased by the consignee from the **Shipper's** Website/Platform/Other media and as declared under "**Collectable Value**" / "**Cash on Delivery**" / "**COD amount**".
- ii. **Ecom Express** shall be liable to pick up and/ or remit the Collectable Value, as declared by the **Shipper** in the transaction order details provided by **Shipper** to **Ecom Express** and it is acknowledged by the **Shipper** that **Ecom Express** shall not be liable for any discrepancy, short or excess Collectable Value details notified by **Shipper** to **Ecom Express** whatsoever. **Ecom Express** reserves its rights to withhold and/ or adjust COD

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Registered Office: - Ground Floor, 13/16 min, 17 min, Samalka, Old Delhi, Gurugram Road, kapashera, New Delhi – 110037, India

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amount in case where the invoiced amounts of **Ecom Express** has been delayed or withheld by **Shipper** beyond prescribed timelines under this Agreement

- iii. In respect of E – COD order, it is also being acknowledged and agreed by the Parties that:
- a. Where the payment made by the consignee is withheld by the issuing bank of the consignee pending conclusion of enquiry by issuing bank on account of any of the reasons as mentioned hereunder and is suspected or identified as such, by said issuing bank, **Ecom Express** shall provide to **Shipper** the details of said shipment along with amount withheld and reasons thereof as provided by issuing bank within 2 days from the agreed remittance cycle. The same shall not be considered to be default on the part of **Ecom Express** in making remittance thereof as per mutually agreed remittance schedule between the Parties under this Agreement;
 - (i) The transaction is for any reasons; unlawful or unenforceable.
 - (ii) Any transaction made through a card outside the territory authorized for the use of the valid Account/ Valid Card.
 - (iii) Transaction is posted more than once to consignee's account.
 - (iv) The transaction is doubtful or erroneously paid by Consignee;
 - (v) Any other event or circumstance, suspected to be fraudulent by the issuing bank.
 - b. That in respect of said alleged transaction and subject to processing of payment by issuing bank, the remittance of alleged transaction amount shall be made by **Ecom Express** within 45 days of the payment transaction being made by the consignee along with details as to valid or invalid transaction discerned as such by the issuing bank, conveyed by **Ecom Express** in writing to the **Shipper** provided however that where the said alleged transaction is discerned by issuing bank to be conducted by the consignee in collusion with **Shipper**/ its Seller the said remittance shall not be processed by issuing bank and consequently **Ecom Express** shall not be liable whatsoever to remit the said transaction amount to the **Shipper**. **Ecom Express** shall convey details of said discernment as provided by issuing bank to **Shipper** and the same shall not be considered to be default on the part of **Ecom Express** whatsoever;
 - c. In case of invalid transaction discerned by issuing bank, **Ecom Express** or POS operator shall in no case be held liable and it shall be the **Shipper's** responsibility to initiate appropriate action in law or equity against the consignee including filing of FIR if deemed necessary;

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- d. **Ecom Express** role in respect of e – COD option availed by consignee is limited to facilitating the POS Device as a courier service provider to the consignee enabling the consignee to make the payment therefrom and remittance as per mutually agreed schedule to be made by **Ecom Express** to the **Shipper** under the Agreement is subject to transaction processing by the issuing bank and any reasons for delay in respect thereof shall be duly conveyed in writing by **Ecom Express** to the **Shipper**

9. **RECONCILIATION AND NO DUE CERTIFICATES:**

- i. The Parties agree to reconcile accounts in respect of shipment booked, delivered, returned and COD amount picked up and remitted on a month to month basis (1st to the end of each month) under proper signoff within a maximum period of 45 days from the close of each month during which the shipment is booked. The Parties shall issue a “**No Dues Certificate**” to each other to this effect. Thereafter **Ecom Express** shall not entertain any claim related to the shipments shipped during the month; and
- ii. Notwithstanding to anything, all payments in respect of COD orders shall be deemed to have been fully paid or settled by **Ecom Express** to the **Shipper** in case if no claim is received from the **Shipper** within a maximum period of 30 days from the end of the month in which the said shipments are booked.

10. **INDEMNIFICATION:**

- i. **Shipper** shall indemnify, defend and hold **Ecom Express** harmless against actions and claims including third party and statutory actions, disputes and claims, suits, prosecutions, proceedings, penalties, levies, demands, assessments and all reasonable costs (including reasonable legal and Advocate costs) arising against **Ecom Express** in respect of or due to (a) breach of obligations including statutory obligations, representations or warranties on the part of **Shipper**/its Seller (b) third party or consignee related disputes, grievances or claims pertaining to the defect in quality, quantity, aesthetics, contents or inherent vice of the shipment (c) actions or proceedings initiated against **Ecom Express** in case of interception/ seizure/ detention related issues by any statutory/ regulatory or law enforcement agency (d) banned, restricted, illegal, prohibited, contraband, stolen, spurious, infringing of any third party proprietary rights, hazardous, dangerous or in breach of any tax or statutory, currency, bullion, letters, financial and security instruments handed over to **Ecom Express** under this Agreement (e) any third party or consignee related claims, grievances, action or dispute whatsoever pertaining to or in relation to shipments, COD including e – COD and other refunds related issues;
- ii. **Ecom Express** shall indemnify, defend and hold **Shipper** harmless against actions and claims including third party and statutory actions, disputes and claims, suits, prosecutions, proceedings, demands, penalties, levies, assessments and all reasonable costs (including

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reasonable legal and Advocate costs) arising against **Shipper** due to breach of obligations, representations, warranties including statutory obligations attributable on the part of **Ecom Express** in the provisioning of Courier Services under this Agreement; and

- iii. Further, Shipper hereby agrees to indemnify and hold the Service Provider its directors, officers, employees, representatives and agents harmless against any direct actual loss, direct actual damages, third party actions, proceedings and claims including Consignee/Addressee and statutory actions and claims, disputes, costs (including reasonable legal costs), charges and expenses, demands, direct actual liabilities, fine, penalties arising against the Service Provider due to any Consignee/Addressee related disputes, claims or issues relating to services/ transaction executed/ availed by Consignee/Addressee from Shipper. Consignee/Addressee herein is the end customer the shipment/carriage is getting delivered to or getting picked up from.
- iv. Neither party shall be liable in any event for any indirect, incidental, consequential, special or exemplary losses or damages arising from the agreement under tort, common law or under public policy, even if such party has been advised of the possibility of such damages, such as including but not limited to loss of revenue, loss of profit, loss of goodwill or anticipated profits or lost business, any loss of data etc.

11. CONFIDENTIALITY OBLIGATIONS:

- a. Both the Parties shall keep confidential the Confidential Information belonging to the other Party and shall use the same for the limited purpose of this Agreement or for better performance of Services provided by the Service Provider. The Parties shall not disclose the Confidential Information of the other Party to any third Party without prior written consent of the other Party during the term of this Agreement and for a period of 1 year from the date of expiry/ earlier termination of the Agreement.
- b. Exceptions to Confidentiality Obligations: The obligation of confidentiality under this Clause shall not apply to information which:
 - i. is non-confidential in nature or is already available in the public domain;
 - ii. was in the possession of the recipient independent of disclosure of the Confidential Information under this Agreement;
 - iii. is disclosed to the recipient by a third party, or is acquired by the recipient from a third party, before or after the date of this Agreement, who to the knowledge of the recipient had no duty of confidentiality to the disclosing Party with respect to such information;
 - iv. is independently developed by the recipient; or
 - v. the recipient is required to disclose under the Applicable Law or pursuant to any order any court, judicial authority or regulatory body.

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12. TERM AND TERMINATION:

This Agreement shall be effective from the date of signing of this Agreement and the same shall be in full force and effect unless otherwise terminated in accordance with the terms as envisaged hereunder:

- i. Upon convenience by giving not less than thirty (30) days prior written notice to the other party;
- ii. Immediate basis: Incase where the bills of **Ecom Express** are not paid within a maximum period of 30 (Thirty) days from the due date, **Ecom Express** reserves its right to terminate and/or suspend the Services on forthwith basis; and
- iii. Immediate basis: If either Party should enter into liquidation, either voluntary or compulsory, or become Insolvent, or enter into composition or corporate reorganization proceedings or if execution be levied on any goods and effects of the other Party or the other Party should enter into receivership or bankruptcy.

13. CONSEQUENCES OF TERMINATION:

Upon termination or early determination of this Agreement, as the case may be:

- i. **Ecom Express** shall perform the Courier Services till validity of the Agreement;
- ii. The Parties shall promptly settle their accounts and Parties shall comply with their respective obligations strictly as per the terms of the Agreement without any protest or demur whatsoever; and
- iii. Indemnification Limitation of Liability, Notices, Governing Law and Jurisdiction and Confidentiality clause shall survive the termination.

14. **FORCE MAJURE:** **Ecom Express** shall not be held liable for any loss, delay or damage caused to the shipments due to force majeure reasons including but not limited to the acts of god, strikes, acts of terrorism, burglary, hijacking, robbery, riots, political disturbances, invasion, fire, floods, tsunami, epidemic/pandemic, road accidents and for reasons beyond the control of **Ecom Express** and/ or not attributable on account of **Ecom Express**. Occurrence of a force majeure shall not relieve a Party of any obligation to pay any sum due and payable under this Agreement.

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15. SUCCESSORS AND ASSIGNS: Neither Party shall assign its rights or obligations under this Agreement without the prior written permission of the other party and any attempt to do so shall be void. Any such assignment consented to by the Parties shall be confirmed vide written confirmation signed by Parties including assignee to the said effect.

16. GOVERNING LAW AND JURISDICTION:

This Agreement, the construction and enforcement of its terms and the interpretation of the rights and duties of the Parties hereto shall be governed by the laws of India and shall be subject to the jurisdiction of courts in New Delhi. This Agreement is executed in English language which shall prevail over any translation thereof.

17. HEADINGS:

The headings in this Agreement are for purposes of reference only and shall not in any way limit or otherwise affect the meaning or interpretation of any of the terms hereof.

18. CORPORATE AUTHORITY/FURTHER ASSURANCES:

Each Party hereby undertakes and represents that it has taken all necessary corporate action to authorize the execution and consummation of this Agreement and will furnish the other Party with satisfactory evidence of same upon request. Further each Party represents to each other that the Party is not restricted by any statutory or other documentary restriction or provision to consummate and/ or execute the transactions or scope reflected under this Agreement. Also each Party agrees to negotiate in good faith the execution of such other documents or agreements as may be necessary or desirable for the implementation of this Agreement and the effective execution of the transactions contemplated hereby, and shall continue to do so during the Term of this Agreement.

19. NOTICES: Any notice provided for in this Agreement shall be in writing and shall be (i) transmitted by Email to the official Email ID of the Party or (ii) first transmitted by electronic mail (Email) and then confirmed by postage, prepaid registered post with acknowledgement due or by recognized courier service; or (iii) sent by postage, prepaid registered post with acknowledgement due or by recognized courier service, to the relevant Party at its address set out below:

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Ecom Express Limited

Name : Dipanjan Banerjee
Designation : Chief Business Officer
Address : Unit No. 1, 10th Floor, Ambience Tower-II, Ambience Island,
Gurugram, NH-8, Haryana-122002
Telephone No : + 91 0124 - 3394000
Email : dipanjanb@ecomexpress.in

AYA NUTRITIONS

Name : ZAINUL ABADEEN
Designation : PROPRIETORSHIP
Address : 123, SAHASPUR ALI NAGAR, JOYA , AMROHA UTTAR PRADESH 244222
Telephone No : 9927486914
Email : ayanutritions@gmail.com

20. **COUNTERPARTS**: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement.
21. **NO AGENCY OR PARTNERSHIP**: Ecom Express relationship with **Shipper** will be that of an independent contractor sharing a principal to principal relation with each other and nothing in this Agreement should be construed to create or imply a partnership, agency, joint venture or employer-employee relationship with each other
22. **WAIVER**: Any waiver by either Party of a breach of any provision of this Agreement by the other Party shall not be construed as a waiver of any other or subsequent or preceding breach by the other said Party. No waiver by either Party of any right under this Agreement shall be construed as a waiver of any other right which the Party may have under this Agreement, in law or in equity.

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23. **AMENDMENTS:** This Agreement shall be changed/modified/varied/altered/revised by mutual agreement of authorized representatives of the parties in writing. No modification of or amendment to the same nor any waiver of any rights under this Agreement shall be effective unless mutually agreed in writing and signed by the authorized representative of the Parties.
24. **SURVIVAL** – Any terms and conditions that by their nature or otherwise reasonable should survive expiration or termination of this Agreement, shall be deemed to survive the expiration or termination of this Agreement. Such terms and condition include but are not limited to indemnification, confidentiality, payment terms, relationship, liability, Jurisdiction, Governing Laws.
25. **SEVERABILITY:** In the event that any provision of this Agreement shall be deemed by any court having jurisdiction thereon to be illegal, invalid or unenforceable, it shall in no way affect or prejudice the legality, validity or enforceability of any other term or condition of this Agreement. If any provision of this Agreement shall be deemed by such court to be unenforceable because such provision is too broad in scope, such provision shall be construed to be limited in scope to the extent such shall deem necessary to make it enforceable, and if any provision shall be deemed inapplicable by any such court to any person or circumstances, it shall nevertheless be construed to apply to all other persons and circumstances.
26. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties including its schedules, annexure, exhibits and addendums thereto and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter.

IN WITNESS WHEREOF BOTH THE PARTIES HAVE SUBSCRIBED THEIR RESPECTIVE SIGNATURES UNDER THEIR COMPANY SEAL TO THE AGREEMENT AS A TOKEN OF THEIR ACCEPTANCE TO THE TERMS AND CONDITIONS HEREIN MENTIONED

For Ecom Express Limited

Signature :

Name :

Designation :

Co seal :

For AYA NUTRITIONS

Signature :

Name : ZAINUL ABADDEEN

Designation : PROPRIETORSHIP

Co seal :



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