

## SERVICES AGREEMENT

This Services Agreement is made on ----- ("Execution Date"), by and between Bitoodle Online Services Private Limited and ----- (the "Agreement"):

1. -----, a company incorporated under the Companies Act, 2013, and having its registered office at ----- (hereinafter referred to as "Seller", which expression shall, unless inconsistent to the context or meaning thereof, be deemed to include its successors and permitted assigns) of the **FIRST PART**;

### AND

2. Bitoodle Online Services Private Limited a company incorporated under the Companies Act, 2013 and having its registered office at E-1070 Rajendra Nagar Bareilly, (Uttar Pradesh)-243122 (hereinafter referred to as the "**Service Provider**", which expression shall, unless inconsistent with the meaning or context thereof, be deemed to include its successors and permitted assigns) of the **SECOND PART**;

The Seller and the Service Provider are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

### WHEREAS:

(A) Seller is engaged in the business of [retail trading and sells products to end-customers].

(B) The Service Provider is engaged in the Business (as defined in Clause 1.1).

(C) Seller seeks to avail the Services (as defined below) from the Service Provider.

(D) Accordingly, the Parties are now desirous of entering into this Agreement to set out the terms and conditions for the provision of the Services by the Service Provider to the Seller.

Now therefore, in consideration of the foregoing, and the premises, mutual covenants, promises, agreements and provisions set forth hereinafter, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties, with the intent to be legally bound hereby agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1. 1 Definitions

**The following** words and expressions used in this Agreement shall, to the extent not inconsistent with the context thereof, have the following meanings respectively:

**"Affiliate"** shall mean, with respect to any Person, any other Person, which, directly or indirectly, Controls, is Controlled by or is under common Control with the first named Person. If such Person is an individual, the term "Affiliate" shall include a Relative of such individual the provisions hereof

**"Applicable Law"** means any applicable national, state, local or other law, statute, regulations, rules, by laws, ordinances, constitution, principles of common law and includes notifications, guidelines, policies, directions, directives, judgment, decree and orders of any Authority, statutory authority, court, tribunal or recognized stock exchange, and having the force of law;

**"Arm's Length Basis"** (including, with correlative meaning, the term "Arm's Length Basis") shall mean on terms consistent with market practice and those actually made in comparable transactions between independent enterprises or Third Parties under comparable circumstances. Where such comparable transactions are not available, the term "Arm's Length Basis" shall mean that the price would be an arm's length price as determined in accordance with the provisions of the Income Tax Act, 1961, and all other terms and conditions should be entered into such that the contracting parties are unrelated and independent parties;

**"Authority"** means any national, supranational, regional or local government, or governmental, statutory, regulatory, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity, or central bank (or any Person whether or not government owned and howsoever constituted or called, that exercises the functions of the central bank);

**"Business"** shall mean the business of, (i) owning and operating the online marketplace [www.bitoodle.com](http://www.bitoodle.com) and providing platform services to buyers and sellers on the platform for the sale and purchase, by such buyers and the sellers, of branded products in the beauty and personal care category on the platform, (ii) wholesale trading of branded products in the beauty and personal care category, (iii) online beauty related services to consumers, intermediaries, beauty service providers, salons, spas, principals and other participants in the value chain, and (iv) such other the business that the Service Provider may carry on from time to time;

**"Business Day"** shall mean a day (other than a Saturday or a Sunday) on which scheduled commercial banks are generally open for business in India.

**"Claim"** shall have the meaning as set forth in Clause 8.1;

**"Confidential Information"** shall have the meaning ascribed to it in Clause 14.1(a);

**"Control"** (including with correlative meaning, the terms, "Controlling", "Controlled by" and "under common Control with"), with respect to a Person, shall mean the ownership or control of more than 50% (fifty per cent) of the voting rights or of the issued share capital, on a fully diluted basis, of such Person or the right to appoint or remove all or the majority of the members of the board of directors or other governing body of such Person, the right to control the management or policy decisions exercisable by a Person, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner

**"Disclosing Party"** shall have the meaning ascribed to it in Clause 14.1(a)(i); **"Due Date"** shall have the meaning ascribed to it in Clause 4.2(b);

**"Execution Date"** means the date hereof;

**"Excluded Products"** means any products or other items set forth in the excluded products list for the Website or any other policy that applies to Seller's use of a Service, and any other products or other items that in the Service Provider's sole discretion are not supported for a Service;

**"Listing Services"** shall have the meaning as set forth in Clause 0 of Part A of Schedule I

**"Logistics Services"** shall mean the service of packaging, courier, dispatch, delivery and

warehousing provided by the Service Provider more fully detailed in Part 13 of Schedule I; **"Nodal Account"** shall have the meaning as set forth in Clause (i) of Part A, Schedule I;

**"Person"** means any individual, partnership, corporation, company, unincorporated organization, association, joint venture, trust, society or other entity (whether or not having a separate legal personality) and includes an Authority;

**"Bitoodle-Fulfilled Products"** means any of the Seller's products that are fulfilled using the Logistics Service;

**"Sales Proceeds"** means the gross proceeds paid by customers in the course of any of purchasing the Seller's products from the Website, including the purchase price, all shipping and handling and other charges, any taxes and customs duties;

**"Seller-Fulfilled Products"** means any of the Seller's products that are not fulfilled using the Logistics Service.

**"Selling Launch Date"** means the date on which the Service Provider first lists one of the Seller's products for sale on the Website.

**"Services"** shall have the meaning ascribed to it in Clause 2.1; **"Service Fees"** shall have the meaning ascribed to it in Clause 4.1(a);

**"Service Provider Associated Properties"** shall mean any website or other online point of presence, other than the Website, through which any products or services available on the Website are syndicated, offered, merchandised, advertised or described;

**"Site Fulfillment Centre(s)"** means the fulfillment centre(s) designated or used by the Service Provider to store and fulfill; units;

**"Tax" or "Taxes"** shall include all taxes, including income tax, Goods and services tax(GST) withholding tax, dividend distribution tax, capital gains tax, fringe benefit tax, sales tax, customs duty, wealth tax, gift tax, franchise, property, sales, use, employment, license, excise duty, service tax, occupation tax, value added or transfer taxes, governmental charges, fees, levies or assessments or other taxes, levies, fees, stamp duties, statutory gratuity and provident fund payments or other **employment benefit** plan contributions, withholding obligations and similar charges, of any jurisdiction and shall include any interest, fines, and penalties related thereto and, with respect to such taxes, any estimated tax, interest and penalties or additions to tax and interest on such penalties and additions to tax;

"Term" shall have the meaning ascribed to it in Clause 2.1;

"Terminating Party" shall have the meaning ascribed to it in Clause 6.1 (b);

"Unsuitable Unit" means a unit: (a) that is defective, damaged, or lacking required label(s); (b) the labels which were not properly registered with Bitoodle before shipment or do not

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

a) references to the masculine, the feminine or the neuter gender shall include each of the other genders;

1. b) any reference to the singular shall include the plural and vice-versa;
2. c) the terms "hereof", "herein", "hereby", "hereto" and derivative or similar words refer to this entire Agreement or specified Clauses, as the case may be;
1. d) headings, sub-headings and bold typeface are only for convenience and shall be ignored for the purposes of interpretation;
2. e) references to any legislation or law or to any provision thereof shall include references to any such law or provisions as it may, after the Execution Date, from time to time, be amended, supplemented or re-enacted, and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;
3. f) references to the words "include" or "including" shall be construed without limitation;
4. g) time is of the essence in the performance of the respective obligations of the Parties. Without prejudice to the foregoing, if any time period specified herein is extended, such extended time shall also be of the essence;
5. h) Schedules form an integral part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include a reference to the Schedules attached to it. Any references to Recitals, Clauses, and Schedules are to recitals of, clauses of, Schedules to this Agreement. Any references to parts or paragraphs are, unless otherwise stated, references to parts or paragraphs of the Schedule in which the reference appears;
6. i) Terms defined elsewhere in this Agreement shall, unless otherwise indicated, have the meaning so ascribed to them;
7. j) any reference in this Agreement, to consent or approval or similar connotation, unless expressly stated otherwise, shall be in writing, and shall include electronic email communications followed by facsimile communications; and
8. k) the words "directly or indirectly" mean directly, or indirectly through one or more intermediary Persons, or through contractual or other legal arrangements, and "direct or indirect" shall have the correlative meanings.

## 2. SCOPE OF SERVICES

2.1 The Service Provider agrees to provide to the Seller, and the Seller agrees to avail from the Service Provider, on a non-exclusive basis, the **Nen/ICUS** set out in Part A (the "Listing Services") and Part 13 ("Logistics Services") of Schedule I ("Services"). The Services shall be provided on an Arm's Length Basis in accordance with Applicable Law.

2.2 The Seller undertakes that it shall provide the Service Provider with all information, training, documents, parts and special tools as the Service Provider may reasonably request in order to enable the Service Provider to properly perform its obligations under this Agreement.

### **3. PROCEDURE FOR ENROLMENT**

3.1 The Seller shall complete the registration process on 111e Website for one or more of the Services in order to initiate the enrolment process.

3.2 The Seller shall update information provided at the time of registration as may be necessary to ensure that it at all times remains accurate and complete

3.3 By accepting the terms of this Agreement, the Seller authorizes the Service Provider to verify the information

(including any updated information) about the Seller from time to time.

### **4. SERVICE FEES, INVOICING AND PAYMENT**

#### **4.1 Service Fees, Expenses & Taxes**

In consideration of the Service Provider providing the Services to the Seller, the Seller agrees to pay the Service Provider the fees/charges as set out in Schedule 11 (the "Service Fees").

In addition to the Service Fees, all out of pocket expenses incurred by the Service Provider in relation to provision of the Services shall be reimbursed by the Seller. This includes out of pocket expenses for travel, spare parts, special tools, accreditations for customer sites, etc.

The Service Provider may choose to either (a) offset any amounts that are payable by the Seller to the Service Provider (in reimbursement or otherwise) against any payments made by the Service Provider to the Seller, or (b) invoice the Seller for amounts due to the Service Provider, in which case the Service Provider will pay the invoiced amounts upon receipt.

If the Service Provider discovers erroneous or duplicate transactions initiated by the Seller, it reserves the right to seek reimbursement from the Seller by deducting from future payments owed to the Seller or seeking **such** reimbursement from the Seller by any other lawful means; provided that the foregoing will not limit the Seller's rights to pursue any good faith dispute with the Service Provider concerning whether any amounts are payable or due.

If on the basis of information available with the Service Provider, the Service Provider is of the opinion that the Seller's actions and/or performance in connection with the Agreement may result in a significant number of customer disputes, chargeback or other claims in connection with the Website, then the Service Provider may, in its sole discretion, subject to Applicable Law, delay initiating any payments to be made or that are otherwise due to the Seller under this Agreement for the shorter of: (a) a period of (90) ninety calendar days following the initial date of suspension; or (b) completion of any investigation(s) regarding Seller's actions and/or performance in connection with the Agreement. The Seller acknowledges and agrees that the Service Provider is entitled to the interest, if any, paid on balances maintained as deposits in its bank accounts.

The Seller agrees that the Service Provider shall not be liable for any failure to make payments to the Seller on account of incomplete or inaccurate information provided by the Seller with respect to Seller Bank Account

All amounts payable under this Agreement by Seller to the Service Provider for the rendering of the Services shall be exclusive of all taxes (including service tax) payable under Applicable Laws, subject however to tax deducted at source, and all such taxes shall, at the option of the Service Provider, either be paid by Seller or reimbursed by the Seller to the Service Provider. The Seller shall reimburse the Service Provider for any tax deducted at source.

## **Invoicing and Payment**

### **4.2**

1. a) Within 10 (ten) Business Days of the beginning of every month, the Service Provider shall raise an invoice setting out the details of the Service Fee, out of pocket expenses and taxes payable for the Services provided in the preceding month,
2. b) The Seller shall pay the amounts set out in the invoice within 30 (thirty) Business Days from the date of receipt of the invoice (the "Due Date").
3. c) If the Seller fails to pay in full the amounts set out in the invoice, by the Due Date, then the Seller shall pay to the Service Provider, interest at 18% (eighteen per cent) per annum on the overdue and unpaid amount, for the period commencing from the Due Date till the date of actual payment in full thereof.
4. d) All payments shall be made to the Service Provider in the form of immediately available funds to a bank account designated by the Service Provider from time to time.

## 5. REPRESENTATIONS & WARRANTIES

Each Party hereby represents and warrants to the others as follows:

1. it is validly existing under the laws of India;
2. it has the power and authority to execute and deliver this Agreement. The execution and delivery of this Agreement has been duly authorized and approved and does not require any further authorization;
3. upon execution, this Agreement will be its legal, valid and binding obligation, enforceable in accordance with its terms;
4. the execution and delivery of this Agreement by it, and its promises, agreements or undertakings under this Agreement do not violate its charter documents, or **any** contracts, agreements or any other instruments to which it is a party or which are applicable to it; and
5. it has not taken any action and no other steps have been taken or legal proceedings started by or against it in any court of law for winding up, insolvency, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of any or all of its assets,

## 6. TERMS AND TERMINATION

### 6.1 Term

The term of this Agreement will start as on the date of completion of registration for one or more of the Services (the "**Effective Date**") and continue until terminated under Clause 6.2 (the "**Term**"). Termination or suspension of a Service will not terminate or suspend any other Service unless explicitly provided.

### 6.2 Termination

This Agreement may be terminated in any of the following ways:

1. a) In the sole discretion of the Service Provider by notice to the Seller for breach of any of the Seller's obligations or for any other reason at any time; or
2. b) by the Seller ("**Terminating Party**") giving to the Service Provider a written notice of 60 (sixty) Business Days.

### 6.3 Effect of Termination

1. On termination, the Seller's account on the Website shall be deactivated. Both Parties shall ensure completion of their respective obligations with respect to the orders placed on the Website on or before the date of termination of this Agreement.
2. The Service Provider shall return all inventory, if any, lying with it on behalf of the Seller, during the course of providing any of the Services, on mutually agreed terms. In the event this Agreement is terminated by the Seller or due to breach of Seller obligations under this

Agreement, all costs related to the return of the Seller's inventory or disposal of the same, would be done at the Service Provider's sole discretion.

3. Upon termination of this Agreement, all amounts then owing by one Party to the other shall be immediately due and payable by the other Party. The Parties shall be relieved and discharged from all obligations, Liabilities or claims under this Agreement except for rights and liabilities accrued under this Agreement prior to the termination thereof or which expressly survive termination of this Agreement.

## **6.4 Survival**

The provisions of Clause 1 (*Definitions and Interpretation*), Clause 6.3 (*Effect of Termination*), Clause 5.4 (*Survival*), Clause 8 (*Indemnity*), Clause 9 (*Limitation of Liability*) Clause 14.1 (*Confidentiality*), Clause 14.11 (*Dispute Resolution*), Clause 14.11 (*Notices*) and Clause 14.15 (*Governing Law & Jurisdiction*) shall survive the termination of this Agreement.

## **7. LICENCE**

The Seller grants to the Service Provider a royalty-free, non-exclusive, worldwide, irrevocable right and licence co-terminus with the term of this Agreement and for as long thereafter as is permitted under Applicable Law to use, reproduce, perform, display (public communication), distribute, adapt, modify, re-format, create and exploit derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of the Seller materials, and to sublicense the foregoing rights to the Affiliates of the Service Provider and operators of the Service Provider Associated Properties; provided, however, that the Service Provider undertakes that it shall not alter any of the Seller trademarks from the form provided by the Seller (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with the Seller's removal requests as to specific uses of its trademarks; provided further, however, that nothing in this Agreement will prevent or impair right of the Service Provider to use Seller materials without obtaining consent from the Seller to the extent that such use is allowable without a license from Seller or its Affiliates under applicable law.

## **8. INDEMNITY**

8.1 The Seller agrees to indemnify, defend and hold harmless the Service Provider (and its officers, directors, employees, agents and Affiliates) against, any claim, loss, damage, settlement, cost, taxes, expense or other liability (including, without limitation, attorneys' fees) (each, a "Claim") arising from or related to:

1. a) An actual or alleged breach of any obligations in this Agreement by the Seller;
2. b) Any sale channels owned or operated by the Seller, its products (including the offer, sale, fulfillment (except with respect to those of the products that are fulfilled using the Logistics Services provided by the Service Provider, if any), refund, adjustment, or return\_ thereof), its materials, any actual or alleged infringement of any intellectual property rights by any of the foregoing, and any personal injury, death or property damage related thereto; or
3. c) The Tax obligations of the Seller.

8.2 If at any time the Service Provider determines in its sole discretion that any indemnified Claim might adversely affect the Service Provider, it may take exclusive control of the defence of the Claim at its own expense.

8.3 The Seller shall not consent to the entry of any judgment or enter into any settlement of a Claim without obtaining prior written consent from the Service Provider, which may not be unreasonably withheld.

## **9. LIMITATION OF LIABILITY**

The Service Provider shall not be liable (whether in contract, warranty, tort, delict (including negligence, product liability, any type of civil responsibility or other theory or otherwise) to the Seller or any other Person for cost of cover, recovery or recoupment of any investment made by the Seller or its Affiliates in connection with this Agreement, or for any loss of profit, revenue, business, or data or punitive or consequential damages arising out of or relating to this Agreement, even if the Service Provider has been advised of the possibility of such costs or damages. Further, except in case of gross negligence or willful misconduct, aggregate liability of the Service Provider arising out of or in connection with this Agreement or the transactions contemplated hereby shall not at any time exceed the total amounts during the prior six months period paid by the Seller to the Service Provider in connection with the particular service and the Website giving rise to the claim, subject to submission of evidence, satisfactory to Service Provider, supporting such claims.

## **10. DISCLAIMER**

10.1 The Website and the Services, including all content, software, functions, materials and information available or provided in connection with the services, are provided on an "as-is" basis. As a user of the services, the Seller's access to the Website, Services and any online portal or tool provided by the Service Provider to help it avail **the** Services are at the Seller's own risk. The Service Provider and its Affiliates waive and disclaim: (1) any representations, warranties, declarations or guarantees regarding this Agreement, the Services or the transactions contemplated hereby, including any implied warranties, declarations or guarantees of merchantability, fitness for a particular purpose or non-infringement; (2) implied warranties arising out of course of dealing, course of performance or usage of trade; and (3) any obligation, liability, right, claim or remedy in tort, whether or not arising from negligence of the Service Provider. The Service Provider does not warrant that the functions contained in the Website or the Services will meet the Seller's requirements or be available, timely, secure, uninterrupted or error free, and the Service Provider will not be liable for any Service interruptions, including, but not limited to system failures or other interruptions that may affect the receipt, processing, acceptance, completion or settlement of any transactions. some jurisdictions' laws do not allow exclusion of an implied warranty. in which case the foregoing disclaimer may not apply, and the Service Provider and its Affiliates disclaim to the maximum extent permitted under Applicable Law all warranties of any kind, whether express, implied or statutory, including without limitation warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, non- infringement or quiet enjoyment.

10.2 The Service Provider is not involved in transactions between customers and sellers or other participant dealings and therefore, if a dispute arises between one or more participants, each of the participants, companies, sellers and customers release the Service Provider (and its agents, Affiliates and employees) from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

## **11. TAX MATTERS**

11.1 The Seller shall be responsible for the collection and payment of any and all of its Taxes together with the filing of all relevant returns, such as GST invoices/credit memos where required.

11.2 The Service Provider is not responsible for collecting, remitting or reporting any service tax, GST or other taxes arising from such sale. The Seller is solely responsible for preparing, making and filing any tax audit report and statutory reports and other filings and responding to any tax or financial audits.

11.3 Unless stated otherwise, any and all fees payable by the Seller pursuant to this Agreement are exclusive of all value added, service, sales, use, goods and services and similar taxes. and it shall be the responsibility of the Seller to pay any taxes that are imposed and payable on such amounts. If the Service Provider is required by IEINV or 1w administration thereof to collect any value added, service, sales, use, goods and services or similar taxes from the Seller, the Seller shall pay such taxes to the Service Provider.

11.4 If for any reason, any income tax or GST is determined to be deducted and deposited on any payments or remittances to the Seller, the Service Provider will have the right to deduct and deposit any such applicable taxes with the appropriate regulatory authority. No claim in respect of the taxes deposited would be made by the Seller against the Service Provider.

## **12. PERMITS AND LICENSES**

Unless otherwise stated in this agreement, the parties shall, at their own cost, obtain all permits and licenses, as are necessary for undertaking the activities related to their scope of work under this Agreement and shall pay all, taxes and fees payable under any law for the time being in force and during the term of this agreement. the parties shall provide to the other Party, evidence to prove the compliance of the legal requirements as stated above as well as payment of Taxes or fees, if required.

## **13. TITLE RISK**

The Parties acknowledge and understand that the title to the products proposed to be sold on the Website rests with the Seller. The Service Provider constructively holds the Seller's products as a part of its Logistics Services, however, the Service Provider shall not assume any title risk. Any loss or damage to the products of the Seller shall remain the sole responsibility of the Seller.

## **14. MISCELLANEOUS 14.1 Confidentiality**

(a) Each Party recognizes that in the course of the transactions envisaged by this Agreement, it may be privy to certain confidential information (whether or not the information is marked or designated as "confidential" or "proprietary") relating to the other Parties and their businesses including legal, financial, technical, commercial, marketing and business related records, data, documents, reports, etc., client information, the terms of this Agreement, the details of the negotiations between the Parties ("**Confidential Information**"). In consideration of the benefits accruing to the Parties from their association under this Agreement, each Party agrees that it shall:

i. keep all Confidential Information received by it from another Party ("**Disclosing Party**") confidential and shall not, without the prior written consent of the Disclosing Party, divulge such Confidential Information to any Person or use such Confidential Information other than for the purposes of carrying out this Agreement;

ii. take all steps as may be reasonably necessary to protect the integrity of the Confidential Information and to ensure against any unauthorized disclosure thereof;

iii. promptly inform the Disclosing Party of any potential or accidental disclosure of the Confidential Information and take all steps, together with the Disclosing Party, to retrieve and protect the Confidential Information; and

iv. use the Confidential Information only for the purpose for which it was provided and not profit from the same in an unauthorized manner.

(b) The obligations contained in sub-Clause (a) shall not apply to any part of the Confidential Information which:

i. Is or has become public (other than by breach of this Agreement);

ii. Is required to be disclosed by Applicable Law, provided that, so far as it is lawful and practical to do so, prior to such disclosure, the Party subject to such disclosure shall promptly notify the Disclosing Party of such requirement with a view to providing the opportunity for the Disclosing Party to contest such disclosure or otherwise to agree the timing and content of such disclosure;

iii. was available to the receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party;

iv. becomes available to the receiving Party on a non-confidential basis from a Person, provided such Person is not, to receiving Party's knowledge, bound by a confidentiality agreement with the Disclosing Party;

v. is independently developed by the receiving Party without reference to the Confidential Information; or

[vi.is](#) disclosed to the employees, directors or professional advisers of the receiving Party, provided that the receiving Party shall procure that such persons treat the Confidential Information received as confidential.

(c.) The obligations contained in this Clause 6.1 shall continue to apply for a period of 5 years from the date of termination of this Agreement.

(d) Upon termination of this Agreement, each Party shall on written demand of the Disclosing Party immediately return Confidential Information together with any copies in its possession, if such information and copies thereof have not already been destroyed.

#### **14.2 Transaction Costs**

Each Party shall bear and pay its respective costs and expenses towards the professional fees and costs of its respective advisors and counsel in connection with the preparation of this Agreement.

#### **14.3 Counterparts**

This Agreement may be executed simultaneously in any number of counterparts, each of which when executed and delivered will be deemed an original, but all of which will constitute one and the same instrument and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

#### **14.4 Severability**

If any provision of this Agreement is rendered void, illegal or unenforceable in any respect under Applicable Law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. Should any provision of this Agreement be or become unenforceable, the Parties shall use reasonable endeavors to agree upon a new provision which shall as nearly as possible have the same commercial effect as the ineffective provision.

#### **14.5 Entire Agreement**

This Agreement constitute **the** entire agreement between the Parties hereto with respect to the subject matters of this Agreement and supersedes all prior agreements and undertakings, both written and oral, with respect to the subject matter hereof.

#### **14.6 Amendment**

No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless made in writing specifically referring to this Agreement and duly signed by each of the Parties.

#### **14.7 Assignment**

This Agreement shall be binding on the Parties and their respective successors and permitted assigns. No Party shall be entitled to assign its rights or obligations under this Agreement to any Person without

the prior written consent of the other Party. Provided that a Party shall be free to assign its rights or obligations under this Agreement to any Affiliate without the prior consent of the other Party.

#### **14.8 No Third Party Beneficiaries**

This Agreement is solely for the benefit of the Parties and no provision of this Agreement shall be deemed to confer upon any other Persons any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.

#### **14.9 Specific Performance**

The Parties shall be entitled to seek and enforce specific performance of this Agreement, in addition to any other legal rights and remedies, without the necessity of demonstrating the inadequacy of monetary damages.

#### **14.10 Waiver**

No failure or delay by any Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof. No single or partial exercise of any right, power or remedy under this Agreement by any Party shall preclude any further exercise thereof or the exercise of any other right, power or remedy by that Party. Without limiting the foregoing, no waiver by any Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof. The rights and remedies of any Party provided for in this Agreement shall be in addition to the rights and remedies in law or in equity.

#### **14.11 Dispute Resolution**

1. Any and all disputes between the Parties arising out of or in connection with this Agreement or its performance (including its validity, interpretation and termination) shall, so far as is possible, be settled amicably between the Parties.
2. b) If after a period of 30 (thirty) days from such dispute, the Parties to the dispute have failed to reach an amicable settlement, such dispute shall at the written request of any Party to the dispute, shall be settled by binding arbitration.
3. The arbitration panel shall consist of 3 (three) arbitrators. (1) One arbitrator shall be appointed by the Service Provider; and (1) one arbitrator shall be appointed by the Seller. The arbitrators shall be appointed as aforesaid within 15 (fifteen) days of the reference of the dispute to arbitration.
4. Arbitrator. The third arbitrator shall be selected by the two arbitrators so appointed within a period of 15 (fifteen) days of their appointment and where such third arbitrator has not been selected within the said period, the third arbitrator shall be appointed in accordance with the provisions of the arbitration rules of the London Court of International Arbitration.

5. The arbitration award rendered shall be final and binding on the Parties. The arbitrators' panel shall endeavor to give their award within 6 (six) months of the dispute being referred to the arbitration panel.
6. Prior to or pending arbitration, nothing shall preclude any Party from seeking interim or permanent equitable or injunctive relief, or both, or specific performance from the courts at Mumbai. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy for monetary damages through the arbitration described in this Clause.
7. The provision of Part I of the (Indian) Arbitration and Conciliation Act, 1996 (except for the provisions of section 9 thereof) shall not apply to the arbitral proceedings referred to in this Agreement

#### **14.12 Notices**

(a) Notices or other communication required or permitted to be given or made hereunder shall be in writing and delivered personally, or by registered post acknowledgement due, or by internationally recognized courier service, or by legible fax addressed to the intended recipient, or by electronic mail (followed by facsimile communication), at its address set out below, or to such other address or fax number as any Party may from time to time notify to the other Parties;

In the case of notices to the **Service Provider:**

**Attention:** Mr. Navneet & Mr. Vishnu Gupta

**Address:** E- 1070 Rajendra Nagar, Bareilly, (Uttar Pradesh)- 243122

**Telephone:** (+91) 9718887766 (+91) 9718543453

**Email:** [navneetgupta@bitoodle.com](mailto:navneetgupta@bitoodle.com)  
[vishnugupta@bitoodle.com](mailto:vishnugupta@bitoodle.com)

In the case of notices to the **Seller: Address:**

**Attention: Telephone:**

**Email:**

(b) Any such notice or communication shall be in English and shall, unless the contrary is proved, be deemed to have been served (if given by fax or personal delivery) on the next following Business Day in the place of receipt or (if given by retail or courier) 10 (ten) Business Days after posting. In proving the same, it shall be sufficient to show, in the case of a letter, that the envelope containing the letter was correctly addressed and handed over by personal delivery, airmail or by courier service and, in the case of a fax, that such fax was correctly dispatched to a current fax number of the addressee.

#### **14.13 Force Majeure**

No Party shall be liable to the other if, and to the extent, that the performance of any of its obligations under this Agreement is delayed, prevented, restricted, prejudiced or interfered with due to

circumstances beyond the reasonable control of such Party including without limitation, legislations, fires, floods, explosions, epidemics, accidents, acts of God, wars, riots, strikes, lockouts, or other concerted acts of workmen, acts of government and/or shortages of materials. The Party claiming an event of force majeure shall promptly notify the other Parties in writing, and provide full particulars of the cause or event and the date of first occurrence thereof, as soon as possible after the event and also keep the other Parties informed of any further developments. The Party so affected shall use commercially reasonable efforts to remove the cause of non-performance, and the Parties shall resume performance hereunder with the utmost dispatch when such cause is removed.

#### **14.14 Further Assurance**

Each of the Parties hereto shall co-operate with the others and execute and deliver to the other, such instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, give effect to and confirm their rights, and the intended purpose of this Agreement provided that no such document or agreement shall be inconsistent with the spirit and intent of this Agreement.

#### **14.15 Governing Law & Jurisdiction**

This Agreement will be governed by and construed in accordance with the laws of India and subject to Clause 14.11 above, the courts in Mumbai shall have exclusive jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date and place first above written.

For and on behalf of -----

Name: ----- Designation: -----

For and on behalf of **Bitoodle Online Services Pvt. Ltd.**

Name: Navneet Gupta  
Designation: Director

#### **SCHEDULE I DETAILS OF SERVICES PART A: LISTING SERVICES**

The Service Provider provides Service that allows the Seller to list products for sale directly via Website ("**Listing Services**"). Listing Services is operated by the Service Provider. By registering for or using selling on the Website, the seller agrees to be bound by this Agreement and the terms set out therein.

#### **1. Product Information and Listing**

- a. (i) The Seller shall provide in the prescribed format, accurate and complete information as may be required for each product that is made available to be listed for sale through the Website and promptly update such information as necessary to ensure that at all times it remains accurate and complete.
- b. (ii) The seller shall ensure that its material, products (including packaging) and offer and subsequent sale of any of the same on the Website comply with all Applicable Laws (including all

marketing and labeling requirements) and do not contain any sexually explicit, defamatory or obscene materials or any unlawful materials.

- c. (iii) The seller shall not provide any information for, or otherwise seek to list for sale on Website, any Excluded Products; on the Website. For each item listed on the Website by the Seller, the Seller shall provide to the Service Provider the state or country from which the item ships.
- d. (iv) The Seller will list the products of the Seller for Sale on the Website in the applicable product categories which are supported for third party sellers generally on the Website on the applicable Selling Launch Date, and conduct merchandising and promote. The Service Provider reserves its right to restrict at any time in its sole discretion the access to list in any or all categories on the Website. The Service Provider may use mechanisms that rate, or allow shoppers to rate, the products of the Seller and/or its performance as a seller on the Website and the Service Provider may make these ratings and feedback publicly available.
- e. (v) The Service Provider will provide information in relation to orders placed to the Seller for each of the transactions of the Seller.

## **2. Shipping and Handling Charges**

For products delivered by the Seller, the Seller shall determine shipping and handling charges via and subject to the Service Provider's standard functionality and categorization for the Website. Any such amounts, paid by the customer towards shipping and handling charges, shall be the Seller's Sale Proceeds, subject to deduction of applicable charges as may be determined by the Service Provider and the Seller shall be solely responsible for reporting and remitting any applicable taxes on the shipping and handling charges, products delivered by Bitoodle, Bitoodle will determine what the shipping fees will be and will display and collect them from customer / Seller.

## **3. Sale and Fulfillment, Refunds and Returns**

Other than as described in the Logistics Services (if applicable), the Seller shall:

- a. Source, sell, fulfill, ship and deliver products and source and sell the products delivered by Bitoodle, in each case in accordance with the terms of the applicable order information, this Agreement, and all terms provided by the Seller and displayed on the Website at the same time of the order and shall be solely responsible for and bear all risk for such activities;
- b. Package each of its products in a commercially reasonable manner and ship each of its products on or before its estimated ship date;
- c. Retrieve order information at least once each Business Day;
- d. Not cancel any of its transactions except as may be permitted pursuant to the terms and conditions appearing on the Website at the time of the applicable order (which terms and conditions will be in accordance with this Agreement) or as may be required under this Agreement;
- e. Ship its products throughout India (except to the extent prohibited by Applicable Law of this Agreement);
- f. Provide to the Service Provider information regarding shipment and order status and tracking (to the extent available), in each case as requested by the Service Provider using the processes designated by the Service Provider, and the Service Provider may make any of the information publicly available;

- g. Notwithstanding any other provision of these Service Terms, ensure that the Seller is the seller of all products made available for listing for sale hereunder;
- h. Include an order-specific packing slip with each shipment of its products;
- i. Identify itself as the seller of the products on all packaging slips or order information included with its products and as the Person to which a customer may return the applicable product; and
- j. Send customers emails confirming shipment of its products in a format and manner reasonably acceptable to the Service Provider). For Bitoodle- Fulfilled Products, if any, the Logistics Terms will apply to the storage, fulfillment and delivery of such Bitoodle- Fulfilled Products.

#### **4. Returns and Refunds.**

- a. For all of the Seller's products that are not fulfilled using Logistics Services, the Seller will accept and process returns, refunds and adjustments in accordance with these Service Terms and the service Provider's refund policies published at the time of the applicable order, and the Service Provider may inform customers that these policies apply to the products of the Seller
- b. The Seller will determine and calculate the amount of all refunds and adjustments (including any taxes, shipping and handling or other charges) or other amounts to be paid by the Seller to customers in connection with its transactions, using a functionality enabled by the Service Provider for this purpose.
- c. This functionality may be modified or discontinued by the Service Provider at any time without notice and is subject to the Service Provider's policies and the terms of this Agreement.
- d. The Seller will route all such payments through the Service Provider. The Service Provider will provide any such payments to the customer (which may be in the same payment form originally used to purchase the Seller's product), and the Seller shall reimburse the service Provider for all amounts so paid.
- e. For all of the Seller's Products that are fulfilled using the Logistics Services, the Service Provider's refund policies published at the time of the applicable order will apply and the Seller will comply with them.
- f. The Seller shall promptly provide refunds and adjustments that it is obligated to provide under the applicable Service Provider's refund policies and as required by Law, and in no case later than 30 (thirty) calendar days after the obligation arises.
- g. For the purposes of making payments to the customer (which may be in the same payment form originally used to purchase the Seller's product), the Seller authorizes the Service Provider to make such payments or disbursements from the available balance in the Nodal Account of the Seller.
- h. In the event the balance in the Nodal Account is insufficient to process the refund request, the Service Provider will process such amounts due to the customer on behalf of the Seller, and the Seller will reimburse the Service Provider for all amounts so paid.
- i. The Seller agrees to adhere to the quality parameters as provided by the Service Provider in writing to the Seller at the time of signing this agreement, (including modifications from time to time). The Seller further agrees that in case of more than 10 (ten) rejections of its products per month or non- confirmation with the agreed quality parameters by the Seller on more than 10 (ten) occasions in a month, The Service Provider reserves the right to terminate this Agreement and deactivate the Seller from the Website.

## 5. Problems with Seller Products

(i) **Delivery Errors and Nonconformities; Recalls.** The Seller shall be responsible for any non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment and delivery of its products, except to the extent caused by; the Service Provider's failure to make available to the Seller the relevant order information as was received by the Service Provider or resulting from address verification. Notwithstanding anything stated in this Agreement, for Bitoodle Fulfilled Products, if any, the Logistics terms will apply to non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment and delivery of those of the Seller's products. The Seller is also responsible for any non-conformity or defect in, or any public or private recall of, any of its products

The Seller shall notify the Service Provider promptly in writing as soon as it has knowledge of any public or private recalls of its products.

## 6. Guarantee and Chargeback's.

(i) If the Service Provider receives a claim under the "**Guarantee**" offered on the Website, or any chargeback or other dispute, concerning one of the Seller's transactions, the Seller shall deliver to the Service Provider within 7 (seven) calendar days after request by the Service Provider:

- (a) Proof of delivery of its product(s) (as applicable);
- (b) The applicable order identification number; and
- (c) A description of the product(s) (as applicable).

(ii) If the Seller fails to comply with the requirement set forth in Paragraph 8.11(i) above, or if the claim, chargeback, or dispute is not caused by the Service Provider's failure to make the order information available as the same was received by the Service Provider or resulting from address verification, then the Seller shall promptly reimburse the Service Provider for the amount of the customer purchase (including the purchase price, all associated shipping and handling charges and all taxes, but excluding any associated referral fees retained and not subject to refund by Bitoodle) and all associated credit card association, bank or other payment processing, re-presentment and/or penalty fees associated with the original purchase and any chargeback or refund, in each case to the extent paid or payable by the Service Provider or its Affiliates.

## 7. Parity with Sellers Sales Channels.

Subject to this Paragraph 8.13, the Seller is free to determine which of its products it wishes to list for sale on the Website. The Seller shall maintain parity between the products it offers through its sales

channels and the products it list on the Website by ensuring that all the applicable Bitoodle Launch date and thereafter;

1. the Purchase Price and every other term of offer and/or sale of its product (including associated shipping and handling charges, Shipment Information, any "low price" guarantee, rebate or discount, any free or discounted products or other benefit available as a result of purchasing one or more other products, and terms of applicable return and refund policies) is at

- least as favorable to users of the Website as the most favorable terms upon which a product is offered and/or sold via other sales channels (excluding consideration of Excluded Offers)
2. Customer service for the products of the Seller listed on the Website is at least as responsive and available and offers at least the same level of support as the most favorable customer services offered in connection with any of its other sales channels; and
  3. The content required product information regarding the products of the Seller listed on the Website that the Seller provides to the Service Provider is of at least the same level of quality as the highest quality information displayed or used in other sales channels. If the Seller becomes aware of any non-compliance with the conditions mentioned herein, the Seller shall promptly compensate adversely affected customers by making appropriate refunds to them. For Bitoodle- Fulfilled Products, the Service Providers acknowledges that if the shipping and handling charges associated with sale and delivery of any of the products of the Seller listed for sale on the Website are included in (and not separately stated) the purchase price listed for such products on the Website (collectively a “**Shipping Inclusive Purchase Price**”), then the party obligation above will be satisfied if the Shipping Inclusive Purchase Price and each other term of offer and/or sale for the product on the Website are at least as favorable to users of the Website as the purchase price and each other term of offer and/or sale of product (including any and all separately stated shipping and handling charges) pursuant to which the product is offered and/or sold via any of the other sales channels other than the Website.

## **8. Sales Proceed & Refunds**

1. Remittances to the Seller for its transactions (excluding COD transactions) will be made through a nodal account (the “**Nodal Account**”) maintained in accordance with the directions issued by Reserve Bank of India for the opening and operation of accounts and settlement of payments for electronic payment transactions involving intermediaries vide its notification RBI/2009-10/231DPSS.CO.PD.No.1102/ 02.14.08/ 2009-10 dated November 24, 2009. Remittance to the Seller for COD transactions shall be made through the online bank or any other mutually agreed means used to Seller Bank Account.
2. The Seller hereby agrees and authorizes the Service Provider to collect, received and hold payments received from the customers on behalf of the Seller for any sales made through the Website. The Seller authorizes and permits the Service Provider to collect and disclose any information (which may include personal or sensitive information such as Seller Bank Account information) made available to the Service Provider in connection with this Agreement to a bank, auditor, processing agency, or third party contracted by Service Provider in connection with this Agreement.

(iii) The Service Provider shall deduct and retain a portion of the Sale Proceeds of the Seller as service fees.

(iv) All payments to the Seller shall be made within 3 (three) Business of the later of (a) the Service Provider receiving the Sales Proceeds, and (b) the Seller delivering the products purchases on Website to the customers.

## **PART B LOGISTIC SERVICES**

Under the Logistic Services, the Service Provider extends additional services to the Seller in the nature of packing, courier, dispatch, shipping and warehousing services. The Logistic Services are a part of this Agreement and apply only upon participation of the Seller by registering for these services.

### **1. Shipping to the Service Provider:**

1. (i) The Service Provider shall provide dispatch and delivery services only with respect to customers located in India.
2. (ii) The Seller shall ship the required units/products to the Service Provider in accordance with applicable policies of the Website.
3. (iii) The Seller shall ensure that:

(a) all units are properly packaged for protection against damage and deterioration during shipment and storage;

1. terms of freight "C.I.P (Carriage and Insurance Paid) Destination";
2. all units comply with the Service Provider's labeling and other requirements;
3. all units are packaged and labeled as per the applicable laws.

1. The Seller shall prepay all shipping costs and the Service Provider shall not pay any shipping costs except as provided in this Agreement. The Seller shall be responsible for payment of all duties, custom duty, Taxes and other charges.
2. In the case of any improperly packaged or labelled unit, the Service Provider reserves the right to return the unit to the Seller at the Seller's expense.
3. The Seller shall not deliver to the Service Provider any Unsuitable Unit, and the Service Provider may refuse to accept any shipment (including any Unsuitable Unit).
4. The Service Provider may return or dispose of or destroy any Unsuitable Unit:  
(1.a) immediately if it determines in its sole discretion that the unit creates a safety, health or liability

risk to itself, its personnel or any third party; or

(1.b) if the Seller fails to direct the Service Provider to return or dispose of or destroy any Unsuitable

Unit within (30) thirty days after being notified by the Service Provider that the unit has been

recalled; or

(1.c) if the Seller refuses or fails to direct the Service Provider to return or dispose of or destroy any

Unsuitable Unit within (90) ninety calendar days after being notified that the Service Provider is in possession of it.

(viii) In addition, the Seller shall compensate the Service Provider for damages incurred including any expenses incurred by the Service Provider in connection with any Unsuitable Units.

### **2. Storage**

1. (i) The Service Provider shall provide storage services as described in these Logistic Terms once it confirms receipt of delivery.
2. (ii) The Service Provider shall keep electronic records that track inventory of units by identifying the number of units stored in any Site Fulfillment Centre.
3. (iii) If there is a loss of or damage to any units while in storage, the Service Provider will, as the Seller's sole remedy, pay the Seller the applicable replacement value. The replacement value is inclusive of any GST (if applicable) and if the replacement value is subject to GST. The Seller agrees to provide a valid GST invoice to the Service Provider.
4. (iv) In consideration of payment of the replacement value, the title in such units will transfer to the Service Provider and the Service Provider will be entitled to dispose of, destroy or otherwise deal in such units in any manner that it may deem fit.
5. (v) The Seller shall have no security interest, lien or other claim to the proceeds that the Service Provider receives from sale, disposal of or otherwise in connection with such units.
6. (vi) At all other times, the Seller shall be solely responsible for any loss of, or damage to, any units.
7. (vii) The Service Provider's confirmed receipt of delivery does not: (a) indicate or imply that any unit has been delivered free of loss or damage, or that any loss or damage to any unit later discovered occurred after confirmed receipt of delivery; (b) indicate or imply that the Service Provider actually received the number of units of product(s) specified by the Seller for such shipment; or (c) waive, limit or reduce any of the Service Provider's rights under this Agreement.

(viii) The Service Provider reserves the right to impose, and change from time to time, scheduling restrictions and volume limitations on delivery and storage of Seller's inventory in the Site Fulfillment Centres, and the Seller shall comply with any of these restrictions or limitations.

### **3. Packaging Services**

The Service Provider shall provide packaging services with respect to the products of the Seller.

### **4. Customer Returns**

(i) The Service Provider shall receive and process returns of any units delivered by Bitoodle in accordance with the terms of the Seller's seller agreement, these Logistic Service Terms and the policies of the Website. Any sellable units registered in connection with the Website that are also Bitoodle Fulfillment Units and that are properly returned will be placed back into the inventory of the Seller's Products for the Website. The Service Provider may fulfill customer orders for the Seller's Products in connection with the Website with any Bitoodle Fulfillment Units returned in connection with the Website. Except as provided in this Paragraph (i), the Seller shall retake title of all Units that are returned by customers.

(ii) Except as provided in Paragraph (i), the Service Provider shall, at the Seller's direction, either return or dispose of or destroy any Bitoodle Fulfillment Unit that is returned to the Service Provider and what is determined as an Unsuitable Unit in terms of this Agreement.

### **5. Customer Service**

**The Service Provider shall be responsible for and have sole discretion regarding all customer service issues relating to packaging, handling and shipment and customer returns, refunds and adjustments**

**related to Bitoodle Fulfilment Units. It will have the right to determine on behalf of the Seller, whether a customer will receive a refund, adjustment or replacement for any Bitoodle Fulfilment Unit and to require the Seller to reimburse the Service Provider necessary. Except as provided herein regarding any Bitoodle Fulfilment Units, customer service will be handled as set forth in the Seller's seller agreement. The Seller will be responsible for GST related customer service enquiries including but not limited to pricing and tax obligations, including but not limited to GST sales, services and goods and service taxes invoices and credit memos.**

## **1. Listing Fees**

### **SCHEDULE II PAYMENT SCHEDULE**

The Seller shall pay listing fees with respect to listing of its products on the Website at the price as may be agreed between the Seller and the Service Provider.

## **2. Logistic Services**

The Seller shall pay Service Provider the applicable fees (including storage, fulfillment, removal and disposal fees) set out in the Schedule II. The Seller shall be charged the Storage Fees beginning on the day (up to midnight) that the Unit arrives at the Site Fulfilment Centre and is available for fulfillment by the Service Provider (or in the case of any Unsuitable Unit, the arrival day (up to midnight)), until the earlier of: (a) the day (up to midnight) the Service Provider receives a valid customer order for such product or a request from the Seller to return or dispose of or destroy the Unit; or (b) the day (up to midnight) the Service Provider actually ships the Unit to the Seller's designated return location or dispose of or destroy the Unit.