

FINANCIAL COLLABORATION AGREEMENT

This agreement is made this...day of 20.....

BETWEEN

ABC , a Company incorporated (hereinafter called “ABC ”, which expression shall unless repugnant to the context or meaning thereof, include its permitted assigns and successors), of the ONE PARTY.

AND

Mr. residents of (hereinafter collectively called “XYZ”, which expression shall, unless repugnant to the context and meaning thereof include their assigns permitted and successors), of the OTHER PART ,

WHEREAS Beta, Alpha and Affiliate of Alpha), with place of registry in (address), and having an office at (address), (hereinafter referred to as Affiliate of Alpha) which expression shall unless repugnant to the context thereof include its assigns and successors), have under a Memorandum of Understanding dated, 20.... agreed to set up a joint venture private limited company in India (hereinafter called “the company”) for manufacture and marketing of garment and finishing equipment and provision of associated and incidental services;

AND, WHEREAS (Affiliate of Alpha), is engaged in the manufacture of garment and finishing equipment and is in possession of extensive know-how and technical information concerning the manufacture of such products;

AND, WHEREAS, Beta have requested (name of Alpha’s Affiliate), to furnish know-how and technical assistance to the Company.

AND, WHEREAS, (name of Alpha’s Affiliate), is willing to provide the Company such know-how and assistance for the manufacture of the aforesaid products;

NOW, it is hereby mutually agreed and declared as follows:

Article 1: Definitions

1.1 “ Effective Date” shall mean the date on which this Government shall commence in accordance with Article 2, hereunder;

1.2 “ Shares” shall mean equity shares of the Company to be subscribed for by the Parties hereto;

1.3 “ Know-how” shall mean the technical information as defined in the technical collaboration agreement between (name of Alpha’s Affiliate) and the Company;

1.4 “ Affiliated Company” shall mean any body corporate which is a wholly owned subsidiary of any party hereto or the holding Company wholly owning such

part or a wholly owned subsidiary of such holding Company;

1.5 “ Date of Incorporation” shall mean the date on which the certificate of

incorporation of the Company is granted to it by the Registrar of Companies at (name of the place).

Article 2. Commencement and Term

2.1 This Agreement shall commence on the date on which approval is obtained from the Government of India and/or the Reserve bank of India to the investment in foreign currency by Alpha in the shares of the Company to the extent and in the manner provided herein;

2.2 This agreement shall remain in force unless terminated earlier in accordance with the provisions herein.

Article 3: Promotion of the Company

As soon as, possible after the effective date, the parties hereto agree to cause the Company to be incorporated and registered under the Companies Act, 1956 with the principal object of manufacturing and marketing of certain garment and finishing equipment, more particularly described in Annexure. I.

Article 4: Structure of the Company

4.1 The Company shall initially be formed as a private limited company. The registered office of the Company shall be located in(name of the place). The initial subscribed and paid up capital of the Company shall be Rs. (Rupees) and its authorised capital shall be Rs..... (Rupees....);

4.2 Subject to the provisions hereinafter appearing Alpha and Beta shall subscribe and participate in the capital of the Company at all times in the following proportions:

Beta: 50%

Alpha 50%

All further issues of capital by the company shall be subscribed and paid for by the parties hereto in the aforesaid proportions. The parties agree to maintain the above proportions at all times, except as hereinafter provided or unless otherwise agreed to in writing by the Parties.

4.3 The name of the company shall be..... (name of the joint venture company) or such other name as is acceptable to the Registrar of Companies which shall be mutually agreed. However, in the event that the participation of Alpha in the equity capital of the Company falls below the percentage set out in Article 4.2 above, the Parties hereto agree to take such steps as are necessary to discontinue the use of the word "Alpha" in the name of the Company and to accordingly change the name of the company. The memorandum and articles of association of the Company shall be in form and substance as, mutually agreed upon and approved by Alpha and Beta.

4.4 All measures and expenses required for incorporating the Company shall be undertaken by Beta. These expenses shall be chargeable to the Company's account after the company is formed.

Article 5: Board of Directors of the Company

To the extent legally permissible, the articles of association of the Company shall at all times contain provisions regulating the following matters and independently of the Articles of Association, the parties hereto solemnly declare and undertake that they shall at all times ensure that:

5.1 The number of Directors of the Company shall (initially)... be two (and during the life of the company be six), it being agreed that the number of Directors shall always be an even number and that the Directors will be appointed by BETA and ALPHA in equal number and the parties hereto shall vote and procure accordingly.

5.2 The Board shall appoint as alternate Director for any Director during his absence for a period of not less than three months from India such person as is nominated or approved in writing by the party hereto represented by the original Director in whose place he is appointed.

5.3 Unless otherwise agreed to by the Directors designated and appointed by the parties hereto or their alternates, written notice of every meeting of the Board shall be received by every Director atleast 28 days in advance thereof. In the case of a Director residing outside India notification of such meeting shall be sent to him by fax atleast 28 days in advance of such meeting.

5.4 Every notice convening meeting of Board of Directors shall set out the agenda of the business to be transacted thereat in full and sufficient details and any item not included in the agenda transacted a meeting in which a nominee of the parties hereto may not be present shall not be deemed to have been carried unless the nominee of the parties hereto confirms his affirmative vote whether before or after such meeting.

5.5 No Director shall be removed except with the approval of the party he represents.

5.6 A quorum at a Board Meeting shall be constituted only when the number of Beta directors (directors nominated by Beta or their alternates) present equals the number of Alpha directors (directors nominated by Alpha or other alternates) present, except where for a particular meeting the said requirement for quorum for their respective nominee's presence is waived in writing by any of the Directors nominated by the parties hereto respectively. If a quorum shall not be present within fifteen minutes from the time appointed for holding a meeting of the Board, the meeting shall be adjourned to the same day in the next month at the same time and place or to such other date, time and place as may be decided by the Directors present of which notice in writing be given again to all Directors.

5.7 The parties hereto agree that in case a Director dies, resigns or is

otherwise removed prior to the completion of his term, then Beta and Alpha will vote on their shares and take such other action as may be necessary to appoint or cause to be appointed, as replacement for such deceased, resigned or removed Director, a Director nominated by the party who nominated by the Director whose death, resignation or removal created the vacancy, as soon as possible after such vacancy occurs.

5.8 Subject to the restrictions contained in the Companies Act, 1956, the Board of Directors of the Company may delegate any of their powers to a committee of the Board consisting of two or more members of its body, as it thinks fit.

5.9 No resolution shall be deemed to have been duly passed by the Board or by a Committee thereof by circulation unless the resolution has been circulated in draft together with necessary papers, if any to all the directors or their alternates or to all the members of the Committee as are entitled to vote on the resolution.

5.10 The parties hereto agree at all during the effective period of this Agreement to cause their representatives on the Board of Directors of the Company to exercise their votes in consonance with and in compliance of the terms of this Agreement.

5.11 One of the directors nominated by Beta shall at all times be the Managing Director of the company, Alpha, however, shall have the right to appoint a Joint Managing Director who will be one of the Directors nominated by Alpha.

5.12 The day-to-day management of the affairs of the Company shall be entrusted by the Board of Directors to the Managing Director who shall manage the affairs of the Company under the supervision and control of the Board.

5.13 The Managing Director/s shall be accountable to the Board for the exercise of powers vested in him. During the month of November every calendar year, the Managing Director shall present a Business Plan for the following financial year to the Board. The Board shall pass the Business Plan with such modifications as it deems fit within 45 days. In the event that the Board fails to pass the Business Plan within the said period, the Business Plan then in force shall be deemed to have been passed for the following financial year, with an upward revision of 15% in the budgeted figures.

5.14 There shall be two (2) chairmen of the Company one each nominated by Alpha and by Beta. The Chairman nominated by Beta will be normally present in India and will act as Chairman of the Company except when the chairman nominated by Alpha visits India and attends a Board Meeting, he will be given the honour of chairing the Meeting.

5.15 The chairmen shall not have a casting vote.

Article 6: Technical Collaboration Agreement

6.1 Alpha agrees to provide to the company through its affiliate, (name of Alpha's Affiliate) the know-how and technical services which would enable the Company to manufacture certain garment finishing equipment.

6.2 The terms and conditions for the provision of the know-how and technical services will be clearly set out in a separate technical collaboration agreement between the.....(name of Alpha's Affiliate) and the company.

Article 7: Roles of Contracting Parties

7.1 Beta and Alpha shall give their respective assistance to the company according to their respective roles as stipulated in this Agreement that will aid the company to become a successful venture.

7.2 Beta' assistance to the company shall include, inter alia, the following aspects:

- (a) business contacts in India,
- (b) procurement of Indian raw materials and equipment,
- (c) ensuring credit facilities in India,
- (d) personnel recruitment,
- (e) administrative, fiscal and legal services, and
- (f) sales, distribution, marketing and servicing infrastructure at the most favourable terms.

7.3 Alpha's assistance to the company shall include, inter alia, the following aspects:

- (a) transfer of know-how,
- (b) international marketing,
- (c) procurement of foreign raw materials and equipment, and
- (d) training the company's employees in..... (name of the place).

7.4 Both the parties shall from time to time assign to the Company their qualified employees in such numbers and on such terms and conditions as mutually agreed upon for providing suitable services as may be necessary.

Article 8: Memorandum and Articles of Association

The Memorandum and Articles of Association of the Company shall be in such form as the parties hereto shall mutually agree.

Article 9: Subscription of Shares and Further Issue of Capital

9.1 The parties shall pay for their respective shares in the Company in cash at par and/or in kind. The calls on the shares shall be made as the Board of the

Company may decide taking into account the financial requirements of the Company.

9.2 If and when the Company desires to increase the paid up share capital, the additional shares shall be offered in the first instance to the existing holders of the equity shares of the Company by way of rights issues in proportion to the capital paid-up on the shares held by them at that time.

Article 10: Trade marks

It is mutually agreed that if the Company uses any of the trade marks of Alpha, the Company and Alpha will enter into a separate agreement governing the rights and obligations of the parties with respect thereto.

Article 11: Mutual understanding on certain matters

11.1 The Company shall not without the prior written consent of Beta and Alpha pass any special resolution at any General Meeting, in particular not, to—

- (a) increase or re-organize its capital,
- (b) alter its memorandum and articles of association, commence any new line of business,
- (c) change the name of the company,
- (d) grant loans or provide credit or guarantees to another party except in the ordinary course of business, and
- (e) wind-up the Company voluntarily.

11.2 The following matters which may be decided by the Board of Directors of the Company shall require the affirmative vote of at least one of the Alpha Directors or his/their alternate(s):

- (a) approval of the annual expenditure budget of the Company;
- (b) capital expenditure in relation to a single transaction in excess of an amount equal to 10% of the paid-up capital of the Company;
- (c) issue of shares or debentures of the Company;
- (d) aggregate borrowings in excess of an amount equal to the paid-up capital and free reserves of the Company;
- (e) disposal of any fixed assets of the Company in excess of an amount equal to 2.5% of the paid-up capital of the Company;
- (f) sub-licensing of the know-how to a third Party;
- (g) appointment and remuneration and terms of service of Directors and senior executives of the Company, including Director (Technical), General Manager and Managing Director;
- (h) appointment or removal of the Company's auditors;
- (i) export of the Company's products or services;
- (j) appointment of selling agents or distributors for the Company's products;
- (k) appropriation/utilisation of profits of the Company;
- (l) acquisition of any company by the Company and/or establishment of

office of the Company in India or abroad;
(m) selling, leasing or otherwise disposing of the whole or any part of the undertaking of the Company;
(n) borrowing money from parties hereto;
(o) changing of composition of shareholding of the Company;
(p) addition/deletion in the products of the Company;
(q) filling casual vacancy in the Board of Directors;
(r) sales policy-domestic and exports;
(s) appointment of foreigners and their remuneration;
(t) purchasing or selling immovable property;
(u) giving guarantees;
(v) entering into contracts with relatives of directors or with companies in which directors are interested;
(w) entering into co-operation agreements with other Companies;

11.3 A general meeting of the Company shall be called only after giving not less than twenty eight days' notice in writing by fax and registered Air-mail.

11.4 The parties hereto shall exercise their voting powers to appoint such firm of Chartered Accountants as the statutory auditors of the Company as may be proposed by Alpha.

Article 12: Sale of Shares

12.1 No shares of the Company shall be transferred to any legal entity other than an affiliated company without the consent of the other shareholders and without the affiliated company agreeing to be bound by the terms and conditions of this Agreement as if he were a party hereto.

12.2 Notwithstanding provisions of clause 12.1 hereof, in the event of either party transferring the shares held by them in the Company to any person other than a party to this Agreement in accordance with the Articles of Association of the Company the transferee of such Shares shall enter into an Agreement with the parties hereto (except the Vendor of the Shares who has sold all his shares) agreeing to be bound by the terms and conditions of this Agreement as if he were a party hereto.

12.3 In the event that Alpha is constrained to divest its shareholding in the Company due to reasons beyond its control, including but not limited to, the change of political regime in..... (name of place), Alpha may transfer its shareholding to any of its affiliates it deems fit and Beta shall not object to such transfer, provided that all requisite approvals for such transfer are obtained and the transferee signs and abides by this Agreement.

12.4 In the event of material breach hereof by Beta, mismanagement by Beta and/or commission of financial irregularities by Beta, Alpha shall have the right to

terminate the Agreement, transfer its shares in accordance with the Articles of Association, terminate the Technical Collaboration Agreement and/or terminate the Trade Mark License Agreement.

Article 13: Non-Competition

Beta shall not during the term hereof, or for a period of three years after the termination hereof, directly or indirectly, compete in any part of India either with Alpha or the Company in any manner whatsoever by directly or indirectly forming or being interested in any business or undertaking which is engaged in or concerned with, or enter into any contract with respect to products and services which are similar to or compete with those of the company, without prior written approval of Alpha.

Article 14: Agreement of the New Company

The parties hereto will have the Company upon its incorporation ratify, consent to and agree to be bound by this Agreement.

Article 15: Reporting and Inspection of Books and Records

15.1 The Company shall send monthly reports to Alpha regarding the affairs of the Company within the first fifteen (15) days of the following month and shall maintain close contact by means of telephone or other mode of communication in the event that Alpha is not able to participate in the day-to-day affairs of the Company covering such matters as may be requisited by Alpha including the following:

- (a) Net sales.
- (b) Values and changes in finished, semi-finished goods material stocks.
- (c) Purchases of materials, supplies and services.
- (d) Manufacturing capacities.
- (e) Wages of production staff and salaries and wages of other staff.
- (f) Expenses incurred.
- (g) Sundry Debtors, Sundry Creditors and other debtors and creditors.
- (h) Amounts of loan utilised and investments made.
- (i) Amounts of depreciation chargeable.
- (j) Projected cash flow for coming month.
- (k) Compliance with all laws applicable to the Company and the parties by virtue of activities of the Company.
- (l) Disbursement on behalf of the Company in accordance with the annual financial and Business Plan.
- (m) Filing with appropriate authorities any tax and other reports of the Company required by law.

15.2 The Company shall give to each of the Parties hereto, and its representative, so long as such party shall then be a shareholder of the Company, full access during normal business hours to all of the premises, physical properties, books, records and agreements of the Company, including the right to make copies of or abstracts from any of such books, records and Agreements.

Article 16. Termination

16.1 In the event of either party committing a breach of any of the provisions of this Agreement, the other party shall, without prejudice to other rights and remedies available, have the right to terminate this Agreement, by giving the defaulting party a 30 days prior notice in writing, specifying inter alia the nature of the claimed default and the intention of termination unless such default is cured by the defaulting party within 30 days following receipt of the said notice.

16.2 In addition to the above, Alpha shall have the option of terminating this Agreement, if changes in Government policy or Government actions require Alpha to reduce its present shareholding in the Company, prevent Alpha from receiving dividends of the Company or from repatriation of capital or profits, or Alpha is effectively excluded from participation in the management or control of the Company, as provided in this Agreement.

16.3 Should Alpha exercise its option to sell its shares on terminating the Agreement, Beta shall purchase the shares at the fair market value as determined by the Company's auditors on the "Net assets" basis which will include a fair amount for "Goodwill".

Article 17: Exports

17.1 The Company shall not export any of its products without the consent of Alpha.

17.2 The parties agree that they will endeavour to export the Company's products and services as and when the international markets present a profitable opportunity, and in the opinion of Alpha the products and services are of Alpha's international standards in terms of price, quality and delivery. In this event the Company shall appoint Alpha or one or several of its affiliated companies as its exclusive distributor/sole selling agent for the export of the Company's products and services, on terms and conditions to be mutually agreed to between the Alpha and the Company, provided that Alpha shall have the right to decline such appointment.

17.3 Products of the Company that are for sale outside India shall be marked only with the trade marks of Alpha and strictly in accordance with the instructions of Alpha. Such products shall not bear the name "Beta", either by itself or in conjunction with other names or marks.

17.4 Upon incorporation of the Company, the parties hereto shall exercise their voting powers to pass necessary resolutions to give effect to the terms of this Article.

Article 18: Confidentiality

Each of the parties (and its affiliated companies, directors and employees) and the Company shall keep secret all the know-how, trade secrets and other confidential information received by the Company from.....(name of Alpha's Affiliate) and shall not use any of such confidential information except as previously authorized in writing by Alpha and subject to such terms and conditions as are imposed by Alpha. This obligation shall survive termination of this Agreement, but shall cease to apply to any information after it has come into the public domain.

Article 19: Force majeure

If, the performance of the obligations under this Agreement is prevented by reason of any contingencies, which could not have been reasonably avoided and are beyond the control of the parties, the party so affected shall not be liable to the other for damages to the extent of such prevention. Such contingencies include strikes of workers, fire, flood, explosion, riots sabotage, acts of God and war or enemy action.

Article 20: Notices

Any notice required or permitted to be given hereunder shall be in writing and sent by registered air mail, postage pre-paid, and shall be addressed to the parties at the following addresses or such other addresses as either of the parties may from time to time designate by notice in writing to the other. The notice shall be deemed to be served when received.

Alpha:

Beta:

Article 21: Arbitration

21.1 In the event, that any dispute or differences arises out of this Agreement or in relation thereto, including any dispute relating to its validity or effect, each of Alpha and Beta shall immediately appoint one high ranking executive of any of their companies as their representative for the purpose of this clause. The two representatives shall meet and try to resolve the dispute or disputes amicably.

21.2 In the event that the disputes or differences are not resolved for a period of two weeks from the date of arising of the dispute or difference, the parties will try to resolve the dispute through mediation for a further a period of two weeks

by appointing a mediator, who shall be a mutually acceptable and respectable person. If no such person(s) is/are appointed or are able to decide to parties satisfaction within the aforesaid period, then clause 22.3 of this Agreement will apply.

21.3 In the event that the dispute or difference is not resolved under Article 22.1 or 22.2 such dispute or difference shall be settled finally in accordance with the Rules of the..... (name of the national arbitration body). The arbitration proceedings shall be initiated by the party asking for arbitration submitting its request for arbitration to the Secretariat of the Court. The other party shall nominate its arbitrator in its answer to the request for arbitration, which shall be supplied to the party asking for arbitration and the Court within a period of thirty days of the receipt of the request for arbitration. The two arbitrators thus appointed shall within a further period of thirty days elect the Chairman of the Arbitration Tribunal. In the event that the other party should fail to appoint its arbitrator within the thirty days or in the event the two arbitrators appointed for the parties do not agree on the appointment of the Chairman within thirty days of their appointment the court shall make the appointment of the Chairman or the appointment of one the arbitrators not timely made or as the case may be, and any such appointment shall be final and binding upon the parties. The venue of the arbitration shall be in..... (name of the place). The parties shall contribute in equal proportion towards the expenses of the arbitration proceedings. However the Arbitration Tribunal shall decide the proportion in which the parties are to bear the expenses ultimately.

21.4 For the purpose of obtaining any interim relief from the Courts, arbitration proceedings shall be deemed to have commenced from the date of arising of the dispute or difference/notice as per clause 22.1

Article 22: Severability

The invalidity of any portion of this Agreement shall not affect the remaining portions of this Agreement or any part thereof, and this Agreement shall be construed, as if such invalid portion or portions had not been inserted therein.

Article 23: Government Approvals

23.1 Beta and Alpha shall use their best efforts to obtain from the appropriate agencies of the Indian and Governments all the consents and approvals required for the execution and performance of this agreement by the Company.

23.2 In the event that such consents and approvals are not obtained within one hundred and eighty (180) days from the date of this Agreement, and unless extension of the said period is agreed upon in writing by Beta and Alpha, either party shall have the right to declare this Agreement null and void.

IN WITNESS WHEREOF, the parties hereto have set and subscribed their respective hands and seals the day and year first hereinabove written.

For and on behalf of For and on behalf of

Alpha Beta

Signature: Signature:

Name: Name:

Designation: Designation:

Date: Date:

Place: Place: