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**PLATFORM EMPLOYMENT DURING
COVID-19 : A study of workers in
food delivery sector in Bengaluru**

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PLATFORM EMPLOYMENT DURING COVID-19

*A study of workers in food delivery sector in
Bengaluru*

By:

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January, 2022

Centre for Labour Studies

National Law School of India University

About the study

This study has been done by the Centre for Labour Studies (CLS), National Law School of India University (NLSIU). This develops on an earlier study of the Centre (CLS), covering the employment conditions of food delivery platform workers, done in collaboration with independent scholars and the United Food Delivery Platform Workers Union (UFDPU), covering food delivery work in Bengaluru. The study seeks to link employment conditions with structure of employment relations and regulation in the sector; it seeks to understand global directions in legislation regulating employment in the platform industry; it consequently also seeks to understand the impact of the ongoing pandemic on the sector and its employees. This paper is divided into two sections: Section-1 based on secondary data examines the platform industry and laws governing the sector from an Indian and a global perspective; Section-2 seeks to understand based on worker interviews, the reality of work in the sector.

The CLS gratefully acknowledges the support from Rosa Luxemburg Stiftung (RLS) in undertaking the study. We hope it will contribute to a better understanding of the sector, and inform wider debate on employment and regulation for food delivery platform workers in India.

About Rosa Luxemburg Stiftung

The Rosa Luxemburg Stiftung (RLS) is a German-based foundation working in South Asia and other parts of the world on the subjects of critical social analysis and civic education. It promotes a sovereign, socialist, secular, and democratic social order, and aims to present members of society and decision-makers with alternative approaches to such an order. Research organisations, groups working for social emancipation, and social activists are supported in their initiatives to develop models that have the potential to deliver social and economic justice.

About Centre for Labour Studies

Centre for Labour Studies (CLS) is an autonomous Centre within the National Law School of India University (NLSIU). It has been set up as a multidisciplinary Centre to be able to address various issues that define regulation and governance in employment relations. It seeks to primarily engage with five issues: labour law and regulation; trade unions and collective bargaining; labour law governance, with focus on the Karnataka Labour Department; understanding employment relations and structure of industry in select sectors of informal and formal employment; precarious work and forced labour.

Acknowledgement

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The Centre for Labour Studies, NLSIU encourages circulation and use of the entirety or any part of this report for the purposes of labour law reform. Please acknowledge the source of your information as '*Report on Platform employment in the food delivery sector in Bengaluru in the time of the Pandemic, Centre for Labour Studies, National Law School of India University. December 2021*'.

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Background

This study examines the structure of platform work in India, with specific emphasis on the food delivery sector. This is one sector that grew substantially during the past two years of the global Covid-19 pandemic. The study further seeks to understand employment relations in the sector during the pandemic.

The first part of the study examines platform work at sector-level through published data, including corporate financial and business data analysis, and legal analysis at the corporate and the industry level in India and globally. The analysis is presented in Section 1 of the study. The second part is based on primary data collected from individual workers employed in food delivery in Bengaluru city, with whom prior contact was established, facilitated by the United Food Delivery Platform Workers Union (UFDPU). The findings are presented in Section 2. The study by the Centre for Labour Studies at the National Law School of India University (NLSIU) follows, and develops on its earlier pre-Covid study on employment in the food delivery platform in Bengaluru¹. The last section presents the broad conclusions from the study.

Section 1: The platform industry in food delivery

The impact of the Covid pandemic in the beginning of the financial year 2021 in India was uniformly severe, particularly with the strict, country-wide lockdown implemented by the government. With people forced into home isolation, employment, and consequently the economy suffered. However, with gradual opening of the economy, there is a revival of growth.

¹ Bharadkar et al (2020), Is Platform Work Decent Work? A Case of Food Delivery workers in Karnataka, OPS# 10/2020, <https://mpp.nls.ac.in/wp-content/uploads/2020/11/OCCASIONAL-PAPER-SERIES-10-final.pdf>

One sector that stood to gain from the pandemic is the gig or platform economy; in particular, the goods and services delivery sector gained from the desire of people to minimise outside contact for routine services. This is reflected in the financial performance of the two largest enterprises in the food delivery segment, Swiggy and Zomato. While both companies are still to become profitable, they made impressive revenue growth. Both companies more than doubled turnover during the two financial year 2018-19 to 2019-20; Zomato's revenues increased from Rs.1395 crores to Rs.2742 crores, and Swiggy had revenue growth from Rs.1292 crores to Rs.2776 crores. While Covid impacted turnover in 2020-21, the first quarter results in 2021-22 suggest the companies have totally shaken off the Covid effect². The measure of the investor confidence in their long term prospects, can be gauged from the hugely successful IPO of Zomato. The Zomato IPO in July 2021 has resulted in the company already breaching market capitalisation of Rs.1 lakh crores by end September 2021.

The revenue growth for the two companies has been accompanied by increasing number of 'delivery partners' employed on the platforms. The term 'partner' is used by platforms across the globe to redefine the employer-employee relationship in business. The platform seeks to portray the 'partner' as a free agent, providing a service to users, with the role of the platform restricted to a neutral provider of a digitally enabled market place. Platforms represent a further development of the business outsourcing model, where the outsourced activity does not require another business enterprise one level down the supply chain; instead the employer directly deals with the worker as a business partner.

In 2020 Zomato had around 160000 delivery partners while Swiggy had 240000 delivery partners. The companies delivered between 1.25 million

²<https://www.businessinsider.in/business/ecommerce/news/swiggy-reports-nearly-three-fold-increase-in-annual-revenue-in-neck-and-neck-race-with-zomato/articleshow/85233393.cms>

and 1.5 million orders per day³. Zomato's Chief Executive expected a ten-fold growth in its business in the next five years, creating proportional increase in employment. According to him, the employment of delivery partners with Zomato tripled from 74000 in September 2018 to 230000 in mid - 2021; further, the company operated in 500 Indian cities and had a customer base of 25 million⁴. It is not surprising that despite both Zomato and Swiggy still being loss making, they enjoy huge customer confidence.

What does all this mean for the Zomato worker, or 'delivery partner'? It would appear that revenue growth in the two companies kept pace with employment growth, indicating the per employee turnover remained about the same. However, the companies would now be moving to a phase of increasing and consolidating market shares; this would require cutting costs. Given the employee costs are the only major costs in this asset light and employee intensive business model, the cost reduction can only come from reducing pay-out to workers. Further, after the pandemic, with surplus labour force in cities, platform work with its low regulation and ease of entry becomes the easy and often only option for many urban workers. These factors might adversely impact terms of employment for the delivery partners. We analyse in the next section the earnings model for the workers, based on employer provided statistics, comparing this earnings model with Minimum Wage in the formal sector.

Earnings comparison between platform work and formal employment

The food delivery aggregator Swiggy through its app provides delivery partners with the following figures (Table 1) for earning potential per month

³ ibid

⁴<https://brandequity.economictimes.indiatimes.com/news/business-of-brands/zomato-sees-10x-growth-in-5-years-creating-thousands-of-jobs/71034484>

(based on actual reading of delivery partners' mobile readouts in September 2021. See Image 1):

Description	Amount (Rs.)
Full time (nearly per month)	
12 hours per day	29000
8 hours per day	20000
Part time	
4 hours per day	10000

Table 1: Earning potential. Source: Swiggy delivery partner mobile readout, September 2021

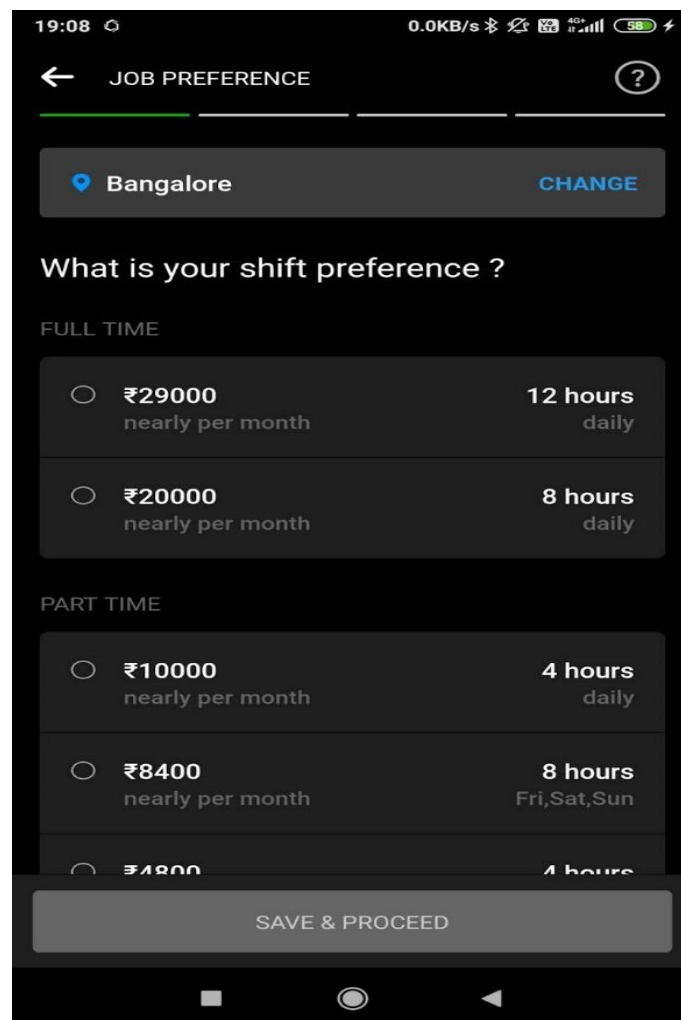


Image 1: Screenshot from Swiggy Delivery Partner App. 'Job Preference' screen is one of the steps in onboarding process and installation of the app. It lists potential earnings and number of hours of work required daily corresponding to the estimated earnings.

As the figures in Table 1 are provided by the aggregator, and the purpose would be to attract more workers to the platform, it is reasonable to assume these figures provide a best case scenario. This seems to provide a reasonable capacity for fair earnings to platform workers at first glance. However, there are several factors hidden behind this presentation.

Pro-rated on time, the delivery worker earns less per hour for a 12 hour shift than an 8 hour shift – the earnings per 12 hours should have been Rs.30000 for a simple pro-rated increase. Evidently, there is no incentive for the worker staying on for longer hours on the app. This goes counter to the principle of overtime work remunerated higher for longer working hours in regular employment. Further, the platform worker is a piece rate earner. There is no concept of any paid holiday. Therefore the earning capacity is for 30/31 work days each month. The earning for 12 hours work assuming 30 days in the month is around Rs.967 per day. The per day earnings for an 8-hour shift is Rs.667.

These earnings figures are gross earnings. In the asset-light structure of the industry, workers bear all costs, including fuel costs, cost of vehicle maintenance, and capital cost of depreciation and investment. As per published media reports, Zomato delivery partners travelled 100-120 kms per day, consuming 60-80 litres fuel per month; the delivery partner had monthly earnings between Rs.20000-25000⁵. Another report quotes the Co-Founder of Teamlease that if the delivery partner made 10 delivery per day working 26 days he could earn Rs.12000 to 15000 in a month; the report carried a claim from Swiggy that their delivery partners earned on average Rs.20000 per month⁶.

⁵ https://www.business-standard.com/article/companies/zomato-to-pay-more-to-delivery-partners-absorb-fuel-price-rise-impact-121022600440_1.html

⁶ <https://economictimes.indiatimes.com/tech/technology/food-delivery-workers-protest-exploitation-on-twitter-companies-deny-charges/articleshow/85016422.cms?from=mdr>

It is reasonable to estimate from the foregoing, the delivery partners on average make around 15 trips per day; the trip distance is around 8 kms. Assuming 70 litres fuel consumption and 30 days working in the month, the fuel consumption per day is around 2.4 litres, or Rs.240 per day. Assuming this fuel cost is for average 10 hours work, we get an hourly fuel consumption cost of Rs.24. Subtracting fuel cost (pro rata Rs.192 for 8 hours) from the 8-hour shift gross earnings of Rs.667 per month we arrive at net of fuel earnings for the 8-hour shift as Rs.475.

However, this calculate does not include the fixed costs incurred by the platform worker. In the asset-light model of platform work, not only running expenses, but all fixed costs are also borne by the employee. The capital cost on vehicle alone, including EMI payments, depreciation and amortisation is estimated as Rs115 per day based on 300 days working. The estimate of capital cost is summarised in the Box 1.

Box 1: Daily capital cost estimate for vehicle

Vehicle: Bajaj CT 100

On road price = Rs. 52000

Down payment = Rs. 6000

EMI = Rs.1953 pm for 36 months (Rs. 23400 per year for 3 years)

<https://www.bikedekho.com/bajaj/ct-100/bike-loan-emi-calculator>

Used bike 2017 model resale value = Rs. 25000

<https://droom.in/bikes/used/bajaj-ct-100>

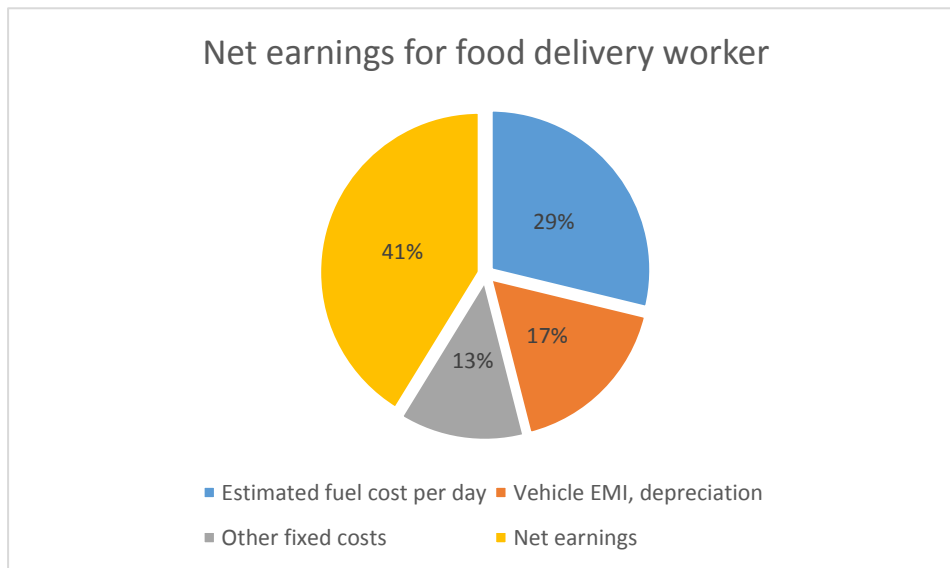
Depreciation in value = Rs.27000 over 3 years (Rs. 9000 per year on straight line depreciation)

Down payment amortised over 3 years = Rs. 2000 per year

Annual capital cost including EMI, depreciation and amortisation = Rs.34400

Capital cost per day (300 days) = Rs.115

Other capital costs and overheads including cost of a cell phone and platform kit which the worker has to buy from the platform; vehicle repairs; road and vehicle tax; vehicle insurance are estimated as Rs.85 per day. The total fixed costs are therefore estimated as Rs.200 per day. Subtracting this we estimate the net earnings after variable and fixed costs as Rs.275 per day for 8 hours work.



Source: Estimated based on company data and worker discussions

We estimate the net earnings for the delivery platform worker to be only 41 percent of his gross earnings (Figure 1). Is this a reasonable net earnings for the platform worker? We compare this with the wage from regulated work for a formal sector worker at the Minimum Wage.

In regular employment the worker works 26 days in a month, with the other days being paid weekly off. The wage is calculated on that basis. The platform worker working 26 days and 8 hours per day has a gross earnings of only Rs.17333 at the same earning rate. If we factor in the weekly off, the equivalent net daily earning of the worker reduces from Rs.275 to Rs.244 per day. This is only around 60 percent of the Minimum Wage for workers in the readymade garment industry in Bangalore. We should clarify that the

fixed cost estimate is based on 8 hours per day. When the number of days averaged by the worker per day increases, the fixed cost component decreases proportionally. This is the inherent driver of the platform model of employment, where a reasonable earning is premised on higher work intensity and longer hours of work.

These calculations have not still included other holidays and leaves the formal sector worker is entitled to, or accounting for work beyond 48 hours per week as overtime work; these would still further negatively skew the equivalent net platform earning in comparison to the formal sector wage.

The platform worker further is denied the social sector benefits available to formal work. These are the benefits flexible employment seeks to claw away from labour jurisprudence, pushing essentially formal work with clearly identifiable employer-employee relations into informality of contractual engagement. The new Labour Codes have held out the promise of a cess based social security for platform workers. However, the questions are when will the promise materialise, and further, is the social security as suggested in the Labour Codes adequate. We analyse below the adequacy of the suggested cess based scheme to meet requirement of a reasonable social security level for the delivery worker on the food delivery platform.

Cess based social security for food delivery workers

The Social Security Code of the government suggested social security coverage for platform workers, to be fully funded with a 1 to 2 % cess on turnover of the platform company; and ceiling of 5% of total worker costs. The following calculations (Table 2) are based on company data for turnover and employment for Zomato and Swiggy.

Description	Zomato (INR. Lakhs)	Swiggy (INR. Lakhs)
Turnover 2020 (annual)	2,74,200.00	2,77,600.00
Cess @ 2% turnover	5,484.00	5,552.00
Delivery partners (reported by company)	1,62,000	2,40,000
Annual cess per delivery partner (Rs.)	3,385.19	2,313.33
Monthly cess per worker (Rs.)	282.10	192.78
Monthly earnings per delivery partner (company report)	23,000	
Maximum ceiling of 5% delivery partner earnings (Rs.)	1,150	
Total ESI and EPF employer contribution for formal sector worker at MW of Rs.10000pm (3.25%+12%)	1,525.00	

Table 2: Social security contribution based on 2% cess for Zomato and Swiggy Financial estimates.
Source: Estimated based on data from sources referenced:

i. <https://economictimes.indiatimes.com/tech/startups/zomato-expects-further-revival-in-business-after-near-25-slump-in-fy21-revenue/articleshow/84230976.cms>

ii. <https://www.businessinsider.in/business/e-commerce/news/swiggy-reports-nearly-three-fold-increase-in-annual-revenue-in-neck-and-neck-race-with-zomato/articleshow/85233393.cms>

iii. <https://brandequity.economictimes.indiatimes.com/news/business-of-brands/zomato-sees-10x-growth-in-5-years-creating-thousands-of-jobs/71034484>

iv. https://www.business-standard.com/article/companies/zomato-to-pay-more-to-delivery-partners-absorb-fuel-price-rise-impact-121022600440_1.html

At 2 percent cess, the company contributes between Rs.200-300 per delivery worker per month towards social security. The ceiling based on average monthly earnings estimates of 5 percent of earnings would be around Rs.1100 per month. However, the cess based limit allows only a fourth of the monthly ceiling to be reached.

How do these figures compare with employer contribution to social security in the formal sector? The total employer contribution is 3.25% towards ESI and 12% towards PF. At Minimum Wage of Rs.10000 per month this works

out to Rs.1525 per month as employer contribution. The contribution to ESI alone (3.25%) is around Rs.325 per month.

The average cess per delivery worker calculated at 2 percent of current company earnings barely covers the employer contribution to ESI in the food delivery companies. It would not allow PF coverage to the worker.

The Platform and the Platform Worker

The legal agreement between the delivery partner and the platform in the case of Swiggy claims that while performing delivery duties, the delivery partner has no relationship with the platform, but instead has a contractual relationship with the consumer. We shall analyse this legal relationship in greater detail later. We examine here what in the nature of relationship the delivery partner might have with the platform within the Indian labour law regime. The analysis is based on analysis of the write-up and data provided in the Red Herring Prospectus (RHP-Z) accompanying the Initial Public Offer of shares made by Zomato on July 7, 2021.

What is the business the company is in?

The RHP-Z states: “Our technology platform connects customers, restaurant partners and delivery partners, serving their multiple needs. Customers use our platform to search/discover restaurants, read/write reviews, upload photos, order food, book tables and make payments while dining-out. We provide restaurant partners with marketing tools to acquire customers. We also operate Hyperpure, wherein we supply ingredients to restaurant partners. We provide our delivery partners earning opportunities. We generate a majority of our revenue from food delivery and the related commissions charged to our restaurant partners for using our platform. Restaurant partners also spend for advertisements on our platform.” Clearly, the main business the aggregator is food delivery.

How many persons does Zomato employ in its business?

According to RHP-Z, as on March 31, 2021, Zomato had 3755 employees worldwide. The company had 169802 'Active Delivery Partners' during March 2021. Even if we assume the majority of time of the Zomato employees was spent on the food delivery business, we find the 'Delivery Partners' outnumbered the whole-time employees of Zomato by over 45 times. It is evident the main business of Zomato could not have been carried out without the food delivery partners.

How central is the role of these delivery partners?

Zomato said in its RHP-Z 99.3 percent of Zomato's food delivery orders came through its mobile app. The mobile apps connect customers with the delivery partners. The delivery partners during March 2021 fulfilled 94.1 percent of all orders delivered by Zomato. Clearly the role of the delivery partner is central to the carrying out of the main business activity of Zomato.

Is there a link between payment to the delivery partner and the platform?

The RHP-Z claims under Risks Clause 8: "there can be no assurance that we will not be forced to reduce the delivery charges charged by the delivery partners, increase the fees we pay to delivery partners for providing services through the platform....." The implication is clearly that the delivery partner works through the platform and earnings are determined by the platform.

Finally, Zomato claims “Our delivery partner, carrying and dressed in distinctive Zomato branded attire, enables us to offer a consistent experience to our customers, increase brand awareness, and build positive brand affinity from which we believe that we could benefit with lower customer acquisition costs.” There is a central and critical role the delivery partner also plays in expanding Zomato’s business and market share, while reducing costs.

It appears evident from the foregoing that there exists a clear principal employer relationship between Zomato and its delivery partners.

There are two tailpieces to this. First, while brand ambassadors are paid for their advertising services, in this case the Zomato partner has to pay for the various pieces of ‘distinctive Zomato branded attire’. The company probably wants to ensure that it does not provide any asset which would make it possible to deduce an employer-employee relationship. Second, if the delivery partner has to constantly wear the attire of one platform, he surely cannot be simultaneously engaged in working for another platform?

Market shares

Zomato recorded 32.1 million average monthly active users in FY21. The company had delivery presence in 525 cities in India, with almost 150,000 active food delivery restaurant listings; it had 170,000 active delivery partners by the year end of FY2021⁷. At its IPO issue price of Rs.76 per share, the market valuation for Zomato was Rs.65000 Crores⁸.

⁷ Mint, July 23, 2021, <https://www.livemint.com/market/ipo/zomato-makes-steady-stock-markets-debut-list-at-53-premium-11627014698872.html>

⁸ Economic Times, July 23, 2021, , <https://economictimes.indiatimes.com/markets/ipos/fpos/zomato-lists-at-53-premium-over-issue-price-enters-elite-club-of-top-100-cos-by-market-value/articleshow/84666820.cms?from=mdr>

According to its own estimates, Swiggy had 20 million monthly active users. It had 1.2 lakh restaurant partners and 2 lakh delivery partners. The company was clocking around 1.5 million orders per day in FY 2021; the number of orders per day had grown 2.5 times and revenue by 2.8 times over the last year. The market value for Swiggy was estimated at USD 5.5 Billion (around Rs.41125 Crores)⁹.

The two premium food delivery brands Swiggy and Zomato between them raised around 5 Billion USD in investor funds. Swiggy raised around 2.9 Billion USD over several funding rounds; the investors include Goldman Sachs, Tencent Holdings, Naspers, and Soft Bank¹⁰. Zomato raised 2.1 Billion from several investors including Goldman Sachs, J.P.Morgan, Black Rock, Canada Pension Plan Investment Board, ICICI Prudential Life Insurance, Birla Sun Life Insurance, Axis Insurance Fund and SBI Mutual Fund¹¹. While Swiggy and Zomato are among the largest platforms in the country in terms of market confidence, several smaller companies have also raised large sums of investor money.

Company/brand	Founded (year)	Sector	Investment (Million USD)
Shadowfax	2015	Logistics	60.00
Ecom Express	2012	Logistics	36.00
Rivigo	2014	Logistics	42.40
Xpress Bees	2012	Logistics	10.00
Dunzo	2014	Logistics	66.00
Porter	2014	Logistics	18.37
Far Eye		Logistics	24.50
Oye! Rickshaw		eMobility	10.00
Yulu		Micro Mobility	3.96

Table 3: Investor funds in select platform companies in India. Source: Market data estimates

⁹ TOI, August 11, 2021, <https://timesofindia.indiatimes.com/business/india-business/swiggy-ipo-could-deliver-good-returns-says-softbanks-masayoshi-son/articleshow/85233079.cms>

¹⁰ <https://craft.co/swiggy/funding-rounds>

¹¹ <https://www.crunchbase.com/organization/zomato>

The investors in various platforms are betting on the large market in India for platform-based services. They are betting on the platform sector being insufficiently exploited and poised for growth. Market analysts described the Indian on-line food delivery market being highly underdeveloped. Only 8 percent of restaurant food consumption was through on-line food delivery, as compared to 40-50 percent in the USA and China¹².

It is evident that the valuation of the food delivery companies is based on their respective market shares. The struggle for increasing market shares and market reach is therefore key to the business models of the companies. It is also evident that delivery partners are the drivers of this growth. Consequently, the role of the delivery partners cannot but be seen as central to the business of the food delivery companies. There is evidently a clear principal employer relationship of the food delivery companies with their delivery partners. This cannot be hidden behind any veil of purely contractual relationship. However, the attempt of the companies to obfuscate precisely this relationship behind the contract of employment.

The contract of employment between Zomato and the delivery partner

The following discussion is based on the legal agreement sent out by Zomato to prospective delivery partners on their platform.

Zomato sends out a ten page closely typed on-line contractual agreement to each of its prospective delivery partners. The contract is embedded in the screen shot asking the partner to accept all conditions and on-board with the Zomato system through its app (See Exhibit 1). The invitation to read the legal document is camouflaged so as to be evident only to those

¹² Mint, July 23, 2021 op cit

specifically searching for the contract (See Image 1). The language of the contract in English, and its presentation indicate a desire on the part of the company to keep the delivery partners in the dark about the terms on which they accept the contract.

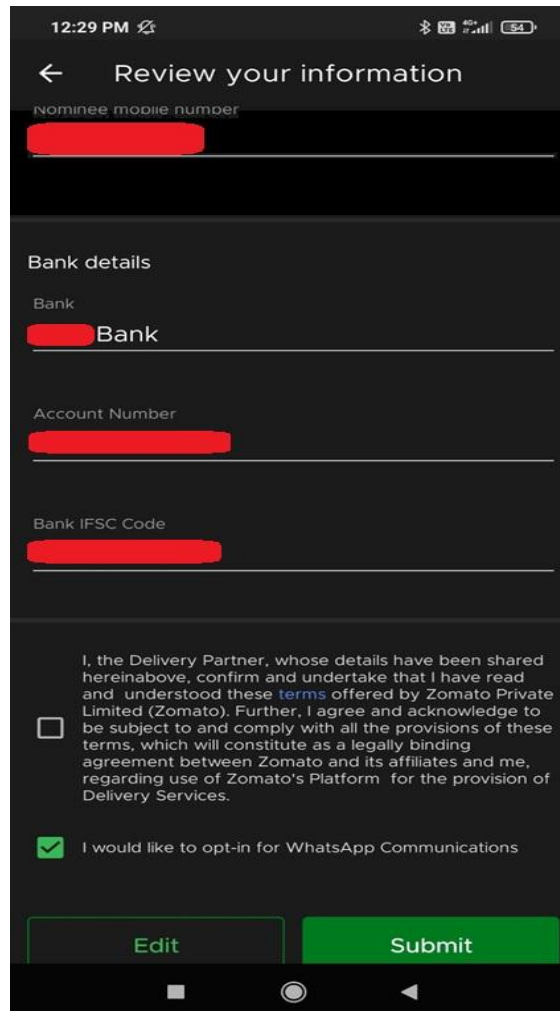


Image 2: Screenshot of Zomato Delivery Partner App. It shows a stage of on-boarding process where the contract between Zomato and the delivery partner is shown and delivery partner is asked to accept it by checking the box. The contract is hyperlinked with the 'terms' word in blue coloured font. The 10-page contract is included in Annexure- I of the report.

Clause 3(ii) of the contract defines the 1 agreement under which the delivery takes place as follows: “Delivery Partner agrees and acknowledges that the upon acceptance of an order by the Delivery Partner, Delivery Services

undertaken by him shall constitute a separate contract for services under the Consumer Protection Act, 2019 or any successor legislations, between the Delivery Partner and the User, to which Zomato is not a party.” In effect, Zomato absolves itself of all responsibility towards the delivery partner while collecting the delivery item from suppliers and reaching it to the user. It attempts by this contractual clause to distance itself from its primary business activity, as explained earlier. However, as analysed below, several other sub-clauses of Clause 3 would appear to deny this attempted contractual distancing.

Who determines the financial terms and conditions for the delivery transaction?

Clause 3(i) states “The Delivery Partner shall comply with the terms of these Delivery Partner T&C (defined below) while providing the Delivery Services to the Users”. Clause 3(x) states “The Delivery Charges shall be agreed between the Delivery Partner and Zomato from time to time, in the manner provided under these Delivery Partner T&C.” Clause 3(xii) states “Delivery Partner hereby absolutely, unconditionally and irrevocably authorizes Zomato to determine the amounts chargeable by the Delivery Partner as Delivery Charges”. Clause 3(xiii) adds “You shall not charge the Users any amount over and above the amount of Delivery Charges agreed between You and Zomato under these Delivery Partner T&C.”

Clause 3(xiv) further states “You hereby authorize Zomato to collect from the Users, on your behalf, the Delivery Charges charged by You to the Users for undertaking Delivery Services, which shall be remitted to you on a weekly basis through such mode and on such day(s) of a week as Zomato may from time to time decide.” Finally, Clause 3(vi) allows Zomato to “(a) set off and deduct any amounts due from, payable by or proposed to be paid by Zomato to the Delivery Partner, including the Delivery Charges collected by Zomato from the Users on behalf of the Delivery Partner.”

It is evident that all payment terms for the transaction are determined by Zomato, and agreed upon between Zomato and the supplier/user; there is no negotiation on terms between the delivery partner and the user. Even the mode of payment collection, including payment of the delivery fees to the delivery partner is determined by Zomato. Clause 3 in its totality therefore appears as a legal veil to deny the principal employer relationship Zomato has with the delivery partners in the pursuit of their functions.

Who controls the delivery activity?

Clause 3(vii) states “Zomato shall also not supervise the actions and conduct of the Delivery Partners unless they are in gross violation of their duty to render Delivery Services under these Delivery Partner T&C.”. However, in continuation, the sub-clause reads “All queries and questions raised by the Delivery Partner, including but not limited to how to collect an order from the outlet of a Restaurant Partner, directions for the delivery address, manner to keep and store the food and beverages while in transit shall be directed to a Lead Business Associate for the particular area from where the Delivery Partner is operating to render the Delivery Services.” The language suggests a firm supervisory control over the delivery transaction by Zomato officers.

Clause 3(viii) states “The Delivery Partner confirms and acknowledges that by logging-in on the Zomato DP Platform, he agrees to be tracked by Zomato via GPS enabled tracking technology and Zomato may share this information with Users on a real-time basis for the purpose of enabling the status of the Delivery Services being provided by the Delivery Partner to the Users.” This further reinforces the fact of supervisory control in the transaction.

Is the delivery partner a free agent?

Clause 3 (vii) appears particularly formulated to show Zomato the Delivery Partner is a free agent. Clause 3 (vii): “Notwithstanding anything contained in these Delivery Partner T&C, there shall be no obligation on the Delivery Partner to be available on Zomato DP Platform for a minimum number of hours/days.”

However, However, Clause 3(vii) adds “Once logged-in, the Delivery Partner shall remain available and shall be able to connect with the Users for the purpose of receiving orders placed by the Users and undertaking Delivery Services in connection with the same”. Further, Clause 4(i) under ‘Obligations’ adds “Delivery Partner makes himself/herself available to undertake Delivery Services as and when a request for the same is placed by User through the Zomato DP Platform”.

It would appear that the Delivery Partner is no longer a free agent once he is logged on to the Zomato app.

Is the contractual arrangement equal to both parties?

The unequal nature of the contract is evident in the clauses on ending the contractual arrangement.

Clause 9.2 allows immediate dismissal without notice of the Delivery Partner: “Without prejudice to the generality of the foregoing clause, Zomato reserves the right to terminate these Delivery Partner T&C with immediate effect”. At the same time the Delivery Partner is required to give a 15 days’ notice period under Clause 9.6: “In case the Delivery Partner intends to terminate these Delivery Partner T&C on his own, he has to intimate Zomato

in advance by giving a fifteen (15) days prior notice in writing, his intention to terminate the contract.”

The unequal contract is further exemplified in the extent to which Zomato indemnifies itself against any action, while retaining the widest latitude to prosecute the Delivery Partner.

Clause 13 (i), (ii) and (iii) indemnify Zomato against all losses suffered by the Delivery Partner, even when it might be directly caused by technical failure on part of Zomato. Clause 14 indemnifies Zomato against any liability for accidents suffered by the Delivery partner, even if it is in the course of a delivery contract. Clause 13(ii) further limits Zomato’s losses to Rs.10000 against any claim by the delivery partner.

Zomato retains the right to prosecute the Delivery Partner under the following circumstances:

Clause 7 allows Zomato to prosecute the Delivery Partner for any Intellectual Property infringement.

Clause 17 states “Notwithstanding anything contrary contained in these Delivery Partner T&C, Zomato shall reserve a right to charge You a penalty in the event You indulge in fraudulent activities while providing Delivery Services.”

Finally, by notifying the courts in New Delhi having exclusive jurisdiction (under Clause 16), Zomato in effect restricts the access to judicial remedy for all Delivery Partners outside New Delhi.

It would appear from the foregoing that first, by camouflaging the legal document in the acceptance window sent to prospective partners, Zomato is not interested in informed consent; second, the various Clauses while trying to deny any responsibility of Zomato in the delivery transaction towards the delivery partner, in fact strengthen a principal employer relationship; third, there is definite supervisory control implied in the contract agreement; fourth, the agreement binds the partner to Zomato once on-boarded on the platform; and finally the agreement prescribes extremely unequal liability terms on Zomato and the delivery partners.

The foregoing discussions bring out the **core nature of work** of the delivery partners to the platform's business; the defining of work, supervisory role of the platform, the role of the platform in fixing remuneration for tasks, all establish the **controlling relationship** the platforms have with their delivery partners. They would bring the platform and the delivery partners into a principal employer – contract worker relationship under the Indian Contract Labour (Regulation and Abolition) Act, 1970. The platforms cannot in the context deny their responsibility towards their 'partners', who could in law be termed employees. Even the newly legislated Social Security Code prescribes platforms to provide cess based social security benefits to the delivery workers, thus establishing accountability towards the workers. We see India is not alone where the nature of the employment relationship in platforms has faced legal challenge. The following section seeks to understand jurisprudence developing in this area internationally.

International judgments on platform work

The on-line business segment has grown substantially during the pandemic; platform companies have also ridden on this growth globally. This has brought to the forefront the issue of whether those employed as 'delivery partners' are actually employees of the platform companies they are

attached. Several legal struggles have tried to define this relationship within the remit of the laws of those countries where platform work has grown in size and employment. These judgments have far-reaching potential impact on the growth and structure of the platform sector across the globe.

Country	Court	Year	Status	Judgement	Platform Companies Involved	Notes
India	PIL in Supreme Court of India	2021	Undefined. Practice as Independent Contractors	Pending	Zomato; Swiggy	Union Involved - Indian Federation Of App Based Transport Workers (IFAT)
USA	California	2020	Action only in California courts. Workers continue to work and classified as Independent Contractors.	AB5 ruled that Independent Contractors are workers. Supreme Court upheld.	Uber, Lyft	ABC Test; Voted Against by California Assembly, AB5, Prop 22
UK	UK Supreme Court	2020	Independent Contractors are employees	Uber drivers are workers	Uber	
Spain	Spanish Supreme Court	2021	Independent Contractors are employees	Introduced 'Rider's Law', delivery workers are employees	Glovo	Judgment in Spanish. Notes available.
Netherlands	Amsterdam Court of Appeal	2021	Uber drivers are employees; Riders are not Freelancers		Uber; Deliveroo	

Table 4: International judgments on platform work employment Sources: Referenced¹³

¹³ https://legislative.gov.in/sites/default/files/COI_1.pdf
<https://vig.cdn.sos.ca.gov/2020/general/pdf/top1-prop22.pdf>
<https://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf>
<https://ioewec.newsletter.ioe-emp.org/industrial-relations-and-labour-law-may-2021/news/article/spain-approves-a-riders-law>

In India the issue has been taken to the Supreme Court in a public interest litigation involving a Hyderabad based trade union, the Indian Federation of App-based Transport Workers (IFAT) and several platform companies. Other countries where challenges to platform companies are being decided in courts include the UK, USA, Spain and Netherland. Boz-2 summarises these cases. We discuss the four cases here.

The UK Ruling

In the UK, Uber contended that the drivers who owned and drove Uber taxis were independent contractors, who entered into a contract with the passengers who rode the taxis, with Uber merely performing the role of a booking agent. This is identical to the arrangement claimed by Zomato in its contract with delivery partners: “Delivery Services undertaken by him shall constitute a separate contract between the Delivery Partner and the User, to which Zomato is not a party”. The UK Supreme Court in its judgment dated 19 February 2021 ruled that the drivers whose work was arranged through the Uber smart phone app “work for Uber under workers’ contracts, and so qualify for national minimum wage....”¹⁴.

The Court based its judgment on the finding that Uber exercised **control** exercised by Uber over its drivers in the performance of their contracted tasks. It highlighted the following five factors in support of its finding:

First, the remuneration paid to the drivers was fixed solely by Uber; it also determined the “service fee” charged by it for each task.

Second, the company determined the contractual terms under which Uber drivers performed their tasks.

<https://www.dutchnews.nl/news/2021/02/deliveroo-to-appeal-to-supreme-court-after-judges-say-riders-are-not-freelancers/>

<https://www.jurist.org/news/2021/09/india-gig->

¹⁴ UK Supreme Court, February 19, 2021, Uber BV and others vs Aslam and others.

Third, while the drivers had the freedom of to choose when and where to work, once they had logged on to the app, their choice to accept or reject ride requests was controlled by Uber, in two ways: one, the passenger's destination was not revealed, and two, the rating of the driver was decided on the basis of his acceptance/rejection rate.

Fourth, Uber exercised substantial control over the performance of service by the driver. The app directed the driver to the pick-up location, and indicated the route to follow to the destination.

Fifth, Uber restricted essential communications between the passenger and the driver to a minimum. Contact between the driver and the ride before pick-up was solely through the Uber app; collection of fare and payment to the driver, handling complaints were all managed by the company.

The Court rejected the argument of Uber that the company only provided technology services, acting as a booking agent for the drivers, and the actual contract for service was between the driver and the ride. It found that the only written agreement to which the driver was party was with Uber. The court further found that it was not possible for Uber to operate its business in London without entering into contract with its drivers – in effect ruling that the drivers' role was **core to Uber's business**.

The Court also ruled (para 34 of judgment¹⁵) quoting from earlier judgments on contracts that “relative bargaining powers of parties must be taken in deciding whether the terms of any written agreement in truth what was written” that even if workers had signed on to contracts restricting their rights, if the contracts represented unequal bargaining relationship the weaker party may not be bound by the letter of the agreement.

¹⁵ ibid

The USA Ruling

The Superior Court of the State of California County of Los Angeles on August 10, 2020 ruled that the defendants Uber Technologies and Lyft Inc. were restrained from classifying their drivers as independent contractors, and restrained the companies from violating any provisions of the Labour Code, the Unemployment Insurance Code and wage orders of the Industrial Welfare Commission for the drivers. The ruling of the Court once again based on the finding of **control** exercised by the companies over the services provided by their drivers, and the drivers' role being **core** to the business of the companies.

The Court found the companies retained **control** over hiring of the drivers, by setting driver standards, soliciting applications and conducting background checks of applicants.

The Court also discussed extensively on the question of whether the service provided by the drivers was **core to the business** of the companies. The argument of Uber that it was not a transportation company, but purely a technology company was found to be without merit. Uber's technology was "merely one instrumentality used in the context of its larger business."¹⁶ The business of Uber was dependent on the service performed by its drivers in transporting customers.

Interestingly, the Court also ruled that in the absence of a proper classification of the drivers as employees, the companies denied responsibility towards paying federal Social Security, employment insurance

¹⁶ Superior Court of the State of California County of San Francisco, August 10, 2020, People of the State of California vs Uber Technologies Inc and Lyft Inc.

and various other benefits; transferring these responsibilities on to the public. In effect, it ruled against the socialisation of these costs towards workers who were core to the business and profit of the companies.

Spain

The ruling of the Spanish Supreme Court against the delivery company Glovo¹⁷ held that Glovo was not merely a technology company, but a delivery company, and the riders under contract to it therefore performed a service **core** to the company's business.

The Court further based its ruling on the finding of **control** exercised by the company on the delivery work: all commercial decisions were made by Glovo; the price of the service and payment method to riders was determined solely by the company and routed through it; the rider was in no way involved in agreements between Glovo and the businesses whose products it undertook to distribute.

Recent rulings of the Spanish Supreme Court on the definition of the employee have sought to expand and clarify the definition of the employee; these rulings have a clear bearing on platform work. First, only those agreements for service with another party will be classified as a separate commercial contract where the contracting party has material elements (machinery, building etc.) and intangible elements of brand, data, goodwill etc. Second, the service provider must have an organisation large enough to have elements of management of business for the establishment of a separate commercial contract. Clearly the individual platform worker in Spain cannot be classified as an independent contractor.

¹⁷ Spanish Supreme Court, ruling of 25 September, 2020, Rec.4746/2019.

The Netherlands

The Amsterdam Court of Appeals ruled that the agreement between meal deliverers and the company Deliveroo qualified as an employment contract¹⁸.

The Court found extensive evidence of **control and authority** exercised by the company over the duties of the delivery workers. It also discussed the question of whether delivery work was **core to the business** of Deliveroo.

The Court considered that even with the Free Login System instituted after March 2020, which gave substantial freedom to riders, the company could still exercise control over choice of rides through its algorithm, based on the identity of the delivery rider, the speed of performance of the rider and such other 'merit' based criteria.

The company had repeatedly changed its contract form and unilaterally changed organisation of work. This indicated the relationship of authority and control of the company over the service provider.

The wage level for deliveries was unilaterally determined by Deliveroo, and the riders had no influence over this decision. While the delivery routes were not prescribed, the average delivery time per delivery was prescribed. The company also tracked the rider through its GPS monitoring system, thus exercising authority and pressure on the rider. Since the introduction of the Free Login System, the standard reward had reduced, with increase in bonuses. This was an exercise of control of Deliveroo over performance of

¹⁸ Amsterdam Court of Appeals, ruling of 16 February, 2021, Case No. 200.261.051/01, Deliveroo Netherlands BV vs Federation of the Dutch Trade Union Movement (FNV)

the riders. Payment terms was determined by Deliveroo, instituting an automatic tow-weekly payment system, with deduction of VAT.

The Court also examined if the work of the rider was part of the core business of Deliveroo, and if they were identified with the company. Deliveroo claimed it was an IT company, and delivery of meals was of minor importance to its business activity. However, the vast majority of those working for Deliveroo were delivery riders. The Court therefore determined delivery of meals as core to the company's activities.

Deliveroo's own website carried a video entitled "Meal delivery is the heart of the organisation". The delivery riders were not identified either by customers or by contracting restaurants as independent contractors, but as riders with Deliveroo. There was clear identification of the riders and their work with the company. The Court also found the delivery workers performed work for the company for a substantial period of their time.

The Court concluded the identification of the riders with Deliveroo, their work being integral to the company's business, and the existence of a relationship of authority and control of the company over the riders in their performance of work. It therefore declared the delivery riders were contractually employed with the company.

Relevance to Indian Situation

It is of interest that the respective platforms in the four countries claimed they were technology companies, the work of the delivery/ride contract workers was not core to their business, and therefore they did not have a principal employer relationship with the contract workers engaged with them; this plea was denied in all four Court judgments. This claim of

platforms in the four countries is similar to Clause 3(ii) of the contract between Zomato and its delivery partners, where Zomato attempts to distance itself from any legal relationship with the work of the delivery partners; instead specifying “Delivery Services undertaken by him shall constitute a separate contract for services under the Consumer Protection Act, 2019 or any successor legislations, between the Delivery Partner and the User, to which Zomato is not a party”.

The court rulings in all four cases also found sufficient evidence to substantiate a relationship of hierarchy and control between the platform and the contract worker. In our analysis of the contract Zomato had with its delivery partners, we discuss several instances of similar relationship of hierarchy and control.

The Courts in the four countries held on the basis of their finding the work of the delivery/ride contract workers was core to the business of the platforms, and the existence of a relationship of hierarchy and control that the platforms had a principal employer relationship with the platform workers, and the workers therefore could claim rights as employees of the platforms. Given the similarity of the work arrangement of Zomato with its contract workers with the description of the arrangement between the respective platforms and their contract employees in the four countries, we might conclude the contract workers of Zomato can make a strong legal claim to employment status and rights with respect to the platform.

The examples from both UK and Spain suggest the presupposition of equal bargaining rights between contracting parties to make both parties equally bound legally to what they sign on to; the UK example clearly upholds the right of the weaker party to claim relief even when he/she has signed on to a document foreclosing any legal right.

In India, as early as 1984, the Law Commission, while reviewing the Indian Contract Act 1872, recommended protection in the case of unequal contracts through Clause 67(1) by holding such unequal contracts unconscionable¹⁹. The Unfair (Procedural and Substantive) Terms in Contract Bill, 2006²⁰, detailed the procedures for finding a contract unfair. The analysis of the contract between Zomato and the contract worker would represent such an unfair contract: it is a standard contract unilaterally determined by Zomato, and its various clauses discriminate substantially between obligations and liabilities of Zomato and the contract worker.

There is a fundamental difference between the architecture of the ride-hire (Uber/Ola) system and the delivery (Zomato/Swiggy) system; the former has three actors – platform, taxi driver and user, while the latter has four actors – platform, delivery partner, user and the food store. Zomato and Swiggy argue the delivery contract is between the delivery partner and user, this is what they try to bring out in the legal contract with the delivery partners; but they can't avoid a contractual obligation to the food store to deliver goods, with maybe contractual obligation for safe and timely delivery. This would imply the platform is not just an IT company with an app, but a company in the delivery business.

¹⁹ Law Commission of India, 103rd Report on Unfair Terms in Contracts, May, 1984, <https://lawcommissionofindia.nic.in/101-169/Report103.pdf>

²⁰ <http://www.bareactslive.com/LCR/LC199.HTM>

Section 2: Employment in the Platform Sector

The study used a combination of group discussions and employee tracking with an interview schedule to gather information on conditions of employment from food delivery workers; the contact with workers was facilitated by the United Food Delivery Platform Workers Union (UFDPU).

Discussion with Workers

Discussions were held with groups of platform workers on two occasions on October 2 and November 19, 2021. Several issues related to conditions of employment were discussed by workers from different delivery platforms.

Workers were near unanimous in saying they could work with only one platform at any time, given the minimum work requirements each day to become eligible for incentives. The sole exception was one platform worker who had previously worked with Zomato for 3 years, and had just shifted to Swiggy three days ago; he was trying to combine working with Rapido during times he was waiting for orders from Swiggy. While Swiggy did not allow cancellation of orders, Rapido allowed cancellation within 30 seconds. The worker was checking out if riding on two platforms was feasible.

Workers also generally stayed with the same platform for more than a year. There was not much to choose between platforms on work intensity or earning capacity. There were small benefits of better rates for workers who stayed on with the platform. In the absence of any relative advantages, many workers preferred staying with the platform they had become accustomed to. However, some workers said of late Zomato was becoming more difficult to earn a reasonable daily income.

The minimum period of work among workers was 10 hours. Many workers said they on average stayed on-boarded with the platform for 12 hours or more in a day, and for six days a week. A Swiggy worker discussed the frequent changes in the rate card and in incentive norms, making it difficult for them to adjust a standard work practice to a standard earning potential. The peak log-in period during the lunch and dinner rush hours was mandatory for workers to qualify for incentive. A Zomato worker claimed the platform used to pay an annual bonus for workers who stayed with the platform through the year; however the company had discontinued this from before the pandemic.

The rate card of Swiggy for 18-21 November, 2021, makes explicit the demand made by the platform for maximum earnings. It guaranteed Rs.14000 per week, if the worker completed 175 orders for the week; being logged in 45 hours through the week-days and a minimum 15 hours during the week-end; in addition remaining on-boarded during peak log-in hours of 12 to 3 pm and 7 pm to mid-night. We find even for workers on-boarded the long hours stipulated, still had to complete the minimum number of orders, for which they were dependent on the platform. Many workers claimed the algorithm of various platforms selectively restricted their ability to earn incentive on most days.

Previously, both Swiggy and Zomato had geographical regions the worker could choose from. Their delivery work was restricted to these boundaries; therefore they did not have to travel very long distances for any particular order. Since March, 2020, there was a change in this stipulation; consequently the trip length could become very long. One delivery trip could extend to even 25 kms each way. This reduced earning for workers; workers claimed the platform deliberately gave workers who came close to achieving incentive targets very long delivery orders, thereby making achievement of the incentive target more difficult. Further, the weekly work load in terms of

travel increased substantially. Workers claimed riding up to even 2000 kms in a week. This increased costs; petrol cost alone to earn Rs.1600 on any day according to one worker could be as high as Rs.600. The workers said this level of activity meant maintenance cost of Rs.3500 per month, including bi-monthly servicing of the vehicle and weekly oil change.

While both Swiggy and Zomato had worker rating systems, the workers claimed their rating had no impact on earnings per trip or number of trips; better rating did not get the worker closer to earning incentives. However, through a barrage of daily messages on their app., where the ratings of all other workers in their geographical region was also displayed, a subtle pressure was created for workers to increase their ratings. Workers with Zomato in the group had ratings ranging from 4.80 to 4.96 on a 5-point scale.

Many workers described having suffered from ‘fake orders’ from customers who did not pay the money on delivery, collecting the delivery using threats. The only recourse the delivery partner had was to call the Customer Care centre. This centre would call the customer; customers could choose to not reply to these calls, or even claim they had actually made the payment. Either way the worker had no recourse to any compensation. He stood to lose the delivery fare, the cost of the delivery order, and even further penalty of action by the platform for trying to cheat the platform and the customer!

The Union gave the example of the ride-hire company Rapido, to show how platforms, while disowning any direct interest in their ‘partner’ network, claiming to be purely IT companies, are dependent on the network to carry on their business. Thus, in Bangalore when two-wheeler taxis were banned for not having a ‘yellow board’, the parent company of Rapido, Roppen Transportation Services Limited approached the Karnataka High Court to

get a stay order on the ban²¹. The lifting of the ban was essential for Rapido to reach customers and carry on business.

Survey of platform workers

The tracking of platform workers in the food delivery business was done through a daily survey, from December 7 to 19, 2021. The survey sought to understand the economics of employment for these workers. While the survey reached out to twenty workers, identified through the Union, it was able to get only eleven workers to participate; finally the data from only ten workers was used in the analysis. Workers stayed with the survey for between 3 to 10 days during the survey period. Data was collected for a total of 64 person-days, varying between 2 days and 10 days for individual respondents.

The workers were tracked over ten days of observation period. This tracking was done through teams of two data collection volunteers (students at the NLSIU) who called an assigned worker at the end of the worker's working hours. Each team comprised of at least one Kannada language speaker. The data collection volunteers entered data into the tracking sheet on a daily basis.

The data from workers was collected using two separate survey instruments – a) preliminary information sheet; and b) daily tracking sheet. The parameters tracked are listed in Table 3.

In the dataset, data from workers who were tracked for at least four days was retained. Entries with inconsistencies in reported data on daily trip

²¹ High court of Karnataka, Writ Petition between Roppen Transportation Services Limited Pvt Ltd and State of Karnataka, W.P. 14627/2021, 11-08-2021.

readings and incentive information were also deleted. A total of ten workers' data was used for analysis. This yielded a total of 64 person-days of data during the observation period of 07 to 19 December, 2021. The period before the Christmas holidays was chosen as likely to yield high turnover of orders and earnings for individual workers.

Workers' Data - Variables	
Preliminary Information Sheet	Daily Tracking Sheet
Date	Date
Phone Number (of the respondent)	Phone Number
Name (of the respondent)	Name
Platform or App (that the respondent works for)	Platform
How many years have you been working on the current platform/app?	How many years have you been working on the platform?
What is your work type - part time or full time?	Work Type - Part Time/Full Time
What are your work hours or shift timings.	Work Hours or Shift (mostly)
Which location or area of the city do you work in?	Location in City
What is your marital status?	Total Hours Worked
What is your age? Write ND if the respondent prefers not to share.	Total Tasks Done
Do you own the motorbike that you use for delivery work?	Number of Food Delivery Tasks
Do you have a loan for the motorbike?	Number of Non-Food Deliveries Done
If you do not own the motorbike, then do you rent it?	Total Pay Out Received
If you rent the motorbike, where do you rent it from?	Odo Reading at Start of Shift
Do you rent an electric bike?	Odo Reading at End of Shift
Where do you rent the electric bike from?	Qualified for Incentive - Yes/No
How did you get to know of the app or platform?	If Yes, Incentive Amount
How did you get on-boarded or how did you join this work?	If No, how many task remaining to get incentive
Have you taken breaks from this work?	
If yes, for how long. Please tell us the purpose also. Leave blank if no.	
Why do you stay with this platform?	

How many days a week (on average) do you work on the platform?	
What is your rating on the platform?	
Has your rating changed in the last 6 months?	
What in your opinion determines your rating?	
Does your rating effect the number of deliveries you get?	

Table 5: Worker data parameters tracked in the survey

The background information on age, marital status, work experience, shift timings and ratings were obtained from the preliminary information sheet collected from workers at the time of first contact.

Together, these two survey instruments informed the analysis of workers' conditions, background and wages as included in the report. We also developed work intensity and riding distance intensity maps.

A comparison with the 2019 study data was undertaken, to compare earnings and effort during the two periods. It must be noted that the workers were not the same, and did not have matched samples. Therefore, comparison were made only on derived variables like net earnings per hour. However, the period in the year of the two surveys (first fortnight of 2019 and pre-Christmas fortnight for 2021) were comparable periods in terms of work availability in the sector.

Of the eleven workers who originally joined the survey, six were married. Platform work is often portrayed as part time work for single persons looking for casual, part-time employment. The survey seemed to suggest otherwise. The oldest respondent was 43 years old; five others were over 30 years in age. The sample suggested the sector employed many workers who sought secure and stable employment.

Ten of the respondents owned their bikes; only one used a rental bike. Six of the 10 workers who owned their bikes were repaying EMIs on loans taken to purchase their bikes. They had a basic fixed cost commitment to meet each month.

Workers	Days Worked	Total Hours Worked	Total Tasks Done	Total Distance Travelled	Gross earnings in observed period (INR)	Gross avg earning per hour	Total fuel cost per hour	Net avg. earning per hour
W1	4	25.5	26	142	1370	53.7	12	41.5
W2	9	72	122	563	6082	84.5	17	67.3
W3	2	26	67	240	2160	83.1	20	62.8
W4	3	30	40	305	1715	57.2	22	34.8
W5	9	116.5	200	1732	12973	111.4	33	78.6
W6	10	89.5	152	1026	6406	71.6	25	46.4
W7	5	59	106	560	6950	117.8	21	96.9
W8	6	64	128	710	5500	85.9	24	61.5
W9	7	56	77	822	5400	96.4	32	64.1
W10	9	105.5	205	1370	11780	111.7	29	83.1

Table 6: Tracking data December 10 to 19, 2021. Note: Fuel cost to the platform worker has been calculated at Rs.2.20 per km, based on average motorcycle mileage of 50 km. to a litre and fuel cost of Rs.110 per litre.

Table 6 highlights salient details of the tracking of workers. The data showed a fair correlation of 0.6 between hours worked per day and net average earnings per hour; the correlation was lower at 0.5 between tasks per day and net average earnings. Evidently the platform ensures the worker who stays on-boarded for a longer period earns at a higher rate. It is not a neutral market place, as claimed by the platform. The lower correlation for tasks may be because workers join on various schemes based on their ability to give time; the returns under different schemes would be different. This further suggests the non-neutral character of the platform as a market place.

Fuel cost as ratio of gross earning varied between 18 percent and 39 percent; the average fuel cost across the sample during the survey period was 28 percent. This agrees well with the estimates based on various company data (fuel cost = 29 percent: see Box 1).

Parameter	Year	
	2019	2021
Gross average earnings per hour	₹ 68.34	₹ 87.32
Average fuel cost per hour	₹ 14.96	₹ 23.62
Net average earnings per hour	₹ 53.39	₹ 63.70
Average tasks per hour	1.50	1.74

Table 7: Comparison 2019 and 2021 earnings, effort, fuel cost and gross earnings per hour

Table 7 compares gross average earnings and fuel cost linking the survey with the earlier survey undertaken as part of the 2020 platform study²². The fuel cost for 2019 was done at Rs.1.54 per km, based on mileage of 50 kms per litre of fuel and cost of fuel estimated as Rs.77 per litre. The average distance per trip in the current survey was 6.5 km; we assume the same average trip distance for 2019. Anecdotal details from platform workers indicated trip distances were higher in 2021 with increase in territory boundaries for the delivery workers; therefore assuming the same trip distance in 2019 is a conservative assumption. Gross hourly earnings for 2021 was about 22 percent higher than in 2019; fuel cost per hour was over 36 percent higher in 2021. Net average hourly earnings were around 16 percent higher. The earning in 2021 were however with higher average tasks per hour, showing a 16 percent increase in work intensity. Factoring these, the net earnings adjusted for inflation and work intensity remained flat at best. We should add the caveat that these estimates are based on small samples; however, the comparisons are sufficiently significant to highlight.

²² Bharadkar et al (2020), Is Platform Work Decent Work? A Case of Food Delivery workers in Karnataka, OPS# 10/2020, <https://mpp.nls.ac.in/wp-content/uploads/2020/11/OCCASIONAL-PAPER-SERIES-10-final.pdf>

The incentive achievement of respondents was tracked during the survey. This has been summarised in Table 8.

Respondent	Total days worked in observation period	No of days worker qualified for incentive	Proportion of incentive days	Avg. hours per day	Avg. tasks per day
W2	9	9	100%	8	14
W3	2	2	100%	13	34
W4	3	3	100%	10	13
W5	9	8	89%	13	22
W6	10	2	20%	9	15
W7	5	1	20%	12	21
W8	6	6	100%	11	21
W9	7	5	71%	8	11
W10	9	9	100%	12	23

Table 8: Incentive achievement among sampled workers. (n=9) Note: Respondent W1 has been left out as the incentive data was doubtful for the respondent

Two factors are of interest. First, five of nine respondents achieved incentive target on all days they were surveyed. Second, the two respondents with minimum incentive achievement of 20 percent were not significantly poorer performers on either average daily hours worked or daily deliveries performed; the correlation with incentive achievement for both performance parameters was low. Some of the difference might be because of their being on different performance schemes. It would appear, however, that incentive achievement was not strictly linked to performance indices easily understood by workers, suggesting workers' claims of the opacity of the algorithm in determining the daily earning.

Some workers said the performance of tasks or rating of workers did not have significant bearing on ability to earn incentive. They so the rating as defining a lower bound, below which the worker stood the danger of getting off-boarded; some platforms had a lower bound of 4 on a 5 point scale. Any rating from 4 to 5 did not give added benefit. Workers also claimed that for schemes offering significant bonus, the achievement of bonus became increasingly difficult as the worker approached bonus target.

Table 9 summarises the work intensity data for the three workers with maximum time spent on the platform during the tracking period. The data shows the high level of work intensity required on the platform for workers to gain adequate net earnings. The data shared with a group of platform workers evoked responses that this was standard for many delivery platform workers.

Worker	Days tracked	Average hrs/day	Average distance/day
W5	9	13	192 km.
W6	10	9	103 km.
W10	9	12	152 km.

Table 9: Work intensity (n=3)

It is evident that working through busy streets of Bengaluru through the day for 9 to 13 hours, clocking between 100 and 200 km each day is extremely strenuous. The three workers maintained this activity through the tracking period on ten continuous days. The impact on the health of the workers can be substantial. The workers W5, W6 and W12 respectively were respectively 37, 31 and 32 years old. The stress of daily work could have long term health impact. We discussed in the report the inadequacy of the proposed cess based social security scheme from the Social Security Code, as applied to delivery workers attached to Zomato and Swiggy.

Adequacy of Platform Earnings

How attractive is the net average earning of the platform worker? On the face of it, net earnings (net of fuel cost) of Rs.63.70 per hour translates to Rs.509.60 per day and Rs.13250 per month. However this still does not take into account the various fixed cost elements. Among the survey respondents three who gave details of motorcycle loans had loan outstanding of Rs.30000, 90000 and 96000; they paid monthly EMIs of Rs.3600, 3800 and

3200 respectively. The loan repayment might have been a 3 year schedule for the workers. Even if we assume the asset lasts for longer period and average the repayment spread over a five year life of the motorcycle the repayment alone would be around Rs.2000 per month. We still need to add the cost of repair and maintenance and replacement of parts including tyres etc. for motorcycles on the road for 300 to 400 km. per month; other cost elements of motor cycle insurance, road tax, engine oil change etc. After accounting for these fixed costs the net earnings of the worker factored over eight hours work per day, and working only 26 days in a month would not exceed Rs.10000 per month. This is not significantly higher than the wages paid to workers in the garment sector who have the lowest Minimum Wage among formal sector workers in Bengaluru. The garment worker however has the benefit of social security towards which the employer contributes 15.5 percent of the basic wage; minimum 8.33 percent Annual Bonus; overtime payment at twice the Minimum Wage when employed beyond 8 hours per day. When all the benefits are taken into account it is arguable the platform worker in the food delivery sector is probably at a lower earnings bracket than the garment sector worker in Bengaluru, when earnings are prorated to the same hours of work.

Workers' Data-Enabled Hyper-Localisation and Increased Supervision

Typically, a platform that provides a set of services, interacts with three parties – the customers, the delivery partners and service providers. These interactions are enabled by specifically designed mobile applications that facilitate the service delivery as agreed by contract with each party. A delivery partner's app is built only to route tasks or work to the delivery partner by the app. Similarly, a customer's app is designed for the customer to buy the platform's offered service, pay for it and track the order until its fulfilment. If the platform is in food delivery service, then the third party is a service provider like a restaurant that will fulfil the order placed by a customer.

The platform therefore integrates and facilitates market participants and create a digital marketplace. The platform as a company earns a commission on every single interaction facilitated by its marketplace for any of these participants. This is how the platforms earns its revenue.

In this marketplace, a platform can offer customer value in one or many of the following ways – short delivery time, customised products, services and offerings, user-specific discounts, remembering customer preferences, building a customer profile that includes personalised details like food preference, delivery location preference, payment preference etc. In order to achieve this depth and width of features, an app will have to collect, track and analyse an even diverse set of data that is tracked continuously from users as well as workers using the app.

Table 10 includes a comprehensive list of types of data access that platform apps in delivery space, collect from workers who use the app. The listed data types are collected by the platforms from gaining rights to it at the time of installation or during the time the app runs on a worker's mobile phone. A worker, in most cases, must grant access permission to the app. The permissions in this case are either assumed to be granted by the virtue of installation of the app or are flashed across worker's phone screen before the app opens up, so that the further function of the app is conditional upon granting permission to the asked data type.

From Table 10, it can be observed that the platforms create an exhaustive dataset which can then be used to train algorithms for predictive models. These predictive models drive localised information services and customer-specific user experience. Further, these algorithms can also help greater control and supervision of workers if the platform company so wishes. The

‘run-time permissions’ are termed as risky permissions where the app requests data or resources that involve the user's private information, or could potentially affect the user's stored data or the operation of other apps. Examples include track location, access camera, record audio, read phone call log and read SMS permissions.

It is this non-transparent use of data and its potential that is causing concern among workers. For instance, if a worker qualifies for an incentive (bonus) payment after doing 20 deliveries (or tasks) in a shift, then does the platform restrict the allocation of task and instead route the task to another worker, when the first worker is at 19 deliveries? Issues like this have been reported by workers. Data from the survey substantiated the possibility of incentive earning not always being linked to performance (see Table 6). There was no correlation between number of days of achieving incentive and the average hours worked or tasks done by individual platform workers. Workers also were not in agreement on whether individual rating at work was linked to the worker’s ability to gain more tasks and earnings. In the absence of externally transparent correlation between work performance and earning potential, the only explanation possible was that the algorithm governing work in the platform for individual workers was enabled to individually tailor performance rewards based on non-transparent parameters.

In the absence of complete list of data types that a platform stores about a worker and the use of that data, the lack of trust between the workers and the platforms will continue. Even as control, surveillance and manipulation possibilities expand rapidly, there have also been significant changes in processes within platform work since the Covid-19 pandemic began.

With respect to the use of data, delivery partner contract with Zomato include the following consent clause in Section 6 (i) – “Zomato may collect Delivery

Partner Information at the time of execution of these Delivery Partner T&C or at any time thereafter, to establish the identity of the Delivery Partner. Zomato reserves the right to store, process, access and use the Delivery Partner Information for business purposes and needs, background check, verification, marketing, service, development, analytics, research, and any other purpose as Zomato may deem fit and in accordance with Applicable Law. The Delivery Partner hereby expressly consents to such collection and use of Delivery Partner Information”.(see Annexure 1)

This blanket consent to allow Zomato to access and use all Delivery Partner information gives license to hyper-surveillance, belying the claim of platforms that they do not subject their delivery partners to supervision. On the contrary, the blanket permission has the danger of intruding on personal data of the worker (See Image 3, Image 4 and Image 5).

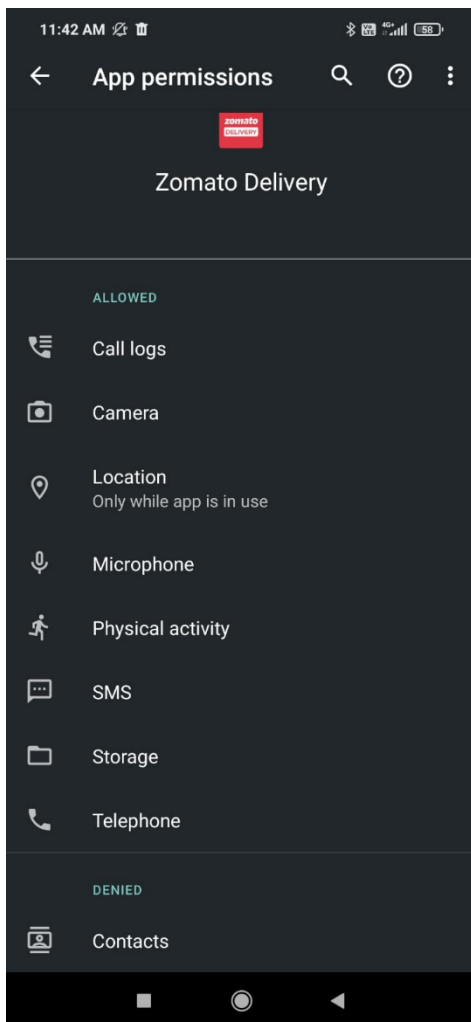


Image 3: A screenshot from delivery partner's mobile phone showing the list of permissions that have been granted to the Zomato Delivery Partner App after installation.

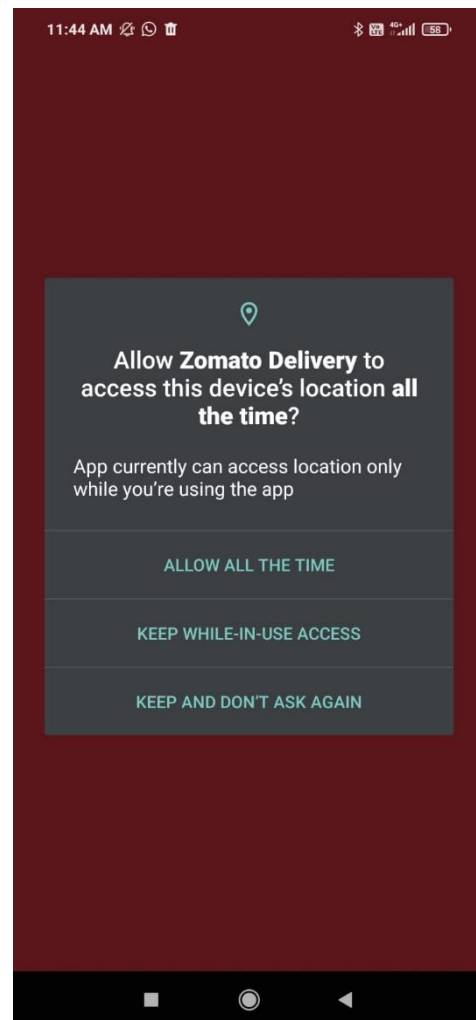


Image 4: A screenshot from Zomato Delivery Partner App where the app continuously shows an in-app notification to allow access to delivery partner's device location all the time.

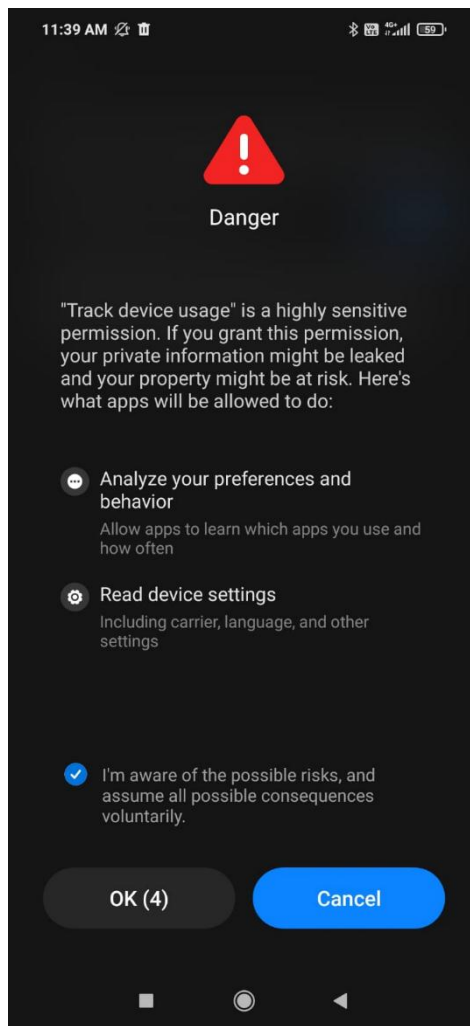


Image 5: A screenshot from a delivery partner's phone. The notification from phone operating system cautions the user about granting 'track device usage' permission which the Zomato Delivery Partner App needs the user to activate.

	Type of Access	Permission Type	Permission Requirement	Platforms/Apps						
				Swiggy	Zomato	Rapido	Porter	BlinkIt	Shadowfax	Dunzo
1	Device ID and Call Information		Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Location									
2a	precise GPS-based location		Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2b	Network-based		Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Personal Data		Mandatory							
3a	find accounts on the device	runtime permission		Yes	Yes	Yes			Yes	Yes
3b	add or remove accounts			Yes	Yes	Yes			Yes	Yes
3c	read contacts			Yes	Yes	Yes			Yes	Yes
4	Device and App History	install-time permission	Mandatory							
4a	retrieve running apps			Yes	Yes	Yes			Yes	Yes
4b	read sensitive log data			Yes	Yes	Yes			Yes	Yes
4c	keep app running in the background at all times			Yes	Yes	Yes			Yes	Yes
5	Microphone		Mandatory							
5a	record audio			Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	Wi-fi connection information									

	Type of Access	Permission Type	Permission Requirement	Platforms/Apps						
				Swiggy	Zomato	Rapido	Porter	BlinkIt	Shadowfax	Dunzo
6a	view Wi-Fi connections									
6b	Storage	runtime permission	Mandatory							
6c	modify or delete contents from device storage			Yes	Yes	Yes	Yes	Yes	Yes	Yes
6d	read the contents of the storage			Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	Calendar									
7a	read calendar events									
8	Photos/Media/Storage	runtime permission	Mandatory							
8a	read and edit contents from device storage			Yes	Yes	Yes	Yes	Yes	Yes	Yes
8b	Phone	runtime permission		Yes	Yes	Yes	Yes	Yes	Yes	Yes
8c	directly call phone numbers			Yes	Yes	Yes	Yes	Yes	Yes	Yes
8d	read phone status and identity			Yes	Yes	Yes	Yes	Yes	Yes	Yes
9	Camera	runtime permission	Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
10	SMS	runtime permission	Mandatory							
10a	read text messages			Yes	Yes	Yes	Yes	Yes	Yes	Yes

	Type of Access	Permission Type	Permission Requirement	Platforms/Apps						
				Swiggy	Zomato	Rapido	Porter	BlinkIt	Shadowfax	Dunzo
10b	receive text messages			Yes	Yes	Yes	Yes	Yes	Yes	Yes
10c	send text messages			Yes	Yes	Yes	Yes	Yes	Yes	Yes
11	Other									
11a	full licence to interact across users	install-time permission	Mandatory	Yes	Yes	Yes			Yes	Yes
11b	have full network access	install-time permission	Mandatory	Yes	Yes	Yes				
11c	prevent phone from sleeping	install-time permission								
11d	run at startup	install-time permission	Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11e	receive data from internet	install-time permission	Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11f	full network access	install-time permission	Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11g	read Google service configuration		Mandatory	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11h	change device audio settings									
11i	use accounts on the device			Yes	Yes	Yes			Yes	Yes
11j	install shortcuts			Yes	Yes	Yes	Yes	Yes	Yes	Yes
11k	send sticky broadcasts			Yes	Yes	Yes	Yes	Yes	Yes	Yes

Table 10: Data types and permissions required by apps. Source: Types of access information is gathered from <https://developer.android.com/>, following which various apps were examined on the listed parameters.

	Process	Platforms				
		Zomato	Swiggy	Dunzo	Shadowfax	Rapido
1	New worker onboarding	automated	automated	automated	automated	
2	Work allocation, shift timings	automated	automated	automated	automated	
3	Work Supervision	automated				Phone Calls
4	Wage Settlement, Payments	automated	automated	automated	automated	automated
5	Frequency of wage settlement	Weekly and daily	Weekly	Weekly	Weekly	Weekly
6	Worker Support	In app requests	In app requests	In app requests	In app requests with no call centre phone number	In app requests
7	Grievance Redressal	In app requests	In app requests	In app requests	In app requests	In app requests
8	Suspension	Notice via in app message		Notice via in app message		Notice via in app message

Table 11: State of practices adopted by platforms in key processes as on December 2021

As the processes of work get automated and human mediation is removed, the conflicts between workers and platform companies are likely to increase. Workers have often taken to social media to complain against these practices.

The considerations of control, transparency and data use are key to understanding the impact of platform apps on workers' earnings, conditions and overall wellbeing. It may be useful to examine data access rights and insist on platforms to show rationale for data access in their privacy documents. It is in this context that in some countries platforms have successfully challenged platforms to exercise their right to greater information sharing.

Section 3: Conclusions

While the sample size in the survey of platform workers might be small to make significant generalisations, broad findings and trends are suggested. Some of these are discussed here.

The sector employs many workers who are likely to seek stable platform employment. Their earnings over 8 hours are arguably only around the Minimum Wage for unskilled garment workers in Bengaluru after accounting for variable and fixed costs; consequently a high work intensity in terms of hours worked and distance travelled to make deliveries becomes a necessity for workers to earn a decent amount. Many workers are at an age when they could become vulnerable to chronic stress related injuries, and health issues. They would be looking to build long term social security protection for themselves and their families. However, as we discuss earlier, even a 2 percent cess on the platform sector, the two largest players in the sector, Zomato and Swiggy will be able to provide less than a fifth of the employer contribution to ESI and PF as mandated for the formal sector.

Comparison with data from an earlier study by CLS²³ conducted in 2019 of food delivery platform workers (see Table 7) indicated the worker earned about the same amount net of fuel cost in 2021 as in 2019, after accounting for inflation and factoring work intensity. Against the flat inflation adjusted earnings for the platform worker, we compare the increase in net worth of the two major players in the food delivery sector, Zomato and Swiggy. In 2019 HSBC Global Research had valued Zomato at USD 3.6 Billion (INR 25000 Crores) and Swiggy at USD 3.2 Billion (INR 22000 Crores)²⁴. After its

²³ Bharadkar et al (2020), Is Platform Work Decent Work? A Case of Food Delivery workers in Karnataka, OPS# 10/2020, <https://mpp.nls.ac.in/wp-content/uploads/2020/11/OCCASIONAL-PAPER-SERIES-10-final.pdf>

²⁴ <https://entrackr.com/2019/03/zomato-valuation-3-6-billion-hsbc/>

IPO in July 2021, the market valuation for Zomato was Rs.65000 Crores²⁵; the market value for Swiggy in 2021 was estimated at USD 5.5 Billion (around Rs.41125 Crores)²⁶. Evidently the two major delivery platforms made hefty gains during the pandemic, with Zomato gaining around Rs.40000 Crores and Swiggy Rs.20000 Crores in market valuation. However, these gains were not passed on to the delivery 'partners'.

The decline in urban employment opportunity post Covid meant there was no dearth of workers available for the sector, despite low net earnings and high work intensity. The net earnings also had to service other fixed costs of asset purchase, maintenance of assets, or payment of various levies and taxes. In the current survey, six of the eleven respondents contacted had outstanding loans incurred for purchase of their motor cycles they were repaying out of their earnings. The requirement to service fixed costs meant workers had to stay yoked to the platform to earn at least a base level every month; the EMI on vehicles alone was over Rs.3000 each month for three of the respondents.

Respondents in the survey and the group discussions said they joined employment with the understanding that the platform rewarded good workers handsomely. Older workers claimed that even 3-4 years earlier the platform returns including incentives were much better. The majority of them said that the platforms had tightened their purse strings just before the pandemic, and the situation continued during the last two years. This trend of platforms affording large incentives to delivery partners in the initial years of their entry in a city to create market shares, and cutting back on the returns once business stabilised is true across sectors of platform work.

²⁵ Economic Times, July 23, 2021, , <https://economictimes.indiatimes.com/markets/ipos/fpos/zomato-lists-at-53-premium-over-issue-price-enters-elite-club-of-top-100-cos-by-market-value/articleshow/84666820.cms?from=mdr>

²⁶ TOI, August 11, 2021, <https://timesofindia.indiatimes.com/business/india-business/swiggy-ipo-could-deliver-good-returns-says-softbanks-masayoshi-son/articleshow/85233079.cms>

The one benefit many workers continued to maintain was the absence of constant supervision, and the relative freedom to take a day off from work – a freedom to be weighed against the anxiety of maintaining a minimum earning level to pay off costs and contribute to the family. However, even this freedom would appear ephemeral given the level of tracking of the life of the worker possible by the platform through its algorithm-based control architecture.

The opacity of the platforms was raised by several respondents who were not able to see any pattern in the algorithm (the term app is used by workers to refer to this black box) which determined their rewards in terms of awarding trips and incentives at the end of the day. In the survey, two workers had a rating of 5 on a 5-point scale; one had rating of 4.98; the lowest rating was 4.5. However, workers were mixed in their response to whether the rating helped them to get more tasks and collect incentives. The absence of any correlation between incentive achievement, and hours of work on-boarded or tasks done in a day would support this claim of opacity. This issue has become the matter for legal challenges by platform workers in other countries, demanding more transparent information sharing from platforms. It remains to be seen if similar challenges will come up from platform workers' organisations in India.

The agreement between Zomato and its delivery 'partner' closely resembles other legal agreements between delivery and ride-hire platforms and their 'partners' in other countries. We have judgments from the highest courts in the UK, Spain, Netherland and the state of California in the USA declaring the relationship between the platform and its delivery platform in the countries as one of employment, placing specific responsibility, including payment of minimum wage and social security on the employer. The case in India before the Supreme Court by the Indian Federation of App-based Transport Workers (IFAT) challenges the platforms definition of their

relationship with their 'partners'. In Karnataka the legal challenge before the Labour Department of the dismissal of a platform worker will also add to struggles within the platform industry to define the worker and work regulation; to force examination by the Indian State of the various new forms of non-standard employment. This will necessarily change the structure of the platform industry in India.

Annexure - I

Delivery Partner Contract - Zomato

DELIVERY PARTNER TERMS AND CONDITIONS

I [Name] [Address], having permanent account number XXXXX on this date XXXXXX, confirm and undertake that I have read and understood these terms offered by Zomato. Further, I agree and acknowledge to be subject to and comply with all the provisions of these terms, which will constitute as a legally binding agreement between You and Zomato Private Limited (Formerly known as Zomato Media Private Limited) and its affiliates ("**Zomato**"), regarding use of Zomato's Platform (as defined below) for the provision of Delivery Services (as defined below).

I Accept

This document is an electronic record in terms of Information Technology Act, 2000 and rules thereunder as applicable and the provisions pertaining to electronic records in various statutes as amended by the Information Technology Act, 2000. This electronic record is generated by a computer system and does not require any physical or digital signatures. By clicking on the "I ACCEPT" button, You are consenting to be bound by these Delivery Partner T&C for using the Zomato DP Platform for the purpose of receiving orders and delivering the food and beverages to the Users. PLEASE ENSURE THAT YOU READ AND UNDERSTAND ALL THESE DELIVERY PARTNER T&C BEFORE YOU USE THE SERVICE OF THE ZOMATO DP PLATFORM, AS YOU SHALL BE BOUND BY ALL THE DELIVERY PARTNER T&C CONTAINED HEREIN upon clicking on the "I ACCEPT" button. If You do not accept any of the Delivery Partner T&C, please do not use the Zomato DP Platform or avail any of the services being provided therein. YOUR AGREEMENT TO THE DELIVERY PARTNER T&C SHALL OPERATE AS A BINDING AGREEMENT BETWEEN YOU AND ZOMATO IN RESPECT OF THE SERVICES OF THE ZOMATO DP PLATFORM. Your engagement with Zomato to use the services of the Zomato DP Platform are subject to your acceptance of these Delivery Partner T&C. Zomato reserves the right, at its sole discretion, to change, modify, add or remove these Delivery Partner T&C, in part or in whole, at any time, without prior notice to You. It is Your responsibility and duty to check the Delivery Partner T&C periodically for changes. Your continued use of the Zomato DP Platform following the posting of changes will mean that You accept and agree to the changes. As long as You comply with these Delivery Partner T&C, Zomato grants You a personal, non-exclusive, non-transferable, limited privilege to enter and use the service on the Zomato DP Platform.

1. DEFINITIONS

"**Acceptance**" means your affirmative action of clicking on the box against the words "**I Accept**" provided at the end of these Delivery Partner T&C, by which action, you unequivocally accept the Delivery Partner T&C and any modifications thereof;

"**Applicable Law**" shall mean and include any law, statute, ordinance, rule, regulation, guideline, policy or other pronouncement having the effect of law in India, as in effect or which may come in effect on a future date;

"**Delivery Partner**" or "**You**" or "**Your**" or "**Yourself**" shall mean an individual who has accepted the terms for the provision of Delivery Services;

"**Delivery Partner Information**" shall mean and include any personal data collected from the Delivery Partner including know your customer documents with Delivery Partner's bank, copies of valid government issued vehicle registration certificate, vehicle insurance copy, driving license, identity proof, residence proof, location data, proof of ownership of Delivery Partner Vehicle and any other information that Zomato may deem fit;

"**Delivery Partner Vehicle**" shall have the meaning assigned to it in Clause 5(i);

"**Delivery Services**" shall mean either or both of the following as the context may require:

- a) The services provided by the Delivery Partner to Zomato of making himself available on the Zomato DP Platform for the purpose of receiving orders placed by the Users;
- b) The delivery services provided by the Delivery Partner to the Users whereby the Delivery Partner collects the food and beverages ordered by the Users and delivers the same to the Users.

"Intellectual Property Rights" shall mean and include the copyright (whether registered or not), patents including rights of filing patents, trademarks, trade names, trade dresses, house marks, collective marks, associate marks and the right to register them, designs (both industrial and layout), geographical indicators, moral rights, broadcasting rights, displaying rights, distribution rights, selling rights, reproducing rights, domain names, internet address, graphics, artwork, links, information, logos, software, configuration, marketing and distribution material and any other intellectual property right in the website of Zomato, and Zomato Platform, which are used and/or owned by Zomato;

"Lead Business Associate" shall mean a person designated by Zomato responsible for ensuring all questions and queries of Delivery Partners operating within a defined territorial area are answered as well as providing all necessary operational support that such Delivery Partners may require;

"Platform Services" shall have the meaning assigned to it in these terms;
Termination Date shall mean the date on which these Delivery Partner T&C shall stand terminated;

"Terms and Conditions" or **"Delivery Partner T&C"** refers to these Delivery Partner Terms and Conditions, which are available on the Zomato DP Platform, as may be amended from time to time; "Restaurant Partner" shall mean restaurants/ cafes listed on the Zomato Platform pursuant to a contractual arrangement with Zomato.

"Zomato" or **"We"** or **"Us"** or **"I"** shall mean Zomato Private Limited, a company incorporated under the Companies Act, 1956, and having its registered office at Ground Floor, 12A, 94 Meghdoot, Nehru Place, New Delhi - 110019 which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include all our successors, affiliates and assigns; "Zomato DP Platform" shall mean a mobile application developed by Zomato for the purpose of connecting third party delivery service providers with the Users. It shall also include for all purposes the mobile interface provided to the Delivery Partner wherein all the back-end technology is incorporated to enable the Delivery Partner to provide Delivery Services as well as enable Zomato, to track the orders and other relevant information;

1. Unless the context of these Delivery Partner T&C otherwise requires:

- i. A word or an expression, which denotes a natural person shall include an artificial person (and vice versa), any one gender shall include the other genders, the singular shall include the plural (and vice versa).
- ii. Heading and bold typeface in these Delivery Partner T&C are for convenience only and shall be ignored for the purposes of interpretation.
- iii. The use of the word "including" followed by a specific example(s) in these Delivery Partner T&C, shall not be construed as limiting the meaning of the general wording preceding it.
- iv. The rule of construction, if any, that a contract should be interpreted against the parties responsible for drafting and preparation thereof, shall not apply.
- v. Reference to any clause, article, section or schedule shall mean a reference to a clause, article, section or schedule of these Delivery Partner T&C, unless specified otherwise.
- vi. Reference to any Applicable Law shall mean a reference to that law as amended, consolidated, supplemented or replaced.

2. APPLICABILITY OF DELIVERY PARTNER T&C

These Delivery Partner T&C shall form the complete understanding between the Parties. By accepting these Delivery Partner T&C, You acknowledge and agree to the Delivery Partner T&C

and Zomato policies that Zomato makes applicable to You from time to time, to the fullest extent possible.

3. SERVICE AND CHARGES

Subject to terms and conditions contained in these Delivery Partner T&C, Zomato shall act as an intermediary between the Users and the Delivery Partner by making the Zomato DP Platform available to the Delivery Partner for the purpose of connecting the Delivery Partner with the User for undertaking delivery of food and beverages ordered by the Users from the Restaurant Partners;

- i. The Delivery Partner shall, at his discretion, and subject to the terms of these Delivery Partner T&C (defined below) and other policies of Zomato, make himself available on the Zomato DP Platform for receiving orders placed by the Users for the purpose of collecting the food and beverages ordered by the Users and delivering the same to the Users. Once Delivery Partner accepts an order placed by a User through the Zomato DP Platform, the Delivery Partner shall collect the food and beverages ordered by the User and deliver the same to the User. The Delivery Partner shall undertake Delivery Services with promptness and diligence in a workmanlike manner and at a level of proficiency to be expected of a delivery service provider. The Delivery Partner shall comply with the terms of these Delivery Partner T&C (defined below) while providing the Delivery Services to the Users to the best of his abilities.
- ii. Delivery Partner agrees and acknowledges that the upon acceptance of an order by the Delivery Partner, Delivery Services undertaken by him shall constitute a separate contract for services under the Consumer Protection Act, 2019 or any successor legislations, between the Delivery Partner and the User, to which Zomato is not a party. At the time of availing the Platform services for the first time from Zomato, the Delivery Partner shall, at the discretion of Zomato, be required to pay either (i) an onboarding fee ("**Onboarding Fee**") to Zomato of such amount and in such manner as prescribed by Zomato from time to time, or (ii) an interest free refundable security deposit ("**Security Deposit**") to Zomato, of such amount and in the manner prescribed by Zomato from time to time. In addition, Zomato shall charge additional fees from the Delivery Partner for any additional training and support services provided by Zomato ("**Training and Support Fees**"). To enable the Delivery Partner to render Delivery Services, Zomato may provide the Delivery Partner with certain assets including, but not limited to, the Zomato DP Platform on the Delivery Partner's smart phone; bags etc. Upon termination of these Delivery Partner T&C, the Security Deposit, if any, shall be refunded to the Delivery Partner by the Zomato after the assets are returned to the Zomato in usable condition. In the event the asset returned by the Delivery Partner is not in usable condition, Zomato shall deduct such amount as provided in Annexure A hereto. The Parties understand that the decision of Zomato whether an asset is usable or not shall be final and binding on the Delivery Partner.'
- iii. The Delivery Partner shall, at the discretion of Zomato, be required to either pay the Onboarding Fee or deposit the Security Deposit which is prescribed at the time of his joining in the city of his joining.
- iv. In consideration of Zomato making the Zomato DP Platform available to You, Zomato, at its discretion, may charge fee for providing the Platform Services ("**Platform Charges**"), which shall be notified to You by such means as Zomato may deem fit. Your continuous use of the Zomato DP Platform and the Platform Services after such notification shall be deemed to be acceptance of the Platform Charges by You. The Platform Charges may be revised by Zomato, at its discretion, from time to time, without any notice.
- v. The amount of Training and Support Fees, On boarding Fee, Security Deposit and the Platform Charges shall be determined by Zomato and may be revised from time to time at the sole discretion of Zomato.
- vi. The Delivery Partner shall create a log-in ID on the Zomato DP Platform to be able to render Delivery Services. The Delivery Partner acknowledges that the sign-in details,

including the username and password, are confidential and, accordingly, shall not share them with any third party, without written approval from Zomato.

- vii. The Delivery Partner shall have access to the Zomato DP Platform at all times unless there is a technical glitch or if the Zomato DP Platform is being updated. Once logged-in, the Delivery Partner shall remain available and shall be able to connect with the Users for the purpose of receiving orders placed by the Users and undertaking Delivery Services in connection with the same.
- viii. The Delivery Partner confirms and acknowledges that by logging-in on the Zomato DP Platform, he agrees to be tracked by Zomato via GPS enabled tracking technology and Zomato may share this information with Users on a real-time basis for the purpose of enabling the status of the Delivery Services being provided by the Delivery Partner to the Users. The Delivery Partner further agrees that logging-in on the Zomato DP Platform shall be deemed acceptance of the Delivery Partner's intention to accept orders of Users to render the Delivery Services mentioned herein.
- ix. All reasonable attempts shall be made by the Delivery Partner to collect the order from the Restaurant Partners and deliver it to the Users, as quickly and efficiently as possible.
- x. In consideration for the Delivery Services provided by the Delivery Partner to the Users of delivering food and beverages to the Users, the Delivery Partner may charge the Users a service fee ("**Delivery Charges**"), subject to such Delivery Charges being accepted by the User at the time of placement of the order. The Delivery Charges shall be agreed between the Delivery Partner and Zomato from time to time, in the manner provided under these Delivery Partner T&C.
- xi. In order to incentivize the Delivery Partner for the availability committed by him/her on the Zomato DP Platform to undertake Delivery Services as and when he is connected to a User, Zomato may, at its discretion, pay the Delivery Partner a fee ("**Availability Fee**"), in addition to the Delivery Charges collected by the Delivery Partner from the Users.
- xii. Notwithstanding anything to the contrary under Clause 3(ix) above, the Delivery Partner hereby absolutely, unconditionally and irrevocably authorizes Zomato to determine the amounts chargeable by the Delivery Partner as Delivery Charges, through such means as Zomato may determine, including real-time analysis of the demand for Delivery Services, the availability of delivery partners on the Zomato DP Platform to provide Delivery Services to the Users, traffic and weather conditions, seasonal peaks and such other factors as Zomato may deem fit, and you agree that the Delivery Charges may be revised from time to time on the basis of one or more of these factors. Zomato shall, from time to time and through such means as Zomato may deem fit, notify You the Delivery Charges that You may charge the Users.
- xiii. You shall not charge the Users any amount over and above the amount of Delivery Charges agreed between You and Zomato under these Delivery Partner T&C.
- xiv. You hereby authorize Zomato to collect from the Users, on your behalf, the Delivery Charges charged by You to the Users for undertaking Delivery Services, which shall be remitted to you on a weekly basis through such mode and on such day(s) of a week as Zomato may from time to time decide.
- xv. Zomato may, at its discretion, pay the Delivery Partner an additional amount and/or incentive (in addition to what Zomato collects from the Users) for the Delivery Services provided by the Delivery Partner using the Zomato DP Platform.
- xvi. Zomato may, at any time: (a) set off and deduct any amounts due from, payable by or proposed to be paid by Zomato to the Delivery Partner, including the Delivery Charges collected by Zomato from the Users on behalf of the Delivery Partner and the Availability Fee; and (b) apply such amounts towards any amounts due from, or payable by the Delivery Partner under or in connection with the Delivery Partner T&C, including without limitation the Platform Charges. Zomato shall have the right and the obligation to pay only such amounts due and payable by Zomato to the Delivery Partner, if any amount so remains due and payable after such set off, deduction and application as set out under this Clause 3(xvii). Nothing in this Clause 3 (xvii) shall prejudice any right or remedy available to Zomato, whether under contract, law or equity to recover any amounts due

- from, or payable by the Delivery Partner under or in connection with the Delivery Partner T&C, whether such amounts arise under contract, tort, statute or equity.
- xvii. Notwithstanding anything contained in these Delivery Partner T&C, there shall be no obligation on the Delivery Partner to be available on Zomato DP Platform for a minimum number of hours/days. The Delivery Partner acknowledges that he has flexible timings and can chose to log-in the Zomato DP Platform anytime he wants and for howsoever long he wants, at his sole discretion. Zomato shall also not supervise the actions and conduct of the Delivery Partners unless they are in gross violation of their duty to render Delivery Services under these Delivery Partner T&C. All queries and questions raised by the Delivery Partner, including but not limited to how to collect an order from the outlet of a Restaurant Partner, directions for the delivery address, manner to keep and store the food and beverages while in transit shall be directed to a Lead Business Associate for the particular area from where the Delivery Partner is operating to render the Delivery Services.
- xviii. Tax You authorize Zomato to make Tax Deduction at Source (TDS) as per the Income Tax Act, 1961, where applicable, and other applicable taxes from the amount paid or remitted to You under these Delivery Partner T&C, including the Delivery Charges collected by Zomato on your behalf from the Restaurant Partners and the Users, which includes the following:

In case any withholding tax has to be deducted from the Delivery Charges or any amount payable by Zomato under these Delivery Partner T&C, the Company shall deduct the same and provide the Business Associate with adequate proof of depositing the said withholding tax with the Indian tax authorities in accordance with the Income Tax Act, 1961. If Zomato is required to withhold any payment under Applicable Law from any amount due or payable to the Delivery Partner under or in connection with the Delivery Partner T&C, Zomato shall be entitled to deduct the same and deal with it in such manner as may be required under Applicable Law. Zomato shall raise a tax invoice containing such particulars as may be prescribed under the Goods and Service Tax Act, 2017 and the rules made thereunder, as amended from time to time for any amount charged to you by Zomato including the Platform Charges. The Platform Charges shall be inclusive of applicable taxes.

4. OBLIGATIONS OF DELIVERY PARTNER

- i. Delivery Partner makes himself/herself available to undertake Delivery Services as and when a request for the same is placed by User through the Zomato DP Platform.
- ii. If required, the Delivery Partner shall use his personal vehicle ("**Delivery Partner Vehicle**") for providing Delivery Services. No vehicle of any kind shall be provided by Zomato under any circumstances.
- iii. The Delivery Partner shall ensure that the Delivery Partner Vehicle is well maintained and in good condition so that there are no delays in rendering Delivery Services.
- iv. All expenses incurred in maintaining, running and riding the Delivery Partner Vehicle shall be borne exclusively by the Delivery Partner unless otherwise agreed by Zomato.
- v. The Delivery Partner shall hold and possess a valid driving license and a valid registration number for the Delivery Partner Vehicle, if required under the Applicable Law for the vehicle used by the Delivery Partner for providing Delivery Services, which are up to date and in subsistence throughout the Term of these Delivery Partner T&C. Copies of the driving license as well as the registration certificate of the Delivery Partner Vehicle, including any other Delivery Partner Information, shall be handed to the Zomato before commencing Delivery Services or at any other time deemed appropriate by Zomato.
- vi. The Delivery Partner shall have a valid and adequate insurance coverage to the Delivery Partner Vehicle. Delivery Partner shall ensure that the insurance is valid, up to date and in subsistence throughout the Term of these Delivery Partner T&C. A copy of the insurance policy shall be given by the Delivery Partner to the Zomato. The Delivery Partner further confirms that all premium payments towards the insurance policy shall

be paid exclusively by the Delivery Partner. Under no circumstances shall Zomato be liable to make any payment with respect to such insurance.

- vii. During the course of undertaking Delivery Services, the Delivery Partner shall conduct himself with honesty, discipline and in accordance with the policies and instructions of the Zomato, whether presently in force or adopted in the future, including but not limited to safety, driving rules, etc. The Delivery Partner shall also comply with all Applicable Law including the provisions of the Motor Vehicles Act, 1988 and its corresponding rules.
- viii. Delivery Partner shall not commit any fraud while providing Delivery Services or otherwise commit any act or omission, to gain any undue advantage. Delivery Partner agrees and acknowledges that in case Zomato believes that the Delivery Partner has committed any of the foregoing while undertaking Delivery Services, Zomato shall, in addition to its right to terminate these Delivery Partner T&C, in its sole discretion reserve the right to (a) disable the Delivery Partner from undertaking Delivery Services through the Zomato DP Platform for such time as it deems fit and /or (b) deduct the undue gain made by the Delivery Partner through the fraudulent orders from the payout including incentives thereof and/or the Security Deposit, if any. This right to withhold payout including incentives thereof may also be exercised by Zomato in the event service parameter guidelines, as prescribed by the Zomato from time to time, is not met.
- ix. At no time whatsoever shall the Delivery Partner tamper, damage, open or do anything to the food and beverages orders of the Users that he/she is not specifically permitted to do. In case Zomato suffers any loss due to the Delivery Partner tampering, damaging or opening the packaging of food and beverages orders of the Users, Zomato shall have the right to recover any loss, if any, from the payments required to be made by Zomato to the Delivery Partner under these Delivery Partner T&C.
- x. Where the Delivery Partner is required, under instructions from Zomato, to use his personal cash for the purpose of paying the Restaurant Partner to pay the Restaurant Partner for the value of the order for a cash on delivery order, then, the Delivery Partner shall collect the original receipt from the Restaurant Partner and recollect his payment from the User by handing the original receipt. Without prejudice to the preceding sentence of this Clause 5(x), any amount collected by the Delivery Partner from the Users, on behalf of, and due to Zomato, shall be deposited by the Delivery Partner with Zomato in such manner and at such frequencies as Zomato may instruct from time to time.
- xi. Notwithstanding Clause 5(x), where the Delivery Partner is required to collect the value of the order from the User but is not required to pay the value of the order to the Restaurant Partner, then any amount collected by the Delivery Partner from the Users, on behalf of and due to Zomato, shall be deposited by the Delivery Partner with Zomato in such manner and at such frequencies as Zomato may instruct from time to time.
- xii. The Delivery Partner shall maintain the welcome kit in good condition at all times and immediately return it to Zomato, upon the termination of these Delivery Partner T&C. In the event the assets is not returned in a condition acceptable to the Zomato or not returned at all, Zomato retains the right to set-off the value of the welcome kit against the Security Deposit (if any) and / or payments required to be made by Zomato to the Delivery Partner under these Delivery Partner T&C.
- xiii. The Delivery Partner shall undertake the Delivery Services by himself and shall not delegate the same to any individual or third party.
- xiv. The welcome kit shall be used in a prudent manner, so as not to destroy or damage any of its contents. Upon receiving any order to render Delivery Services after logging-in the Zomato DP Platform, the Delivery Partner shall act and perform his role in an ethical

manner and to the best of his abilities by ensuring a timely pick-up and delivery. In case of any delays due to traffic, the Delivery Partner shall inform the Restaurant Partner and the User and follow instructions as given by them.

- xv. The Delivery Partner acknowledges that the goodwill and reputation of Zomato is at stake with how effectively and efficiently the Delivery Partner renders Delivery Services pursuant to these Delivery Partner T&C. Accordingly, the Delivery Partner shall not do any act that adversely affects Zomato and undertakes to be in compliance with Applicable Law at all times and protect the brand image, business reputation or any other asset/property of Zomato.
- xvi. While logged-in the Zomato DP Platform, the Delivery Partner shall not engage in any illegal activity or perform any actions that are contrary to Applicable Law.
- xvii. All Confidential Information procured shall at all times be kept confidential and used only for the limited permitted purposes of rendering Delivery Services.
- xviii. The Delivery Partner is not entitled to claim reimbursement of hospitalization/ hospital bills that may be incurred by the Delivery Partner while rendering Delivery Services or incurred by his family members for any unfortunate accidents or severe illness, during the subsistence of these Delivery Partner T&C.

5. OBLIGATIONS OF ZOMATO

- i. Zomato shall endeavor to take reasonable and financially prudent measures to ensure sufficient flow of orders from Users to the Delivery Partner. All Delivery Partner Information procured shall be kept confidential and used only as per these Delivery Partner T&C.
- ii. Zomato shall make all reasonable efforts to ensure that the Zomato DP Platform is running at all times. However, it shall not be liable for any technical glitches or updates due to which a Delivery Partner is unable to log-in the Zomato DP Platform or receive orders.

6. DELIVERY PARTNER INFORMATION

- i. Zomato may collect Delivery Partner Information at the time of execution of these Delivery Partner T&C or at any time thereafter, to establish the identity of the Delivery Partner. Zomato reserves the right to store, process, access and use the Delivery Partner Information for business purposes and needs, background check, verification, marketing, service, development, analytics, research, and any other purpose as Zomato may deem fit and in accordance with Applicable Law. The Delivery Partner hereby expressly consents to such collection and use of Delivery Partner Information.
- ii. Subject to Applicable Law, Zomato may provide to a third party, governmental agency, judicial body, any Delivery Partner Information or information relating to Delivery Partner Services, if there is a complaint, dispute or conflict, including any accident involving a Delivery Partner on one hand and end-consumer, or a third party on the other hand;

7. INTELLECTUAL PROPERTY RIGHTS

- i. The Parties hereby agree that all Intellectual Property Rights shall be in absolute ownership, possession and control of Zomato and the Delivery Partner is only permitted to use such Intellectual Property Rights in connection with Delivery Services rendered under these Delivery Partner T&C as are specifically permitted by the Zomato. The Parties hereby clarify that no license or rights is granted in the Intellectual Property Rights to the Delivery Partner under these Delivery Partner T&C, by implication or otherwise.

- ii. Notwithstanding anything contained in these Delivery Partner T&C, in the event the Delivery Partner uses the Intellectual Property Rights in such manner so as to license, sub-license, create derivative Intellectual Property Rights, use it otherwise not being in connection with Delivery Services rendered under these Delivery Partner T&C, the same shall constitute a breach of these Delivery Partner T&C and Zomato reserves its rights to resort to legal proceedings against the Delivery Partner for recovering damages and losses suffered or likely to be suffered.

8. REPRESENTATIONS AND WARRANTIES

8.1 The Delivery Partner represents and warrants as follows:

The Delivery Partner is capable of entering in the present agreement, pursuant to the Indian Contract Act, 1872 and is not below the age of 18 years as on the Effective Date.

- i. All Delivery Partner Information provided shall be true and correct and no information that could impact the Delivery Partner's performance to render Delivery Services pursuant to these Delivery Partner T&C and shall not be hidden from the Zomato anytime during the subsistence of these Delivery Partner T&C.
- ii. The Delivery Partner has not been convicted by any court in India or any other country of any crimes including but not limited to involving moral turpitude. Further, the Delivery Partner is not a party to any pending litigation, which shall materially affect Your obligations under these Delivery Partner T&C.

8.2 Zomato hereby represents and warrants as follows:

It is fully capable of executing these Delivery Partner T&C and has the necessary authority.

It shall not exercise operational supervision on the activities of the Delivery Partner as they are free to determine how to render Delivery Services so long as the Zomato's reputation and goodwill is not damaged.

9. TERMINATION

9.1 Zomato reserves the right to terminate these Delivery Partner T &C and deny the Delivery Partner access to Zomato DP Platform at any time for any reason. The date on which the Delivery Partner's access to the Zomato DP Platform is intentionally blocked by the Zomato shall be considered as the Termination Date of these Delivery Partner T&C.

9.2 Without prejudice to the generality of the foregoing clause, Zomato reserves the right to terminate these Delivery Partner T&C with immediate effect for:

Any breach of the terms of these Delivery Partner T&C by the Delivery Partner;

- i. failure to verify or authenticate Delivery Partner Information; and
- ii. any action or omission by the Delivery Partner which can cause legal or contractual liability for Zomato including but not limited to fraudulent conduct, customer complaints, continuous unsatisfactory reviews by the Restaurant Partners or the Users, misconduct, negligence, and all other actions specifically prohibited under Applicable Law.
- iii. Zomato is also at liberty to terminate the contract at their discretion, where, in their opinion, continuance of the services of Delivery Partner is detrimental to the business interest of Zomato due to the acts of the Delivery Partners, such as the following:
 - a. Misbehavior, rude behavior with the staff of Zomato, Restaurant Partners, Users or any other persons associated with the Zomato.
 - b. Any acts involving criminal offence punishable under law, including physical assault, threatening any of the staff of Zomato, person associated with Zomato and any other persons.
 - c. Concealment of fact / material information while entering into contract with Zomato.

- d. Poor & irregular for work, meetings and failure to abide by the rules / terms of contract.
- e. Drunk while on duty and drunken behavior.
- f. Poor performance for two consecutive weeks. Performance includes - daily productivity, login hour, idle hours, number of deliveries completed, quality standards such as denying/ fast forwarding/ cancelling the order placed by a Restaurant Partner.
- g. Commission of fraud/ misappropriation/embezzlement for undue monetary gain, which is against the interest of the Zomato.
- h. Negligence in performing the duty, causing damage of moveable and immovable assets of Zomato, its employees, Users.
- i. Indulging in spreading content through digital media, social networking sites, or any other form, which could be detrimental to Zomato's brand and its image.
- j. Indulging in acts such as creating ruckus/ strike/ or any activity against Zomato, which could be detrimental to the Zomato's brand and its image.
- k. Indulging in unauthorized disclosure of Confidential Information of Zomato to external agency, person, Zomato or organization.
- l. Misuse of assets provided by Zomato and welcome kits, which could be detrimental to the interest of Zomato's brand and its image.
- m. Absconding for more than 4 hours with any asset, delivery item, money or any other valuable item belonging to Zomato, its employees, Users, Restaurant Partner(s) and/ or other staff member(s).
- n. Failure to abide by any of the rules and guidelines given by Zomato as part of service quality standards and principles.
- o. Doing any act unbecoming of a Delivery Partner.
- p. In case the background check, whether wholly or partially, is found negative at any point of time during the term of these Delivery Partner T&C.

9.3 Upon termination of these Delivery Partner T&C, the Delivery Partner shall return the assets, within 24 hours from the Termination Date. In case the Delivery Partner fails to do so, Zomato shall forfeit the Security Deposit (if any) and shall further reserve the right to set-off the cost of assets against the payments required to be made by Zomato to the Delivery Partner under the Delivery Partner T&C.

9.4 Notwithstanding anything contained in this Clause, Zomato reserves the right to recover any amounts due and owed by the Delivery Partner and take appropriate legal actions that may be available under Applicable Law and equity for recovery of any amounts due.

9.5 In the event, the Delivery Partner leaves or absconds, the provision of Clauses 9.3, 9.4 or Annexure A to these Delivery Partner T&C shall apply.

9.6 In case the Delivery Partner intends to terminate these Delivery Partner T&C on his own, he has to intimate Zomato in advance by giving a fifteen (15) days prior notice in writing, his intention to terminate the contract.

10. COMPLIANCE WITH APPLICABLE LAW

The Delivery Partner agrees and consents to comply with all Applicable Law at all times while providing the Delivery Services and while accessing the Zomato DP Platform.

11. AMENDMENT

Zomato reserves the right to change, modify, reinstate, amend or delete any terms and conditions contained in these Delivery Partner T&C, without prior notice, at any time and in its sole discretion, by posting a change notice or a new agreement on the Zomato DP Platform. The Delivery Partner shall be responsible for keeping himself apprised and informed of the revised terms and conditions at all times.

12. RELATIONSHIP OF THE PARTIES

The Delivery Partner is an independent business contractor and this Delivery Partner T&C is a principal-to principal contract. It shall not create any partnership, joint venture, employment,

agency, franchise, sales representative or any vicarious and absolute liability relationship between the parties. It is clarified between the parties that neither of the parties shall be liable for any action or omission of the other party in any manner. It is clearly understood and agreed that under these Delivery Partner T&C no relationship of employer and employee exists between Zomato and Delivery Partner. The Delivery Partner shall not have any claim for permanent employment or employment benefits under any statutes / local laws.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

You agree and undertake to indemnify and to hold harmless the Zomato its affiliates, successors, agents, assigns, and each of their directors, officers, employees, associates, agents, and representatives or any third party from and against any losses, damages, liability, claims, costs, penalty and expenses (including, without limitation, reasonable attorneys' fees) incurred by reason of (i) any breach or alleged breach by You of your obligations, performance or observance of your role, functions, responsibilities, representations, or warranties under the Delivery Partner T&C; (ii) any violation of Zomato's policies; (iii) any act or omission that causes or may cause harm to the reputation and goodwill of Zomato; (iv) any claim of violation of intellectual property of Zomato or any third party by your usage of Intellectual Property Rights in a manner not permitted under these Delivery Partner T&C; (v) your misconduct or unauthorized access or use of the User data on the Zomato DP Platform or by the transferring of such data to any third party or unauthorized disclosure or use of Confidential Information of Zomato; (vi) any act of theft, fraud, negligence and misconduct by you; (vii) any damage to the Restaurant Partner's or User's property or any asset; and (ix) any misbehavior towards the Restaurant Partner, Users or Zomato and its employees or tampering with the food and beverages packaging while performing the Delivery Services.

- i. You shall be liable to indemnify and hold Zomato harmless against all damages, losses, costs and expenses incurred by Zomato as a consequence of any complaint from any User and/or Restaurant Partner received by Zomato with respect to any error or deficiency in the Delivery Services.
- ii. In addition to the indemnification rights of Zomato under these Delivery Partner T&C, Zomato shall also be entitled to such other remedies available under Applicable Law for breach of contract where time is of essence. In no event will Zomato be liable for any losses arising from or in connection with these Delivery Partner T&C, pursuant to any claim by the Delivery Partner against Zomato under contract, tort or otherwise, if such losses could have been avoided by the Delivery Partner using reasonable efforts to mitigate them. Further, the Zomato shall also not be liable to the Delivery Partner in contract, tort or otherwise for indirect, special, incidental, exemplary, punitive, or consequential damages of any kind whatsoever even if advised of the possibility of such damages. Notwithstanding anything contrary contained elsewhere in these Delivery Partner T&C , the total cumulative liability of the Zomato to the Delivery Partner or to any person claiming under contract, tort, or otherwise, shall not exceed an amount of INR 10,000/- (Rupees Ten Thousand only).
- iii. Zomato shall not be responsible or liable for any loss or damage, howsoever caused or suffered by the Delivery Partner arising out of the use of the Platform Services offered by the Zomato to the Delivery Partner directly or indirectly, for any reason whatsoever, including but not limited to damage or loss caused to the Delivery Partner as a result of a Restaurant Partner/User's non-compliance, which includes, but is not limited to, any incorrectly placed voice instructions, malfunction, partial or total failure of any network terminal, data processing system, computer tele-transmission or telecommunications system or other circumstances whether or not beyond the control of Zomato or any person or any organization involved in the above mentioned systems. Without prejudice to the above, Zomato shall not be liable for any direct or indirect loss or damage, which may be suffered by the Delivery Partner as a result of any failure by a User to show up within any stipulated time even if Zomato has agreed to such timing or even if the User has advised Zomato of the possibility that he / she may not show up within the stipulated time.

14. SPECIFIC INDEMNITY

The Delivery Partner shall be solely liable for any and all accidents/incidents involving the Delivery Partner Vehicle, while providing the Delivery Services. Zomato shall not be held liable for any such accidents/ incidents involving the Delivery Partner.

15. SET-OFF

In addition to any other remedies provided under a contract including these Delivery Partner T&C or provided by law or in equity, Zomato may, at any time, without notice to the Delivery Partner, set off any liability of the Delivery Partner to Zomato against any liability of Zomato to the Delivery Partner, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under these Delivery **Partner T&C**.

16. DISPUTE RESOLUTION

These Delivery Partner T&C shall be governed by laws of India. The courts of New Delhi shall have exclusive jurisdiction over all disputes arising from these Delivery Partner T&C.

17. PENALTY

Notwithstanding anything contrary contained in these Delivery Partner T&C, Zomato shall reserve a right to charge You a penalty in the event You indulge in fraudulent activities while providing Delivery Services. The penalty may be deducted from the payments made to You by Zomato.

18. MISCELLANEOUS

Force Majeure: Neither Party shall have any liability under or be deemed to be in breach of these Delivery Partner T&C for any delays or failures in performance of these Delivery Partner T&C which results from circumstances beyond the reasonable control of that Party such as acts of god, fire, earthquake, tempest, flood, lighting, violence of any army or mob or enemies of the country. **Assignment:** No rights or liabilities under these Delivery Partner T&C can be assigned by any of the Parties hereto without the prior written consent of the other Party. **Entire Agreement:** These Delivery Partner T&C shall supersede all prior discussions and agreements (whether oral or written) if any, between the Parties with respect to the subject matter of these Delivery Partner T&C.

Term: These Delivery Partner T&C shall, unless specifically terminated in accordance with the provisions contained herein, be valid and effective from the date of the execution of these Delivery Partner T&C till such time that the Delivery Partner continues to remain enlisted with the Zomato DP Platform. **Waiver:** No waiver of any part of these Delivery Partner T&C consent to any departure from it by any Party shall be effective unless it is in writing. A waiver or consent shall be effective only for the purpose for which it is given. No default or delay on the part of any Party in exercising any rights, powers or privileges operates as a waiver of any right, nor does a single or partial exercise of a right exclude others. **Severance:** Any provision of these Delivery Partner T&C which is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, without affecting in any way the validity, legality and enforceability of the remaining provisions hereof.

- i. Zomato retains the right to share the information provided by you with any financial lending institution(s) if you agree to the same, if it is proved within reason that you have availed a loan from them. You forego the right to claim any damages from Zomato in the event any such financial facility has been availed by you. You also agree that Zomato will not be liable for any damages arising as a result of such disclosure of your information. Zomato retains the right to withhold pending payouts and terminate you on an immediate basis in such cases.
- ii. Delivery Partner hereby acknowledges and agrees to the use of his/her photographs by Zomato for certain purposes, which may include usage of the Delivery Partner's photographs in Zomato's internal communications and presentations, training materials, marketing and advertisement activities on various platforms, including without limitation, online advertisement, social media and offline advertisement. Delivery Partner hereby consents to sharing of his/her photographs by Zomato with third parties for the aforesaid purposes. The information shared by Delivery Partner pursuant to these Delivery Partner T&C shall be used in accordance with the Privacy Policy.

19. CONFIDENTIALITY

Other than for provision of Delivery Services by the Delivery Partner, Zomato does not share any other information of the Delivery Partner with third parties unless requisitioned by (i) government authorities or (ii) the Delivery Partner, whether orally or in writing (via email, SMS etc.) for any purpose whatsoever, including but not limited to availing loan from financial institutions, filing of tax returns etc. Other than for the purpose of undertaking Delivery Services, the Delivery Partner must not disclose any confidential information about Zomato, including but not limited to these Delivery Partner T&C, its business strategies, pricing, revenues, expenses, User data, Restaurant Partner data and order information to third parties.

20. DISCLAIMER

Zomato does not warrant that You will be able to use the Zomato DP Platform and/ or will be able to provide the Delivery Services at all times or locations on the Zomato DP Platform or that the Zomato DP Platform and the Platform Services will be uninterrupted or error-free or that the defects will be capable of being corrected by the Zomato in a timely fashion. The Platform Services, Zomato DP Platform, Device, the output generated there from, and all other technology developed by Zomato are provided to you on an "AS IS" and "AS AVAILABLE" basis and Zomato specifically disclaims all warranties and indemnities, express, implied or statutory, including without limitation any warranty of merchantability, fitness for a particular purpose, accuracy, completeness, or any other warranty arising from the course of performance or course of dealing.

ANNEXURE A

- a) Onboarding Fee: As prescribed by Zomato from time to time.
- b) Security Deposit: As prescribed by Zomato from time to time.

At the time of onboarding, Delivery Partner shall pay either of

- i. the Onboarding Fee, or
- ii. Security Deposit, at the sole discretion of Zomato.

- c) Training and Support Fee: As prescribed by Zomato from time to time.
- d) Delivery Partner hereby acknowledges and agrees that any amount deposited by Delivery Partner to Zomato in the form of Security Deposit shall stand forfeited at the sole discretion of Zomato, in the event Delivery Partner does not deliver at least one order pursuant to the Delivery Services under these Delivery Partner T&C for a continuous period of 30 days during the term of these Delivery Partner T&C.

Annexure – II

Workers' trips, work hours, gross wages and net average earning data from 2019 and 2021 surveys

Workers (2019 Survey)	Days worked	No of Trips	Total Payment (INR)	Avg trips per day	Gross avg earning per day	Gross avg earning per hour	Total fuel cost per day	Total fuel cost per hour	Net avg earning per hour
							At 10.7 KM per trip rate, fuel cost of INR 1.54 per KM calculated from 2019 price of petrol at INR 77 per litre; motorcycle mileage at 50 KM per litre (assume at 6.5 km per trip rate, rest the same and update)		
W14	8	166	6387	20.8	798.4	99.8	342.7	42.8	57.0
W20	5	102	3855	20.4	771	96.4	336.2	42.0	54.4
W21	11	255	9255	23.2	841.4	105.2	382.3	47.8	57.4
W25	3	53	1830	17.7	610	76.3	291.7	36.5	39.8
W26	8	131	4865	16.4	608.1	76	270.2	33.8	42.2
W27	8	88	4007	11	500.9	62.6	181.3	22.7	39.9
W31	8	117	4123	14.6	515.4	64.4	240.6	30.1	34.3
W33	5	44	1550	8.8	310	38.8	145.0	18.1	20.7
W15	6	82	3040	13.7	506.7	63.3	225.7	28.2	35.1
W16	8	69	2629	8.6	328.6	41.1	141.7	17.7	23.4
W29	8	94	3832	11.8	479	59.9	194.4	24.3	35.6
W 22	6	73	2708	12.2	451.3	56.4	201.0	25.1	31.3
W17	7	107	5018.2	15.3	716.9	89.6	252.1	31.5	58.1
W18	8	96	5774	12	721.8	90.2	197.7	24.7	65.5
W19	8	168	12678	21	1584.8	198.1	346.0	43.3	154.8
W23	6	108	4103	18	683.8	85.5	296.6	37.1	48.4
W24	6	108	4094	18	682.3	85.3	296.6	37.1	48.2
W28	8	98	6718	12.3	839.8	105	202.7	25.3	79.7
W30	8	85	5428	10.6	678.5	84.8	174.7	21.8	63.0
W32	7	145	10925	20.7	1560.7	195.1	341.1	42.6	152.5
					Average	88.7	253.0	31.6	57.1

Workers (2021 Survey)	Days Worked	Total Hours Worked	Total Tasks Done	Total Distance Traveled	Gross earnings in observed period (INR)	Gross avg earning per hour	Total fuel cost per day	Total fuel cost per hour	Net avg earning per hour
							Fuel cost of INR 2.2 per KM calculated from 2021 price of petrol at INR 110 per litre; motorcycle mileage of 50 km per litre		
W1	4	25.5	26	142	1370	53.7	78	9.8	44
W2	9	72	122	563	6082	84.5	138	17.2	67.3
W3	2	26	67	240	2160	83.1	264	33	50.1
W4	3	30	40	305	1715	57.2	224	28	29.2
W5	9	116.5	200	1732	12973	111.4	423	52.9	58.4
W6	10	89.5	152	1026	6406	71.6	226	28.2	43.4
W7	5	59	106	560	6950	117.8	246	30.8	87
W8	6	64	128	710	5500	85.9	260	32.5	53.4
W9	7	56	77	822	5400	96.4	258	32.3	64.1
W10	9	105.5	205	1370	11780	111.7	335	41.9	69.8
					Average	87.3	245.2	30.7	56.7

Annexure – III

Work Intensity Map

Work Intensity Map														
	Work hours per day (in hours)													
Worker	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14
W1				6	6.5		7		6					
W2		5	7.5	8	12	6					8	9.5	9	7
W3										12		14		
W4			16		3	11								
W5			13	13		12	11.5	12	13	13	14		15	
W6	11	7		8	6		8		16		9	24.5		
W7										10	10	10	15	14
W8				13		13		11	10.5	6		10.5		
W9		0	0	14			15	9	10	8				
W10		12	12	12	12	12.5		11.5	11.5		10		12	

Colour codes: Green: If work hours is equal to or less than 8; Yellow: If work hours is between 9 and 10; Red: If work hours is greater than or equal to 10

Ride Distance Intensity Map

Ride Distance Intensity Map														
	Riding distance at work per day (in KM)													
Worker	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14
W1				0	49		93		0					
W2		18	58	84	50	74					68	74	80	57
W3										120		120		
W4			148		95	62								
W5			200	200		215	200	175	175	180	180		207	
W6	100	80		130	70		56		220		100	270		
W7										85	115	65	160	135
W8				97		130		145	132	84		122		
W9		0	0	170			220	173	137	122				
W10		150	156	156	173	160		145	150		130		150	

Colour codes: Green: If ride distance is less than 100 KM; Yellow: If ride distance is between 100 and 150 KM; Red: If ride distance is greater than or equal to 150 KM