**Draft Share Purchase Agreement**

This **Share Purchase Agreement** (“**Agreement**”)is made on this [EFFECTIVE\_DATE] (“**Effective Date**”):

**By and Between**:

1. **[HOLDING\_FULL\_NAME]**, currently residing at [SELLER\_ADDRESS](the “**Seller**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include his heirs, executors, successors, administrators and permitted assigns) of the **FIRST PART**; [HOLDING\_EMPLOYEE\_ID]

Vesting Schedule

|  |  |  |
| --- | --- | --- |
| Date | Details | Notes |
| [VESTING\_DATE] | [VESTING\_DETAILS] | [VESTING\_NOTES] |

**AND**

1. **[BUYER\_NAME]**, a public unlisted company incorporated under the Companies Act 1956 and having its registered office at [BUYERADDRESS] (the “**Buyer**”, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and assigns) of the **SECOND PART**;

**AND**

1. **[COMPANY\_NAME]**, a private limited company, bearing corporate identity number 12345 and having its registered office at [company address] (the “**Company**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) of the **THIRD PART**.

The Seller, the Buyer and the Company are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

**Whereas:**

1. The Company is engaged in the Business (*as defined hereinafter*).
2. The Seller is the sole legal and beneficial owner of the Sale Shares (*as defined hereinafter*).
3. The shareholding pattern of the Company as on the Effective Date is set out in **Part A** of **Schedule III** (*Shareholding Pattern prior to Completion*). The Seller is desirous to Transfer the Sale Shares and the Buyer, relying on the Seller Warranties (*as defined hereinafter*) and the covenants of the Seller, has agreed to purchase and acquire the Sale Shares from the Seller, in the manner as provided hereunder (“**Transaction**”). The shareholding pattern of the Company post Completion shall be as set out in **Part B** of **Schedule III** (*Shareholding Pattern post Completion*).
4. The Buyer and the Seller are entering into this Agreement to record the terms on which the Seller has agreed to sell, and the Buyer has agreed to purchase, the Sale Shares.

**NOW, THEREFORE**, in consideration of the mutual agreements, covenants, representations and warranties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, intending to be legally bound, the Parties hereby agree as follows:

# Definitions and InterpretatIon

## Unless a contrary intention appears and/or the context otherwise requires, (a) capitalised terms defined by inclusion in quotations and/or parenthesis have the meanings so ascribed; and (b) the definitions listed in **Schedule I** (*Definitions*) shall apply throughout this Agreement. The interpretation and/or construction of this Agreement shall be in accordance with the rules of interpretation set out at **Schedule II** (*Interpretation*).

# Sale AND PURCHASE of THE SALE shares

## Subject to the terms and conditions of this Agreement, at Completion, the Seller, as the sole, legal and beneficial owner of the Sale Shares, agrees to Transfer and deliver [ALLOCATION\_QUANTITY] (the “Sale Shares”) to the Buyer, and the Buyer, relying on the Seller Warranties and the covenants of the Seller, agrees to purchase the Sale Shares and pay Rs [SHARE\_PRICE] per share, implying a total Purchase Consideration of Rs [ALLOCATION\_AMOUNT] to the Seller. The Seller shall Transfer the Sale Shares free and clear from any and all Encumbrance, together with the title attached to such Sale Shares.

## The Seller hereby acknowledges that the payment of the Purchase Consideration in the manner as set forth in Clause 3. (*Simultaneous* *Execution and Completion*) and **Schedule IV** (*Completion Actions*), will constitute a full, final and valid discharge of the obligation of the Buyer towards the Seller for the purchase of the Sale Shares under this Agreement.

## The Buyer is not obliged to complete the purchase of any of the Sale Shares unless the purchase of all the Sale Shares is completed simultaneously and in accordance with the provisions of Clause 3.

# SIMULTANEOUS EXECUTION AND Completion

* 1. **Actions on or prior to the Effective Date**

### The Seller to deliver to the Buyer, its depository account statement as on the Effective Date, evidencing that it is the sole, legal and beneficial owner of the Sale Shares.

### The Seller to deliver to the Buyer, the written consent from [COMPANY\_NAME], for the Transaction, as required under Clause 9 read with Schedule 6 of the investment agreement dated dated 21 June 2011, as amended from time to time.

### The Seller to deliver to the Buyer, a no-objection certificate from the relevant tax authorities under Section 281 of the Income Tax Act 1961.

### Simultaneously with the completion of action set out in Clause 3.1.1, Clause 3.1.2 and Clause 3.1.3, and immediately following execution of this Agreement, the Parties shall proceed to fulfilment of all actions set out in **Schedule IV** (*Completion Actions*) (collectively, the “**Completion**”).

* 1. **Completion on the Effective Date**

3.2.1 The Completion shall take place at the offices of the, or such place that the Parties may mutually agree in writing, on the Effective Date.

3.2.2 The actions set out in **Schedule IV** (*Completion Actions*) shall occur in the sequence mentioned therein, but shall be deemed to take place simultaneously and the Parties’ obligation to Transfer the Sale Shares for the Purchase Consideration is subject to the fulfilment of all the actions set out in **Schedule IV** (*Completion Actions*). No such transaction set out in **Schedule IV** (*Completion Actions*) shall be consummated unless all such transactions set out in **Schedule IV** (*Completion Actions*) are consummated.

3.2.3 If some, but not all of the actions set out in **Schedule IV** (*Completion Actions*) are completed by the Long Stop Date, the Parties shall have the right to mutually agree and cause all such completed transactions to be reversed and unwound by taking all necessary actions for this purpose.

* 1. In the event Completion does not occur on or prior to the Long Stop Date, the Parties shall, on the Long Stop Date, mutually agree on whether the Long Stop Date should be extended or the Agreement should be terminated.

# Representations and Warranties

## The Seller represents and warrants to the Buyer, as on the Effective Date and as on the Completion Date, in terms of each of the representations and warranties set out in **Schedule V** (*Seller Warranties*) (“**Seller Warranties**”).

## The Buyer represents and warrants to the Seller, as on the Effective Date and on the Completion Date, in terms of each of the representations and warranties set out in **Schedule VI** (*Buyer Warranties*) (“**Buyer Warranties**”).

## Each Warranty is separate and independent and shall not be limited by reference to any other Warranty.

## Other than as set out in the respective Warranty, none of the Warranties shall be treated as qualified by any actual or constructive knowledge on the part of the Party providing such Warranty or any of its agents, representatives, officers, employees or advisers.

# Indemnification

## **Indemnification**

The Seller agrees to defend, indemnify and hold harmless, the Buyer, its Affiliates and their respective directors, officers and employees (“**Indemnified Parties**” and “**Indemnified Party**” shall be construed accordingly) from and against any and all Loss, incurred or suffered by any of the Indemnified Parties, which arises as a result of any of the following (collectively, the “**Indemnification Obligations**”):

### any inaccuracy in, or breach by the Seller of any of the Seller Warranties; and

### any breach by the Seller of its covenants, agreements or obligations contained in this Agreement.

# GOVERNING LAW AND DISPUTE RESOLUTION

## This Agreement shall be governed by and construed in accordance with the laws of India, without reference to conflict of laws principles, and subject to this Clause 6, the courts at India shall have exclusive jurisdiction.

## All disputes or claims arising out of or in connection with or relating to this Agreement, including in relation to the breach or invalidity thereof, shall be submitted to final and binding arbitration before a sole arbitrator at the request of any 1 (one) or more of the Parties upon written notice to the other Parties.

## The arbitration shall be conducted in accordance with the Rules (“**MCIA Rules**”) of the Mumbai Centre for International Arbitration (“**MCIA**”) in force at the relevant time (which is deemed to be incorporated into this Agreement by reference).

## All proceedings of such arbitration shall be conducted in the English language. The seat and venue of the arbitration shall be Mumbai, India, provided that, the arbitrator may hold hearings in such other locations as the arbitrator determine to be most convenient and efficient for all the parties to such arbitration under the circumstances.

## The Parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including but not limited to any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the arbitrator, the MCIA, the Parties, their counsel and any Person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

## Notwithstanding anything contained in the MCIA Rules, in order to facilitate the comprehensive resolution of related disputes, and upon request of any Party to the arbitration proceeding, the arbitrator may, within 90 (ninety) days of such request, consolidate the arbitration proceeding with any other arbitration proceeding involving the Parties. The arbitrator shall not consolidate such arbitrations unless it determines that: (a) there are issues of fact or law common to the proceedings, so that a consolidated proceeding would be more efficient than separate proceedings; and (b) no Party would be prejudiced as a result of such consolidation through undue delay or otherwise.

# ANNOUNCEMENT AND Confidentiality

## Subject to the provisions of this Clause 7.1, before or after Completion, no announcement (“**Announcement**”) concerning the existence or contents of this Agreement, the Transaction, the negotiations relating to this Agreement shall be made by any Party and shall not be otherwise disclosed without the prior written consent of the other Party.

## The contents of Clause 7.1 shall not apply in respect of any Announcement, to the extent such information:

### is acquired by the receiving Party from a third-party who is entitled to provide it;

### is or becomes public knowledge otherwise than by reason of breach of Clause 7 (*Announcement and Confidentiality*);

### may be required to be disclosed by any Governmental Entity or any Applicable Law or regulation;

### may be required to be disclosed by the Buyer in relation to any potential Transfer of the Sale Shares; or

### is required to be disclosed to any Governmental Entity in connection with the business of the Company or as is necessary in order to comply with any of the provisions of this Agreement;

provided that, any Announcement or other disclosure shall, so far as is practicable, be made after consultation with the other Party and after taking into account such Party’s reasonable requirements regarding the content, timing and manner of dispatch of the Announcement in question.

# TERMINATION

## This Agreement may be mutually terminated in writing, at any time prior to the Completion Date, by the Buyer and the Seller.

## Subject to the Parties’ agreement in accordance with Clause 3.3, in the event the Completion does not occur by the Long Stop Date, this Agreement shall terminate immediately.

## Nothing herein shall relieve any Party from liability for any breach of its respective Warranties, covenants or agreements (together with the corresponding indemnity obligations) under this Agreement, which occurs prior to the termination of this Agreement or for fraud.

## The Surviving Provisions shall survive the termination of this Agreement.

# MISCELLANEOUS

## **Notices**

### Notices, demands or other communication required or permitted to be given or made under this Agreement shall be in writing (in the English language) and delivered personally or sent by courier or prepaid post with recorded delivery, or by telex or legible telefax or email addressed to the intended recipient at its address set forth below, or to such other address or telex or telefax number or email as either Party may from time to time duly notify to the others:

#### If to the **Seller**:

|  |  |  |
| --- | --- | --- |
| Address |  | : [SELLER\_ADDRESS] |
| E-mail |  | : [SELLER\_EMAIL] |
| Attention |  | : [SELLER\_NAME] |

#### If to the **Buyer**:

|  |  |  |
| --- | --- | --- |
| Address | : | [BUYER\_ADDRESS] |
| E-mail | : | [BUYER\_EMAIL] |
| Attention | : | [BUYER\_CONTACT] |

#### If to the **Company**:

|  |  |  |
| --- | --- | --- |
| Address | : | [•] |
| E-mail | : | [•] |
| Attention | : | [•] |

### All notices, demand or communication shall, unless the contrary is proved, be deemed to have been duly served at the time of delivery in the case of service by delivery in person or by post, and on receipt of transmission in the case of service by email.

## **Further Assurances**

### The Parties shall cooperate fully and do all such acts and things and execute all documents as may be necessary and exercise all rights and powers available to them, so as to ensure the consummation of the Transaction and the carrying out of the full intent of, and to give full effect to this Agreement.

### If after Completion, the Seller receives any dividend or other distribution in relation to the Sale Shares or any other amount that is otherwise due and owing to the Buyer in accordance with the terms of this Agreement, the Seller shall promptly remit to the Buyer’s Bank Account, or shall cause to be remitted to the Buyer’s Bank Account, within 2 (two) Business Days from the date of receipt of such dividend or distribution, such amount or other distribution to the Buyer.

## **Counterparts**

## This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute 1 (one) agreement. Transmission of an executed counterpart of this Agreement (and for the avoidance of doubt not just a signature page) or the executed signature page of a counterpart of this Agreement by email (in “portable document format”, “joint photographic experts group” or other agreed format) shall be effective delivery of an executed counterpart of this Agreement.

## **Severability**

## If any of the provisions of this Agreement will become or be held invalid, ineffective or unenforceable, all other provisions hereof will remain in full force and effect. The invalid, ineffective or unenforceable provision will be deemed to be automatically amended and replaced without the necessity of further action by the Parties hereto by such form, substance, time, matter and jurisdiction as will be valid, effective and enforceable and as will accomplish as far as possible the purpose and intent of the invalid, ineffective or unenforceable provision.

## **Costs**

## Except as expressly set forth hereunder, each Party shall pay its own costs and expenses relating to the negotiation, preparation and execution of this Agreement and all other documents related to the Agreement. The stamp duty on this Agreement shall be borne equally by the Parties.

## **Amendment**

## This Agreement may not be amended, modified, waived or supplemented except by a written instrument executed by both the Parties.

## **Assignment**

## No Party shall be entitled to assign their rights, liabilities and obligations under this Agreement in any manner without the prior written consent of the other Party; provided that the Buyer shall be entitled to assign its rights and obligations under this Agreement to 1 (one) or more Affiliates or a third party purchasing all or part of the Sale Shares.

## **No Partnership or agency**

## No Party shall act as an agent of the other Party or have any authority to act for or to bind the other Party.

## **Waiver**

## No delay or omission on the part of either Party in exercising any right, power or remedy provided by Applicable Law or under this Agreement or any other documents referred to in it will impair such right, power or remedy or operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by Applicable Law or under this Agreement will not preclude any other right or further exercise thereof or the exercise of any other right, power or remedy except where expressly stated therein.

## **Entire Agreement**

## This Agreement and any other documents delivered pursuant to the terms of this Agreement, sets forth the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior arrangements, agreements, promises, covenants, communications, representations or warranties, whether oral or written, with respect to the subject matter hereof.

## **Independent Rights**

## Unless otherwise agreed in this Agreement, each of the rights of the Parties hereto under this Agreement are independent, cumulative and without prejudice to all other rights, powers, privileges or remedies available to them under this Agreement, under law or in equity. Provided that where different rights are created as a result of or on account of a single cause of action, where a Party has achieved a remedy by pursuing 1 (one) course of action, such Party shall not be entitled to pursue other courses of action to seek further remedies for the same cause of action.

[**SIGNATURE PAGES FOLLOW**]

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE DULY EXECUTED AND DELIVERED BY THEIR DULY AUTHORISED REPRESENTATIVES AS OF THE DAY AND YEAR HEREINABOVE WRITTEN**

|  |  |  |
| --- | --- | --- |
| Signed and delivered by  **[SELLER\_NAME]** |  |  |

|  |  |  |
| --- | --- | --- |
| Signed and delivered by  **[BUYER\_NAME]**  By:  Title: |  |  |

|  |  |  |
| --- | --- | --- |
| Signed and delivered by  **[COMPANY\_NAME]**  By:  Title: |  |  |

# Schedule I

**DEFINED TERMS**

* + - 1. “**Affiliate**” means any Person that directly or indirectly through one or more Persons, Controls, is Controlled by, or is under common Control with, the Person specified. In case of a Person being a natural person, “**Affiliate**” shall include the Relatives of such Person.

* + - 1. “**Agreement**”means this share purchase agreement and all attached schedules and instruments supplemental to or amending, modifying or confirming this Agreement in accordance with the provisions of this Agreement.
      2. “**Applicable Law(s)**” means all applicable statutes, enactments, acts of legislature or the parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any governmental authority or person acting under the authority of any Governmental Entity and/or of any statutory authority, in effect on the Effective Date and on the Completion Date.
      3. “**Business**” means the distribution of international premium and luxury branded products in India.
      4. “**Business Day**” means a day (excluding Saturdays and Sundays) on which banks are generally open in Bengalur and Mumbai, India for the transaction of normal banking business.
      5. “**Completion Date**” means the date on Completion is deemed to have occurred pursuant to the provisions of this Agreement.
      6. “**Control**” (including the terms “**Controlled by**” and “**under common Control with**”) means, in relation to a body corporate, the right to exercise, or control the exercise of, whether directly or indirectly, acting alone or together with another Person, more than 50% (fifty percent) of the total voting rights at a general meeting of that body corporate, or the right or power to direct, whether directly or indirectly, acting alone or together with another Person, the policy decisions or management of that body corporate, including the composition of any board of directors of that body corporate.
      7. “**Depository Participant**”means a depository participant within the meaning of the Depositories Act 1996, who has an agreement with the depository under Section 4(1) of the Depositories Act 1996.
      8. “**Encumbrance**” means any mortgage, pledge, equitable interest, assignment by way of security, hypothecation, right of other persons, security interest, title retention agreement, voting trust agreement, interest, option, drag right, lien, charge, commitment, restriction or limitation of any nature whatsoever whether arising by agreement, operation of law or otherwise, including restriction on use or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same or any adverse claim as to clear title, possession or use, and the term “**Encumber**” shall be construed accordingly.
      9. “**Equity Shares**” means equity shares of the Company having a face value of INR 10 (Indian Rupees Ten) each.
      10. “**Fully Diluted Basis**”means that the calculation is to be made assuming that all outstanding equity securities, including a binding commitment of the company to issue an equity security (which are convertible or exercisable into or entitle the holder to acquire or receive any equity shares) whether or not due to the occurrence of an event or otherwise, have been converted, exercised or exchanged into the maximum number of equity shares issuable upon such conversion, exercise and exchange, as the case may be.
      11. “**Governmental Entity**” means any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority or agency, including any tax authority.
      12. “**INR**” means the lawful currency of the Republic of India.
      13. “**Long Stop Date**” means [•] or any other extended date, as the Parties may mutually agree in writing.
      14. “**Loss**” or “**Losses**” means any and all liabilities, claims, damage, losses, interest, fines, penalties, fees, settlements and proceedings, expenses, damages (whether or not resulting from claims from third parties), charges, costs (including costs of investigation, remediation or other response actions), reasonable attorneys’ and accountants’ fees and disbursements.
      15. “**Person**” means any individual or entity, whether a corporation, firm, company, joint venture, trust, association, organisation, partnership or proprietorship, including any Governmental Entity and “**Persons**” shall be construed accordingly.
      16. “**Purchase Consideration**” means INR [•] payable by the Buyer to the Seller pursuant to the terms of this Agreement, for Transfer of the Sale Shares by the Seller to the Buyer on the Completion Date.
      17. “**Buyer’s Bank Account**” means the bank account of the Buyer maintained [BUYER\_IFSCCODE] , with the Fort Mumbai branch, bearing account number [BUYER\_BANK\_ACCOUNT].
      18. “**Buyer’s Demat Account**” means the demat account of the Buyer in which the Sale Shares are to be received, details of which are as follows:
      19. “**Relative**” shall have the meaning ascribed to the term under Companies Act 2013.
      20. “**Sale Shares**” means [sale\_shares] Equity Shares.
      21. “**Seller’s Bank Account**” means the bank account of the Seller in which the Purchase Consideration is to be received, details of which are set out below:

|  |  |
| --- | --- |
| Account Name: | [Seller number] |
| Account No: | [SELLER\_BANK\_ACCOUNT] |
| Bank (w/address): | [Bank Name] |
| IFSC: | [SELLER\_IFSC\_CODE] |

* + - 1. “**Seller’s Demat Account**” shall mean the demat account of the Seller from which the Sale Shares are to be transferred, details of which are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| NAME | DEPOSITORY PARTICIPANT | DEPOSITORY PARTICIPANT IDENTITY NUMBER | CLIENT IDENTITY NUMBER |
| [SELLER\_NAME] | [Seller DP] | [Seller DP Account Number] | [Seller CIN] |

* + - 1. “**Share Capital**” means the total issued, subscribed and paid-up equity share capital of the Company on a Fully Diluted Basis.
      2. “**Surviving Provisions**” means Clause 1. (*Definitions and Interpretation*), Clause 6. (*Governing Law and Dispute* Resolution), Clause 7. (*Announcement and Confidentiality*) and Clause 9. (*Miscellaneous*).
      3. “**Transfer**” shall mean to transfer, sell or assign by operation of Applicable Law or in any other way, dispose of, whether or not voluntarily; and “**Transferred**” shall be construed accordingly.
      4. “**Warranties**” shall mean collectively, the Seller Warranties and the Buyer Warranties.

# SCHEDULE II

**INTERPRETATION**

### The terms referred to in this Agreement shall, unless defined otherwise or inconsistent with the context or meaning thereof, bear the meanings ascribed to them under the relevant statute/legislation.

### Reference to statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the Execution Date) for the time being in force and to all statutory instruments or orders made pursuant to such statutory provisions.

### Words denoting the singular shall include the plural and words denoting any gender (including neutral gender) shall include all genders (including neutral gender).

### Headings, subheadings, titles, subtitles to clauses, sub-clauses and paragraphs are for information only and shall not form part of the operative provisions of this Agreement or the schedules hereto and shall be ignored in construing the same.

### The schedules and recitals hereto shall constitute an integral part of this Agreement.

### References to days, months and years are to calendar days, calendar months and calendar years, respectively.

### The words “directly or indirectly” shall mean directly or indirectly through one or more intermediary persons or through contractual or other legal arrangements, and the words “direct or indirect” shall have correlative meanings.

### Any reference to “writing” shall include printing, typing, lithography, transmissions by facsimile or in electronic form (including email) and other means of reproducing words in visible form but shall exclude any form of text messages via mobile phones.

### The words “include” and “including” are to be construed without limitation unless the context otherwise requires or unless otherwise specified.

### No provisions shall be interpreted in favour of, or against, any Party by reason of the extent to which such Party or its counsel participated in the drafting hereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof.

### If there is any conflict or inconsistency between a term in the body of this Agreement and a term in any of the schedules or any other document referred to or otherwise incorporated in this Agreement, the term in the body of this Agreement shall take precedence.

### Reference to any document includes any amendment or supplement to, or replacement or novation of, that document, but disregarding any amendment, supplement, replacement or novation made in breach of this Agreement.

### Reference to an “amendment” includes a supplement, modification, novation, replacement or re-enactment, and “amended” shall be construed accordingly. reference to the word “include” shall be construed without limitation.

# SCHEDULE III

**PART A –** **SHAREHOLDING PATTERN PRIOR TO COMPLETION**

|  |  |  |  |
| --- | --- | --- | --- |
| NO | NAME OF SHAREHOLDER | NUMBER OF SHARES HELD | PERCENTAGE OF SHAREHOLDING |
| 1. | [•] | [•] | [•] |

[NET\_ALLOCATION\_AMOUNT]

[SELLER\_FEES]