

**Confidentiality Undertaking**<sup>1</sup>

*[To be printed by the bidder on the stamp paper of appropriate amount (of not less than INR 600) as per the stamp act applicable to the state of execution. bidder is requested to procure the appropriate stamp paper]*

This confidentiality undertaking has been signed by \_\_\_\_\_, an interested party, having its office at \_\_\_\_\_ acting through Mr./Ms. \_\_\_\_\_, the authorized signatory / authorized representative (“**Bidder**” which expression shall, unless repugnant to the context, include its successors, legal representatives, permitted assigns and administrators in business ) in favour of Future Retail Limited (“**Company**”) on this \_\_\_\_\_ day of \_\_\_\_\_ 2023. This undertaking shall inure to the benefit of the Company and Resolution Professional of the Company (“**RP**”).

WHEREAS

1. Future Retail Limited, a company registered under Companies, Act, 1956 undergoing corporate insolvency resolution process (“**CIRP**”) under the provisions of the Insolvency and Bankruptcy Code, 2016.
2. Company is desirous to sell various inventory of the Company (“**Inventory**”) maintained at several premises as set out in request for proposal (“**RFP**”), subject to the compliance with applicable laws and terms of RFP (“**Inventory Sale**”).

**THEREFORE, the Bidder hereby declares and undertakes as follows:**

1. The Bidder declares and undertakes that it will not divulge any information including any information of the Company disclosed to it by the Company and/ or RP (or any other person on behalf of the RP) (“**Disclosing Parties**”), whether in relation to CIRP and/ or in relation to financial, operational or other information of Company, and/ or other information in respect of Inventory Sale process, through oral, electronic or written communication or through any mode to anyone and the

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<sup>1</sup> Changes, as applicable, may be made to the draft if the bidder is an individual.

same shall constitute (“**Confidential Information**”). Any information or documents generated or derived by the recipients of Confidential Information that contains, reflects or is derived from any Confidential Information shall be deemed as Confidential Information.

2. The Bidder further unconditionally and irrevocably undertakes and declares that:
  - a) the Confidential Information shall be kept confidential by the Bidder and shall be used solely towards Inventory Sale process as allowed under the applicable laws;
  - b) it shall not use the Confidential Information to cause any undue gain or undue loss to itself or any other person;
  - c) it shall comply with all provisions of law for the time being in force relating to confidentiality and insider trading in relation to such Confidential Information;
  - d) it shall protect any intellectual property of the Company which it may have access to;
  - e) the Confidential Information may only be disclosed to and shared with any directors, officers, employees or advisors or identified investors of the Bidder (“**Third Party(s)**”), by the Bidder, in accordance with applicable laws, including in relation to confidentiality and insider trading, and terms of this confidentiality undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the Inventory Sale process of the Company, provided that the Bidder binds such Third Parties, by way of an undertaking/ agreements, to terms at least as restrictive as those stated in this confidentiality undertaking. . The Bidder shall be responsible for any breach of the confidentiality obligations by such Third Parties to whom it shares the Confidential Information in accordance with this confidentiality undertaking;
  - f) it shall ensure that all Confidential Information is kept safe and secured at all times and is protected from any unauthorised access, use, dissemination, copying, theft or leakage;
  - g) it shall take all necessary steps to safeguard the privacy and confidentiality of the information shared and shall ensure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the Company, all information related to disputes by or against the Company and any other matter pertaining to the Company as may be specified in the information shared; and
  - h) it shall be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any Third Party) and shall indemnify and hold harmless the Company, RP and its representatives, advisors and agents for any loss, damages and costs incurred by the Company, RP and/or such representatives, advisors and agents due to such breach of obligations by the Bidder, Third Party, or any person acting on its behalf.

3. Notwithstanding anything to the contrary contained herein, the following information shall however not be construed as Confidential Information:
  - a) information which, at the time of disclosure to the Bidder was already in the public domain without violation of any provisions of applicable laws;
  - b) information which, after disclosure to the Bidder becomes publicly available and accessible without violation of applicable laws or a breach of this confidentiality undertaking;
  - c) information which was, lawfully and without any breach of this confidentiality undertaking, in the possession of the Bidder prior to its disclosure, as evidenced by the records of the Bidder;
  - d) information that is received by the Bidder from a third party, who to the knowledge of the Bidder after having conducted reasonable enquiry into the authority of such third party to possess and divulge the same, is not in breach of its confidentiality obligations (except for information marked as 'confidential' or which is generated from, reflects, or is derived out of Confidential Information made available to such third party by the Disclosing Parties). Provided that upon the Bidder obtaining knowledge of a breach or the possibility of a breach by such third party of its confidentiality obligations, the Bidder shall promptly notify the RP of such breach or potential breach and refrain from any usage or dissemination of such information; and;
  - e) information that is required to be disclosed by the Bidder (and to the extent required to be disclosed) pursuant to the requirements of applicable laws, or order of a judicial authority or the guidelines of a regulatory authority or the stock exchange, provided however the Bidder must provide prior intimation of such disclosure to the RP. Without prejudice to the aforementioned, in the event such disclosure cannot be avoided on account of requirement under applicable law, the disclosure must be limited strictly to the extent required for compliance with the aforementioned law, rules, direction or order.
  
4. The Bidder shall, and shall cause the Third Parties to, forthwith return, destroy, delete, permanently erase, and not access the Confidential Information upon the earlier of: (i) a written request by the Disclosing Parties; or (ii) decision taken by the Bidder to not submit its bid in the Inventory Sale process or otherwise pursue or move forward with its participation in the Inventory Sale process; or (iii) earnest money deposit of the Bidder in the Inventory Sale process by the Company is returned to the Bidder.

5. In the event of breach or threatened breach of the terms of this confidentiality undertaking, the Company and/ or the RP shall be entitled to all remedies available under law or equity. Without prejudice to generality of above, Company and/ or the RP shall be entitled to the remedies of injunction and other equitable relief for a threatened or actual breach of this confidentiality undertaking. The Bidder shall indemnify and hold harmless the Company, RP, its representatives, agents, advisors for all losses, damages and costs incurred or suffered by the Company, RP, its representatives, agents, advisors on account of any breach of this confidentiality undertaking by the Bidder or the Third Parties.
6. Nothing contained in this undertaking shall be deemed to require or obligate the Company, RP, its representatives, agents, advisors to disclose any or whole of Confidential Information to the Bidder, and any such disclosure shall be subject to the requirements of the Insolvency and Bankruptcy Code, 2016.
7. No representation or warranty has been provided by the Disclosing Parties in relation to the authenticity or adequacy of the information provided to the Bidder, including Confidential Information, and the Bidder would not have any claim against the Disclosing Parties in relation to any information provided.
8. Nothing in this confidentiality undertaking shall have the effect of limiting or restricting any liability of the Bidder and/ or Third Party arising as a result of fraud or wilful default.
9. The Bidder hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this undertaking.
10. The terms of this confidentiality undertaking may be modified or waived only by a separate instrument in writing signed by the Bidder with the prior written consent of the Company that expressly modifies or waives any such term.
11. This confidentiality undertaking and any dispute, claim or obligation arising out of or in connection with it shall be governed by and construed in accordance with Indian laws and the courts and tribunals at Mumbai shall have exclusive jurisdiction over matters arising out of or relating to this confidentiality undertaking.

12. The confidentiality undertaking shall be in conjunction to any other undertakings provided by the Bidder to the RP and/ or Company.

Encl: Board resolution / Power of Attorney authorising the execution of the undertaking<sup>2</sup>.

Signed on behalf of

\_\_\_\_\_

(Name of Bidder)

By

\_\_\_\_\_

\_\_\_\_\_

(Name and Designation)

Authorised Signatory

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<sup>2</sup>Note: This is applicable in the case of corporate persons.