

DECLARATION¹

Preliminary Note

Normally an instrument executed is the outcome of an agreement between two or more parties. Sometimes, however, an instrument in which there is no party to it other than the executant himself may have to be executed. In such an instrument there is no privity between two or more parties. Such an instrument, if declaratory in nature, may be called a "Declaration". Declarations executed when persons change their names or throw their self-acquired property into the hotch-potch of joint family property are some of the illustrations. A declaration may be in the form of deed poll or in the form of an affidavit which will require to be sworn or solemnly affirmed before a Notary Public.

Although strictly speaking, a declaration is not an agreement, yet as a measure of abundant caution it may be assumed to be liable to stamp duty under item 5 of Schedule I to Stamp Act ("Agreement or memorandum of agreement not otherwise provided for") or under the corresponding entry of the Schedule applicable in the particular State.

¹ See also Release P 1

PRECEDENTS

1—Deed Changing Surname¹

BY THIS DEED I the undersigned AY (*new name*) etc., lately called AB (*old name*) employed as _____ do hereby for and on behalf of myself and my wife and children and remoter issues wholly renounce, relinquish and abandon the use of my former surname of B (only) and in place thereof do assume from the date hereof the surname of Y and so that I, and my wife and children and remoter issues may hereafter be called, known and distinguished not by my former surname of B (only) but by my assumed surname of Y.

For the purpose of evidencing such my determination I declare that I shall at all times hereafter in all records, deeds, and writings, and in all proceedings, dealings and transactions private as well as public and upon all occasions whatsoever use and sign the name of Y as my surname in place of and in substitution for my former surname of B (only).

I expressly authorise and request all persons at all times hereafter to designate and address me and my wife and children and remoter issues by such assumed surname of Y accordingly.

IN WITNESS WHEREOF I have hereunto subscribed and adopted name of AY, and have affixed my signatures this _____ day of _____

2—Declaration Throwing Self-Acquired Property into the Hotch Potch of Hindu Undivided Family²

This deed executed by AB, etc., (hereinafter called "the executant")
WITNESSES that :

- 1 Such a declaration is sometimes published in newspapers as an advertisement with a view to giving wide publicity.
- 2 A "Hindu undivided Family", under income tax law is wider than a Hindu coparcenary under Hindu law; it includes wife and unmarried daughters as well. Such declarations were often resorted to earlier as a tax saving device, but later ceased to be advantageous as they amounted to "gift" within the meaning of the Gift Tax Act 1958, *Sec. 4(2)*. However, after the abolition of gift tax in 1998 such deeds may again become useful. The theory of blending is explained in *Pushpa Devi v. CIT*, (1977) 4 SCC 184 and *K. J. Narayanan v. K. J. Ranganathan*, (1977) 1 SCC 344.

WHEREAS the executant has inherited one-sixth share in certain land cum house ancestral property situate at _____ which he is competent to dispose of;

AND WHEREAS the executant has constructed a bungalow at _____ at a total cost of Rs. _____ which is his self-acquired property;

AND WHEREAS the executant, his wife CD and his sons EF and GH and daughter IJ form a Hindu undivided family and are the members of that family;

AND WHEREAS the executant had always desired to throw his self-acquired properties into the hotch potch of the Hindu undivided family and to treat the same as the property of the said family.

NOW THEREFORE the executant by this deed solemnly declares that the said properties, fully described in the Schedule hereto, have been thrown by the executant into the hotch potch of the Hindu undivided family consisting of himself, his wife, CD and his sons EF and GH and daughter IJ and that the same is the property of the said family, of which the executant is *karta*.

IN WITNESS WHEREOF etc.

Description of Property

Inherited property :

Self-acquired property :

3 Disclaimer of Exclusive Title

WHEREAS by a Deed of Lease dated _____ made between me as the Lessee and the Uttar Pradesh Avas Evam Vikas Parishad as the Lessor registered as No. _____ in book _____ volume _____ on pages _____ to _____ at the _____ office of the Sub-Registrar, Lucknow on the _____ day of _____ the Lessor had demised unto the Lessee all that leasehold plot described in the schedule below;

AND WHEREAS the premium and rent of the said plot were paid partly by me and partly by my wife CD and accordingly the aforesaid lease should have been executed in the joint names of myself and my wife aforesaid;

AND WHEREAS at my request the Uttar Pradesh Avas Evam Vikas Parishad have intimated to me vide their letter No. --- dated --- that in their records the joint names of myself and my wife aforesaid have been entered as the joint lessees of the plot described in the schedule below.

NOW THEREFORE I, AB, etc., hereby declare that the property described in the schedule below was purchased by me partly *benami* for the said CD, wife of AB, and partly by me, at her instance and partly with her money and therefore it does not belong exclusively to me but belongs jointly to myself and my wife aforesaid AND I hereby disclaim exclusive rights in and title to the same.

Dated this --- day of --- 19---

Signed by --- (AB)

EASEMENTS

Preliminary Note

Definition

An Easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon or in respect of certain other land not his own. The essence of easement is that it should be a right over property belonging not to the person claiming the easement but to someone else.

How Grant is made

One of the modes of acquiring an easement is by grant. The grant may be made orally or by a deed. The deed may be separate or the grant may be included in a deed relating to the dominant heritage, for example when A sells his land to B he may grant by the same deed a right of way to B for such land over another land of his.

When the transferee of land grants an easement to the transferor, the easement is often mentioned as a "Reservation" or "Exception" from the parcels transferred. This is not strictly correct, as an easement is neither a thing issuing out of the land transferred which can probably be a subject of reservation, nor a parcel of land which can properly be excepted from the transfer. But such reservations and exceptions may be construed as implied regrant of the easement by the transferee. For burdens annexed to anything taken under a deed bind those who take the benefit. It is however expedient that the transferee is also made to join in the execution of the deed in such cases so that possibility of dispute be avoided.

Mention of Successors

As the burden of an easement runs with the servient tenement into the hands of every person to whom it comes, it is not necessary to mention the representatives or assigns of the grantor. Similarly, as under section 19 of the Easements Act, an easement passes to heirs and transferees of the dominant heritage, it is not necessary to mention the grantee's representatives and assigns, but it would be necessary in States in which the Easements Act is not in force.

Mention of Nature and Purpose

In a deed of grant the nature of the easement and purpose for which it is to be enjoyed should be expressed unless an unlimited enjoyment is intended.

In a grant of easement of way the *termini* and the position of the way should be clearly defined.

Restrictions to be Expressly Mentioned

As the dominant owner has an implied right to put the subject-matter of easement into such a condition as is necessary to enable him to enjoy the easement for the purpose for which it is granted and such implied right, if not restricted by the grant, may cast an unforeseen burden on the servient tenement, it is advisable to lay down in the grant such restrictions as may be necessary in this respect.

Registration

According to the definition given in the Registration Act, rights of way and light are expressly included in the definition of immovable property while other easements are not. The definition is however not exhaustive but only illustrative,² as it uses the word "includes" and it appears that a deed granting any right of easement will require registration if the value of the right is Rs. 100 or above or if the grant amounts to a gift (Sec. 17(1) (a) and (b) Registration Act).

Stamp Duty

Chargeability of stamp duty depends upon the nature of the grant of easement. Thus, if the grant amounts to gift it will be charged with stamp duty according to Article 33 (Gift) of the Schedule to the Stamp Act.

² *State of Orissa v. Titaghar Paper Mills*, A 1985 SC 1293; 1985 (Supp) SCC 280 (para 100).

PRECEDENTS

1—Grant of a Right of Way

THIS DEED is made on the _____ day of _____ BETWEEN AB, etc., (called “the grantor”) AND CD, etc., (called “the grantee”).

Recitals

WHEREAS _____

(1) The grantor is owner and is in possession of a plot of land situate at _____ and entered in the Municipal Registers as No. _____ delineated on the annexed plan and coloured red (called “the red land”) and on the south of the plot of land runs a public road called the _____

(2) The grantee is owner and is in possession of a plot of land adjoining the red land on the north and delineated on the plan and coloured blue (called “the blue land”); and

(3) The grantor has agreed with the grantee in consideration of the sum of Rs. _____ to grant to the grantee the right of way mentioned below.

Grant of way

NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rs. _____ paid by the grantee to the grantor (the receipt of which the grantor acknowledges) the grantor grants to the grantee FULL AND FREE right and liberty for him and his successors in title, owners or occupiers for the time being of the blue land, and his and their tenants, servants, visitors and all other persons authorized by him or them in common with the grantor and others having the like right at all times hereafter to pass and repass with or without horses, cattle or other animals, carts, carriages or other vehicles laden or unladen of any description over the red land along a path _____ feet wide between the points marked A and B on the plan, which path has been shown on the plan by dotted lines, for the purpose of going from the blue land to the public road called the _____ road and *vice versa* TO HOLD the same to the grantee and his successors in title as appurtenant to the blue land;

PROVIDED ALWAYS that it shall be lawful for the grantor and his successors in title to place and keep gates at the points A and B marked on the said plans, he and they maintaining such gates in proper repair and condition and keeping them open when required for the exercise of the right of way hereby granted.

IN WITNESS WHEREOF, etc.

2—Grant of Easement of Light

THIS DEED (*as in Form 1*).

WITNESSES that in consideration of the sum of Rs. _____ paid by the grantee to the grantor (the receipt of which the grantor hereby acknowledges) the grantor hereby grants to the grantee FULL AND FREE right to the uninterrupted access, transmission and enjoyment of light over and across all that piece of land belonging to the grantor situate at _____ containing _____ acres and delineated on the plan annexed hereto and thereon shown as coloured red to the existing windows of the house of the grantee erected on the land adjoining the said land on the north thereof TO HOLD the said easement hereby granted to the aforesaid house.

IN WITNESS WHEREOF etc.

3—Agreement for Preventing Acquisition of Easement

THIS AGREEMENT is made on the _____ day of _____ BETWEEN AB, etc., of the one part AND CD, etc., of the other part.

Recitals

WHEREAS _____

(1) The said AB is owner of the land situate at _____ and delineated on the plan annexed hereto and thereon coloured blue; and

(2) The said CD is owner of a house adjoining the said land of AB and has recently opened two new windows in his said house which overlook the said land of the said AB but in respect of which (as the said CD hereby admits) no right or easement of light or air over the said land of the said AB has been acquired or exists.

NOW it is hereby mutually agreed between the parties as follows :

1. Covenants not to Erect

The said AB shall not erect on any part of the said land within —— feet of the nearest part of the said house of CD any building or erection any part of which shall be higher than —— feet above the present ground level of the said land.

2. Not to Enlarge Windows

The said CD shall not without the previous consent in writing of the said AB enlarge the said windows or any of them or open any other windows or apertures in the said house which shall overlook the said land of the said AB.

3. Duration of Agreement

This agreement shall continue to be in force until determined by either party on six months' notice given to the other party and upon determination of this agreement the said CD shall if so requested by the said AB forthwith block up and keep permanently blocked to the satisfaction of the said AB the said windows or such of them as shall be included in such request of the said AB.

4. Running with Land

The benefit and burden of the stipulations in this agreement shall so far as may be possible pass with and bind the said premises of the said AB and CD so as to ensure and bind all persons deriving title thereto from or under the said AB and the said CD respectively.

IN WITNESS WHEREOF, etc.

4—Forms of PARCELS of Different Kinds of Easements

1. Right of Way

FULL AND FREE liberty, right and authority by himself, his servants and agents with receptacles of any kind either on wheels or otherwise to enter into and upon the said piece of land delineated on the said plan and thereon coloured blue and to pass and repass to and from the said well along the footpath shown in the said plan and marked thereon with letters XY and to take water from the said well for all domestic purposes.

2. *Right to Lay the Footings of a Wall on the Neighbour's Land*

FULL AND FREE liberty, right and authority to enter into and upon the said land of the grantor and to excavate the same to the width of --- feet and to a depth of --- feet along the said boundary between the respective lands of the grantor and the grantee and to lay and for ever hereafter to keep laid and maintained in such excavation at a depth of not less than --- feet from the surface, all such footings and foundations of concrete, bricks, stone or other substance as the grantee shall think fit and proper as the foundation or any part of the foundation of the said intended wall of the said house AND also to erect scaffolding on the said land of the grantor for the purpose of erecting the said wall and to use such scaffolding during the erection of such wall for all usual building purpose AND also to erect such scaffolding and use the same from time to time for repairing and painting the said work after giving two weeks' previous notice to the grantor.

3. *Right of Sewage*

ALL that free right to using the said sewer or drain for the passage or conveyance of sewage water and soil from the said piece of land of the grantor or any of the lands adjoining such piece of land AND for this purpose to make and for ever hereafter to repair and maintain all such connections with the said sewer or drain at the point marked A on the said map as may be reasonable and proper in that behalf making good at his own expense all damage or disturbance which may be caused to the surface of the said piece of land of the grantor in relation to such connection, repairs and maintenance.

4. *Rights of Support of a Building*

FULL RIGHT AND PRIVILEGE for ever hereafter to have whatever building the grantee may at any time hereafter erect on the dominant tenement supported laterally by the subsoil of and minerals in, and under the servient tenement.

Note — Any of these forms with necessary changes may be utilised for drafting a deed of grant of easement.

EXCHANGE

Preliminary Note

Exchange is mutual transfer of ownership of one property for the ownership of another. It is completed in the same manner as sale. A deed of exchange is in fact a deed of double transfers in which one transfer is stated to be the consideration of the other.¹ It should be executed in duplicate, one of the parties taking the original and the other duplicate. Exchange differs from a sale in that either of the things transferred is the price of the other. A partition is not an exchange within the meaning of Sec. 118 Transfer of Property Act. In partition some of the co-owners possessing an undivided share in several property take by arrangement a specific property in lieu of their shares in all. Exchange takes place where two persons owning two separate properties transfer or convey their respective ownership one to the other.

On the abolition of estates material changes have been made by various state laws permitting or prohibiting exchanges of certain types of land tenures. Before drafting a deed of exchange in respect of such land the provisions of the applicable state law must be looked into.²

Stamp Duty

According to Article 31 (Exchange) of the Schedule to Stamp Act, stamp duty is the same as on a Conveyance (Article 23) for a consideration equal to the value of the property of the greater value. The value of both the properties should be clearly set forth in the deed (Sec. 27). In the absence of an agreement to the contrary, it is borne by both parties in equal shares [Sec. 29 (e)].

Registration

Registration is compulsory in case of exchange of immovable property if the property exchanged is valued at Rs. 100 or more (In U.P., it is compulsory in all cases irrespective of value).

1 *Income Tax Commissioner v. Motor & General Stores Ltd.*, A 1968 SC 200 (para 3).

2 See Preliminary Note on SALE, *post*.

PRECEDENTS

1—Deed of Exchange

THIS DEED OF EXCHANGE is made on the _____ day of
19____—BETWEEN AB, etc., of the one part AND CD, etc., of the
other part.

WHEREAS the said AB and CD are the absolute owners of the
properties described in the first and second schedules hereto respectively;

AND WHEREAS the parties hereto have agreed to exchange the
said properties described in the first and second schedules hereto in the
manner hereinafter appearing;

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the
transfer by the said CD hereinafter contained the said AB hereby grants
and transfers to the said CD ALL THAT property described in the first
schedule hereto TO HOLD the same to the said CD absolutely forever;

2. In further pursuance of the said agreement and in consideration of
the transfer by the said AB hereinbefore contained the said CD hereby
grants and transfers to the said AB ALL THAT property described in the
second schedule hereto TO HOLD the same to the said AB absolutely
for ever.

3. Each of the parties hereto hereby covenants with the other, FIRST,
that the property hereby transferred by him is free from encumbrances;
AND (SECONDLY) that the property so transferred by each of them
shall be quietly entered upon and held and enjoyed by the other of them
and the rents and profits received by the other of them without any
interruption or disturbance by the party transferring the same; AND
(THIRDLY) that each of the parties hereto will at the request and cost of
the other execute every such assurance and do every such act or thing as
shall reasonably be required by such other for further or more perfectly
assuring to such other the property hereby transferred to him.

4. It is hereby declared that the value of the property mentioned in
each first schedule hereto is Rs. _____ and in the second schedule hereto
is Rs. _____.

5. The grants hereby made and each of the covenants herein contained shall in the case of each party hereto be binding upon and enure for the benefit of his heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, etc.

The First Schedule herein referred to

* * * *

The Second Schedule herein referred to

* * * *

2—Exchange when Cash Compensation is Paid for Equality¹

THIS DEED OF EXCHANGE is made, etc. (*as in Form 1*).

WHEREAS——

The said AB owns the property mentioned in the first schedule hereto valued at Rs.50,000;

The said CD owns the property mentioned in the second schedule hereto valued at Rs.65,000; AND

The parties hereto have agreed to exchange their aforesaid properties with each other with effect from——and the said AB has further agreed to pay to the said CD for equality of exchange the sum of Rs.15,000.

NOW THIS DEED WITNESSES as follows :

1. *Same as in para 1 of Form 1.*

2. In further pursuance of the said agreement and in consideration of the transfer by the said AB hereinbefore contained and of the sum of Rs.15,000 paid by the said AB to the said CD (the receipt of which the said CD hereby acknowledges) the said CD, etc., (*as in Form 1*);

Same as paras 3, 4 and 5 of Form No. 1

IN WITNESS WHEREOF, etc.

¹ Such payment of money in part does not detract from the character of the transaction as exchange : *Ismail Shah v. Saleh Mohd.*, A 1925 Lah 326; *Ram Badan Lal v. Kunwar Singh*, A 1938 All 229. Where however, the value of the other property is negligible and the main consideration is money, than the transaction will amount to sale : *Nihalu v. Bhagwan*, A 1936 Lah 234.

3—Deed of Exchange when Previous One was Ineffective

THIS DEED OF EXCHANGE is made on the——day of——
BETWEEN AB, etc., of the one part AND the Governor of Uttar Pradesh
(hereinafter called “the said Government”) of the other part;

WHEREAS

(1) *Previous Exchange*

By an agreement dated the——between EF, the then Superintendent of the Central Jail——purporting to act on behalf of the said Government and XY the deceased father of the said AB an exchange of the land specified in the first schedule hereto belonging to the said Government and of the land specified in the second schedule hereto belonging to the said XY was effected between the parties to the said agreement and since then the said Government through the Jail Department has been in possession of land specified in the second schedule hereto and the said XY and after him the said AB has been in possession of the land mentioned in the first schedule hereto;

(2) *Doubts*

The said Government has now claimed the land mentioned in the first schedule hereto from the said AB on the ground that the said EF had no authority on behalf of the said Government to transfer the said land by the aforesaid agreement and doubts have thus arisen as to the validity of the aforesaid agreement;

(3) *Agreement to Confirm*

In consideration of the said Government withdrawing all claims to the said land specified in the first schedule and confirming the title of the said AB to the same by a proper deed of conveyance, the said AB has agreed to confirm the title of the said Government to the said land specified in the second schedule;

(4) The said Government of Uttar Pradesh have by G.O. No.——dated the——approved the aforesaid proposal; and

(5) The parties have agreed that the aforesaid agreement should be carried out by a proper deed of exchange;

NOW THIS DEED WITNESSES as follows :

On the lines of Form No. 1

IN WITNESS WHEREOF, etc.

FOREIGN COLLABORATION

Preliminary Note

Foreign collaboration basically represents a collaboration between the people, organisations, or corporations of two countries to join together to do something for common interest. Foreign collaboration could be in the form of technical collaboration or financial collaboration or both.

Technical collaboration could be of the nature of transfer of comprehensive technology wherein the collaborator provides all services right from the supply of equipment till the commissioning of plant including the transfer of technical know-how, for the production of goods, training of personnel, grant of trade mark, patent rights, provision of drawings and designs etc.

Financial collaboration is in the form of provision of capital which can be by way of purchase of shares or by way of setting up of joint venture. Generally the financial collaboration takes place along with technical collaboration from the foreign party.

Foreign collaboration agreement in its tenor and the context is of crucial importance and even decisive to determine whether payment made is of the nature of capital or revenue expenditure for purposes of the Income Tax Act. The courts accordingly look to this with care.¹

In broad terms, we can classify the Foreign collaboration agreements into:

1. Share Purchase Agreement

Share Purchase Agreement reflects the agreement for purchase of shares by the foreign party in an existing company so as to join and promote the existing company. Share purchase is generally supplemented by transfer of management support.

2. Joint Venture Agreement

Joint Venture Agreement entered into between the foreign party and the Indian party to set up projects with equity participation from the foreign party. The foreign party generally also provides technical know-how and management support.

3. Technical Know-How Agreements

Technical know-how transfer agreement which generally include provision of drawings and designs, provision of process know-how, training

1 *CIT v. British India Corporation Ltd.*, (1987) 165 ITR 51 (SC).

personnel, provision of technicians for supervision of erection and commissioning of plant etc.

Accordingly, for reference the following model agreements are given:

1. Share Purchase Agreement
2. Joint Venture Agreement
3. Technical Collaboration Agreement
4. Supplement to Technical Collaboration Agreement.

These agreements as detailed, are just model agreements and need to be developed and elaborated considering the specific need and understanding among the parties.

PRECEDENTS

1—Share Purchase Agreement

THIS SHARE PURCHASE AGREEMENT (hereinafter referred to as the "Agreement") entered into on this _____ day of _____ between _____, a company registered under the Companies Act, 1956 having its registered office at _____ India, (hereinafter referred to as "Seller") of the One Part and a corporation established and registered under the law of _____ having its principal office at _____ (hereinafter referred to as "Purchaser") of the Other Part.

WHEREAS the Seller owns _____ equity shares constituting outstanding equity shares of _____ a company limited by shares and registered under the Companies Act 1956 with its registered office at _____ India, (hereinafter referred to as the "Company")

WHEREAS the Seller desires to sell, and the Purchaser desires to purchase _____ % (*part of the shares*) of the said equity shares of the company held by the Seller, (hereinafter referred to as the "Shares") subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises, the mutual agreements and covenants hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the Seller and the Purchaser do hereby agree as follows :

1. Sale and Purchase of the Shares

Subject to the terms and conditions set forth in this Agreement, the Seller does hereby agree to sell, assign, transfer and convey to the Purchaser all of its rights, obligations, title and interests in and to the Shares, and the Purchaser do hereby purchase, acquire and accept all of the Seller's rights, obligations, title and interests in and to such Shares. The sale shall be on spot delivery basis.

2. Consideration

(i) As consideration for the sale and transfer of the Shares by the Seller, the Purchaser shall pay to the Seller at the rate of Rs.

(Rupees) per share an aggregate sum of Rs. (Rupees), which amount shall hereinafter be referred to as the Purchase Price.

(ii) Unless otherwise mutually agreed in writing the Purchase Price shall be paid in full, without any adjustment, deduction, set-off or counter-claim.

3. *Payments*

The Purchase Price shall be paid by the Purchaser to the Seller, as detailed in clause 2 above, on the Closing Date (as defined herein) when all the conditions precedent set forth in clause 5 below are fulfilled.

4. *Time and Date of Closing*

(i) The closing of the transaction provided for in this Agreement shall take place on a date when all the conditions precedent mentioned in Clause 5 hereof have been fulfilled (hereinafter referred to as the "Closing Date") in the office of the company at ----- India by or at such other time, date and/or place as may be mutually agreed upon by the parties hereto in writing.

(ii) Simultaneously, on payment of the Purchase Price by the Purchaser to the Seller as set forth in Clause 3, above, the Seller shall deliver to the Purchaser original share certificates of the Shares together with duly executed share transfer deeds and the Seller's receipt acknowledging payment of the Purchase Price by the Purchaser to the Seller.

5. *Conditions Precedent to Closing Date*

(i) On or before the Closing Date following conditions shall have been fulfilled:

(a) All approvals or permissions have been obtained from competent authorities and/or department and/ or ministries of the Government of India relating to the transfer of the shares from the Seller to the Purchaser under this agreement.

(b) The Purchaser has entered into the agreement with the Company for the transfer of technical know-how as per draft enclosed as annexure-A.

(c) The technical know-how agreement as per clause 5(i) (b) above is approved by the Government of India.

(ii) The Shares are agreed in principle to be transferred by way of sale by the Seller to the Purchaser under and in accordance with this Agreement by the Board of Directors of the company.

6. Termination

In case the conditions precedent set forth in clause 5 above are not fulfilled or satisfied on or before _____ or such other later date as may be mutually agreed between the parties in writing from time to time, the Seller and the Purchaser shall each have the right to terminate this Agreement.

7. Representation and Warranties of Seller

The Seller hereby represents and warrants to the Purchaser as follows:

(i) The Seller is a corporation, duly organised and validly existing under the Companies Act.

(ii) The Seller has full legal right, power and authority to enter into, execute and deliver this Agreement and to perform the obligations, undertakings and transactions set forth herein, and this Agreement has been duly and validly executed and delivered by the Seller and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

(iii) The Seller has all requisite power to own and dispose of the Shares to be sold by it.

(iv) The Shares are owned by the Seller free and clear of all pledges, security interest, liens, charges, encumbrances, equities, claims, options or limitations affecting its ability to vote on such shares or to transfer such shares to the Purchaser and all such shares have been validly authorised and issued and are fully paid.

(v) Except for the transaction contemplated by this Agreement there is no subscription, option, warrant, call right, agreement or commitment outstanding in relation to the sale or transfer of the Shares.

(vi) The Balance Sheet of the company as at _____ which have been disclosed to the Purchaser, and which is annexed as Annexure B hereto (hereinafter called the "said balance sheet") gives the true and fair view of the financial position of the company as at _____

(hereinafter called the "said date") and there are no other material liabilities contingent or otherwise as on the said date which have not been disclosed in the said balance sheet and since the said date there has been no material reduction in the aggregate net asset position of the company as set out in the said balance sheet by way of sale, transfer or write off of capital assets except as stated in Annexure C hereto.

(vii) The fixed and other assets of the Company, save and except to the extent disclosed in the said balance sheet, are not subject to any charge or lien or encumbrance whatsoever.

(viii) The Company has not since the said date issued or agreed to issue any shares or given or agreed to give any option or right in respect of any shares nor issued or agreed to issue or given any option in respect of any debentures or other securities of the Company.

(iv) The Company has not entered into any long term or abnormal contract for undertaking any obligation on or after the said date except as are usual and necessary in the ordinary course of business and in particular and without limiting the generality of the foregoing there are no contracts for purchase of the stocks and stores at prices substantially higher than the market price ruling on dates such contracts were made.

(v) The Company do not have any material debt liabilities, contracts or engagements other than those disclosed in the said balance sheet.

(xi) No material part of the amounts included in the said balance sheet as due from the debtors has been released after the said date on the terms without any debtor paying less than the book value as on the said date or has been written off or treated as irrecoverable or bad debt.

(xii) All returns, particulars of resolutions and other documents required to be delivered by the Company to the Registrar of Companies and other statutory authorities have been duly delivered to such Registrar and authorities.

(xiii) After signing of the agreement till the Closing Date the business and affairs of the Company shall be conducted in the ordinary course of business and there shall be no sale, transfer, assignment and nor shall there be created any lien, charge or encumbrances on the assets and stocks of the Company other than in the normal course of business and unless it is necessary in the interest of the Company.

(xiv) There are no material demands contingent or otherwise on account of outstanding income tax and other taxes or penalties on the Company save and except to the extent disclosed in the said balance sheet.

(xv) All trade marks and registered designs used by the Company in connection with their respective businesses are registered in their respective names and no licence or other rights have been granted or agreed to have been granted to any third party in respect of such trade mark or registered designs.

(xvi) The Company is not engaged in any substantial litigation or arbitration proceedings or prosecutions pending or threatened which will adversely affect its aggregate assets materially.

(xvii) The Company has effectively maintained all insurances necessary and properly required to be effected and maintained by reason of nature of their business and such insurances are in force and effect and there are no facts or matters which could vitiate and/or lead to repudiation of such insurances.

(xviii) The Company has good and marketable title to all its assets save and except the charges, liens, and encumbrances in favour of lenders as disclosed in the said balance sheet.

(xix) The Company will not prior to the completion of the sale of the Shares pursuant hereto, save and except with the previous consent of the Purchaser or in the normal course of business and subject to the interest of the Company:

- (a) create, expend, grant, or issue or agree to create, expend, grant or issue any mortgage, charges, debentures or other securities;
- (b) create or issue or agree to issue any shares or give loan or agree to give any option in respect of any shares or loan;
- (c) enter into any long term, material or abnormal capital commitments exceeding Rs. _____ other than in the ordinary course of business;
- (d) do or suffer anything whereby their financial position shall be rendered less favourable than at the said date save and except in the ordinary course of business;

- (c) cause to pass any resolution in General Meeting creating any special rights or privileges in favour of any class of shareholders or particular shareholder;
 - (f) pay, or agree to pay to its Directors, officers or workmen or any of them, any additional or further remuneration, grant, bonus or allowance other than those in the ordinary course of business;
 - (g) dispose of any material part of its fixed assets or other assets other than in the ordinary course of business.
- (xv) The Seller undertakes that it shall cause the company to make amendments within _____ days from the date of transfer of shares in the existing Memorandum and Articles of Association of the Company to incorporate the clause mentioned in the annexure-D.
- (xvi) The Seller warrants that after the transfer of shares to the Purchaser pursuant to this agreement, the Company shall be managed jointly by the Seller and the Purchaser as per management agreement annexure - E.

8. Disclaimer of Representations and Warranties By the Seller

Save and except the representations and warranties stated in this Agreement, the Seller makes no other representations or warranties of any kind or nature including without limitation any representations or warranties with regard to the business, financial viability, assets or liabilities of the Company and no statutory or other warranties as to or the business, financial viability, assets or liabilities of the Company shall be implied.

9. Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Seller as follows:

- (i) The Purchaser has full legal right, power and authority to enter into, execute and deliver this Agreement and to perform the obligations, undertakings and transactions set forth herein, and this Agreement has been duly and validly executed and delivered by the Purchaser and constitutes his legal, valid and binding obligation, enforceable against it in accordance with its terms;

(ii) The Purchaser shall cause sufficient funds to be available to acquire and pay for all of the Shares and otherwise to consummate the transactions contemplated by this Agreement on the terms and conditions contemplated hereby;

(iii) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate or conflict in India with any Central, State, local or municipal statute, law, ordinance, rule or regulation, or any judgement, order, writ, injunction, award or decree of any court, governmental, quasi-governmental or public agency, arbitrator, tribunal, commission, board, bureau, or other authority applicable to the Purchaser;

(iv) The Purchaser is familiar with the business of the Company and future prospects and has conducted its own due diligence and analysis of the Shares and the businesses in their present conditions as disclosed in the said Balance Sheet:

(v) Save and except what is stated herein, neither the Seller nor any of its agents, affiliates, attorneys, representatives, directors, officers or employees has made any representations or warranties regarding the Company or any of its assets.

10. Expenses

Each party shall pay its or their own expenses (including without limitations, attorneys' fees), in connection with the negotiation, preparation and execution of this Agreement and any amendments or other documents or instruments relating hereto and the transactions contemplated hereby.

11. Obtaining Approvals

Each Party hereto shall at all times exert their best efforts and assist the other to obtain all necessary/requisite approvals, permissions, consent of or registration or declaration with, any authority, department or Ministry of Government of India or any third party in connection with the execution, delivery, performance, validity and enforceability of this Agreement and the sale of the Shares pursuant hereto.

12. Miscellaneous Matters

(i) *Amendment*: This Agreement may not be amended or otherwise

altered except pursuant to an instrument in writing signed by each of the parties hereto. This Agreement shall be binding on the respective successors, legal representatives and permitted assigns of the parties, provided that no party shall assign any of its rights, or delegate any obligations hereunder without the prior written consent of the other, and any attempted assignment or delegation without consent shall be null and void. However, such consent shall not be unreasonably withheld.

(ii) *Notices* : Any notice, request or instruction permitted or required to be given hereunder by any party to the other shall be in writing and shall be deemed sufficiently given if delivered personally, sent by registered or certified mail, postage prepaid, or sent by fax or e-mail to the parties at their respective places of business.

(iii) *Delivery* : Notice and other communications sent by mail shall be deemed to have been given ----- days after the date on which the same shall be proved to have been posted. Notices and communications sent by fax or e-mail shall be deemed to have been given----- hours after the same shall be proved to have been sent.

(iv) *Headings* : The headings contained in this Agreement are inserted for reference purposes only and are not to be considered in interpreting this Agreement.

(v) *Counterparts* : This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. In pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one such counterpart.

(vi) *Governing Law* : This Agreement shall be governed by and construed and enforced in accordance with the laws of India as to all matters including but not limited to matters of validity, construction, effect, performance and remedies.

(vii) *Publicity* : Neither party shall issue any press release or announcement or make any other public statement, in each case relating to, connected with or arising out of this Agreement or the matters contained herein, without obtaining the prior written approval of the other party hereto to the contents and the manner of presentation and publication thereof (which approval shall not be unreasonably withheld or delayed), except

such release, announcement or statement as may be required by law or the rules or regulations of a national or foreign stock exchange or self-regulatory organisation; provided, further, that nothing herein shall apply to any required communications by any party hereto with any relevant governmental or statutory authority, municipal corporation or any other local authority or any bank or financial or other institution or body.

(viii) *Waiver*: No delay on the part of the Seller or the Purchaser in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of the Seller or the Purchaser of any right, power or privilege hereunder, operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which the parties hereto may otherwise have at law or in equity.

(ix) *Severability*: Any provision of this Agreement which is held to be invalid or unenforceable for any reason shall be ineffective to the extent of such invalidity or unenforceability only, without affecting in any way the remaining provisions hereof.

(x) *Further Assurances*: Subject to the terms and conditions of this Agreement, each of the parties hereto will use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to fulfill its obligations under this Agreement. At any time or from time to time after the Closing Date, without further consideration, each party hereto shall at the request of the other party hereto execute and deliver any further instruments or documents and take all such further action as the Seller may reasonably request in order to more effectively consummate and make effective the transactions contemplated by this Agreement.

(xi) *Entire Agreement*: This Agreement, all Schedules hereto or thereto, and all other documents and certificates referred to herein or therein constitute the entire understanding and agreement between the parties hereto with respect to the transactions contemplated herein and

cancel and supersede all previous written or oral negotiations, commitments, and writings with respect to the transactions contemplated herein.

1.3. Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Seller and the Purchaser hereto in connection with or arising out of this Agreement (and whether before or after the termination or breach of this Agreement), including any question regarding the existence of such dispute or difference, such dispute or difference shall be referred to and settled by arbitration as hereafter provided in accordance with the Arbitration and Conciliation Act, 1996 but the existence of any dispute or difference or the initiation or continuance of the arbitration proceeding shall not postpone or delay the performance by the Parties of their respective obligations pursuant to this Agreement.

The matter would be referred to arbitration of a tribunal of three Arbitrators. The disputing Parties shall appoint one Arbitrator each and the two Arbitrators so appointed shall name the third Arbitrator.

The decision of the majority of Arbitrators so appointed, shall be final and binding upon the disputing Parties. If any of the Arbitrators is unable or incapacitated to act as such by reason of resignation, death or otherwise, a new Arbitrator shall be nominated by the party which had nominated the Arbitrator who is no longer able to serve or by the two Arbitrators nominated by the parties as the case may be. The tribunal with the new Arbitrator so nominated shall continue with the Arbitration proceedings from the stage left by the tribunal with the outgoing Arbitrator and such proceedings shall not be recommenced *de novo*. The arbitration shall be held at _____ . The costs and expenses of such arbitration shall be allocated as determined by the Arbitrators.

1.4. List of Annexures

The following annexures to the agreement form an integral part of the Agreement.

Annexure 'A'	Draft Agreement for transfer of Technical know-how.
Annexure 'B'	Balance Sheet of the company as at _____

- Annexure 'C' Details of material reduction in the net asset position of the company after the said date.
- Annexure 'D' Amendments to be made in the Memorandum and Articles of Association of the company.
- Annexure 'E' Proposed Management Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the day of year first above written.

2— Joint Venture Agreement

THIS AGREEMENT made and entered into this _____ day of _____ by and between _____ (hereinafter referred to as "PARTY OF THE FIRST PART") a corporation organised and existing under the Companies Act 1956 having its registered office at _____ and _____ (hereinafter referred to as "PARTY OF THE SECOND PART" a corporation organised and existing under the _____ having its registered office at _____.

WHEREAS, the party of the FIRST PART and the party of the SECOND PART are desirous to set up a project to manufacture _____ in India.

AND WHEREAS, each party understand that the creation under the laws of India of a limited liability company jointly owned by the parties or their approved associates or nominees and with public participation will be instrumental to the accomplishment of the objective.

AND WHEREAS, the parties have mutually agreed to incorporate a new joint stock company with limited liability under which the project to manufacture _____ shall be taken up.

AND WHEREAS, each party upon agreed ratios, terms and conditions is willing to provide the required capital, technology, equipments and services for the manufacture of _____ in the joint stock company so incorporated.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the party of the FIRST PART and the party of SECOND PART agree as follows.

1. Definitions

As used in this Agreement, the following terms shall have the following meaning, such meanings to be equally applicable to both the singular and plural forms of the terms defined:

1.1 *Joint Company* shall mean the Joint Stock Company to be incorporated in India with limited liability by the parties for the manufacture of _____ in accordance with provision of clause 2 of this agreement.

1.2 *Associated Company* shall mean any company or enterprise owned or controlled by a Party through direct or indirect ownership of at least _____ of the stock normally entitled to vote.

1.3 *Party* shall mean either party of the First Part or party of the Second Part.

1.4 *Parties* shall mean party of the First Part and party of the Second Part.

1.5 *Board* shall mean the Board of Directors of the Joint Company.

2. Formation of Joint Stock Company

2.1 The parties (or party of the First Part) shall cause the Joint Company to be incorporated under the provisions of the Companies Act, 1956 in accordance with the terms of this agreement under the name and style of _____ or such other name as may be mutually agreed by both the parties, with Memorandum and Articles of Association, which shall be as per schedule 'A' attached.

2.2 If any of the provisions contained in the Memorandum and Articles of Association as given in the schedule 'A' is not approved by the Registrar of Companies, suitable and desired amendments shall be made therein with mutual consent of both the parties.

2.3 The costs of incorporation of Joint Company shall be borne equally (or by the Party of the First Part).

2.4 The registered office of the Joint Company shall be situated at _____

3. Objects of the Joint Company

The activities of the Joint Company shall be the manufacture and sale of _____. The joint company shall take up any other object as specified in the object clause of its Memorandum and Articles subject to applicable laws, only after having the consent of both the parties in writing.

4. *Cost of the Project and means of Financing*

The estimates of the cost of project to be set up by the Joint Company and its means of finance are given in Schedule 'B' attached. The pattern of financing for any cost overrun shall be decided by the parties with mutual consent.

5. *Capital Investment*

5.1 Capital investment by the Parties in the Joint Company and all obligations pursuant to this agreement are conditional upon the fulfilment of the following conditions on or before ----- or such other date as may be agreed to mutually by the parties.

(a) The requisite approvals from the Government of India for setting up of the project for the manufacture of ----- by the Joint Company are received.

(b) The approval of the Government of India of the Application for Foreign Collaboration is received.

(c) The approval of the Government of India of the Application for Capital Goods Clearance for the import of equipment required is obtained.

(d) The following further approvals from the Government of India and Government of ----- are obtained.

(Give the list of necessary approvals required for setting up of the project)

(e) All of the aforesaid approvals must be in a form and content acceptable to both the Parties.

5.2 Immediately after all conditions precedent as set out in clause 5.1 are fulfilled, the parties shall provide capital, in cash, as per the agreed time schedule given in Schedule 'C'. The Time Schedule 'C' may be modified or revised from time to time by the parties with mutual consent in writing.

5.3 The authorised share capital of the Joint Company shall be Rs. -----, which shall be divided, into ----- equity shares of Rs. ----- each.

5.4 The parties and their respective associate companies shall respectively subscribe to the issued equity capital of the Joint Company in the following proportions:

Party of the First Part and its associate companies _____

Party of the Second Part and its associate companies _____

Public holdings _____

It is further agreed that nominee of each party participating in any issuance of equity share shall, before acquiring such share of the Joint Company shall agree in writing to be bound by the terms of this agreement.

Subject to the terms hereof, the parties agree to maintain the aforesaid proportions at all times unless otherwise expressly agreed in writing.

6. Directors

6.1 The number of directors of the Joint Company shall neither be less than _____ nor more than _____ excluding alternate directors. Initially the Board of Directors, ("Board") shall consist of _____ directors, subject to a possible increase in the number of such initial directors to accommodate the nominee directors of the financial institutions or banks, as mutually agreed by the parties.

The initial and successive Boards shall be comprised of _____ directors nominated by the party of the FIRST PART, _____ directors nominated by the party of the SECOND PART and Independent directors elected to the position from a list of candidates mutually acceptable to each party as well as such other directors that may be appointed under rights granted by Joint Company with the mutual agreement of the Parties to financial institutions or banks. Each party shall have the right to appoint alternate directors for each of the directors nominated by such party.

6.2 The Chairman of the Board shall be appointed by the party of the _____, and his term shall not be liable to retirement by rotation.

6.3 The managing Directors shall be appointed by the party of the _____, and his term shall not be liable to retirement by rotation.

6.4 The parties shall jointly nominate for election and appointment of _____ directors, whose office shall be liable to retirement by rotation. Any vacancy caused by such directors being unable or ceasing to hold the office for any reason whatsoever shall be filled by the parties jointly nominating another person for election and appointment to such office.

6.5 Subject to the maximum numbers provided in clause 6.1 above, any additional director or directors may be nominated and appointed by the "Board" only with the mutual agreement of the parties.

6.6 Unless both the parties agree in writing to a shorter notice, ~~clear~~ clear days notice of every meeting of the Board of Directors or a committee thereof shall be given in writing to every director (including an alternate director) or member of a committee at his usual address, whether in India or abroad. A director abroad shall furnish to the Joint Company a telex or facsimile number at which such notice may be given and communication of notice by the Joint Company at such numbers shall be deemed service thereof on such director. Where notice of a meeting is required to be given to a director abroad, the notice shall be given simultaneously by registered Air Mail letter and by facsimile transmission or telex, at the facsimile telephone number or telex number provided by such director.

6.7 Every notice convening a meeting of the Board or a committee thereof shall set out the agenda of the business to be transacted at such meeting in full details. Unless otherwise agreed to by the chairman, no item of business shall be transacted at such meeting which has not been stated in full detail in the notice convening the meeting provided that with the prior written consent of the parties, any item of business not included in the agenda may be transacted at that meeting.

6.8 The quorum for the meeting of the Board shall be ~~-----~~ of its total strength including directors, if any, whose place may be vacant at the time; provided that where at any time the number of directors who have declared an interest in any matter on the agenda exceeds or is equal to one-half of the total strength of the number ~~-----~~ of directors, then the number of directors who are not so interested, present at the meeting and being not less than two, shall form a quorum for the purpose of that meeting; and further PROVIDED ALWAYS that no such meeting shall proceed to transact any business unless at least ~~-----~~ each of the directors nominated by each party pursuant to clause 6.1 above or their alternates are present at such meeting, except where for any particular meeting, the said requirement for a quorum is waived in writing by either party in respect of the particular rights under this clause. Provided however, that if a meeting cannot be held due to the absence of the quorum, then upon notice being provided to each director such meeting shall stand

postponed to the same day after _____ weeks at the same time and place or if that day is a public holiday, till the next succeeding day that is not a public holiday at the same time and place.

6.9 Subject to the approval of the Reserve Bank of India, the Joint Company shall bear all the expenses of each visit of all the Directors living abroad to attend the Board Meetings.

6.10 Except in those cases where a resolution is required by law to be passed at a meeting of Board, a resolution shall be taken as duly passed at a meeting of the Board or a Committee of the Board, as the case may be, duly called and constituted in accordance with the provisions of the Companies Act, 1956 and the Article of Association of the Joint Company, if a draft thereof is circulated, together with the relevant papers, if any, to all the directors or to all members of the committee of the Board as the case may be, and such resolution has been approved by a majority of the directors entitled to vote thereon, including in such majority at least _____ each of the directors nominated by either Party pursuant to clause 6.1 above.

6.11 The following business cannot be approved by the Board without the unanimous affirmative vote of the Directors nominated by the Party of the _____ part:

- (a) Changes in the capital structure of the Joint Company, including issue of shares, reduction of capital, etc.
- (b) Winding-up, sale or amalgamation of the Joint Company.
- (c) Change of the Joint Company's registered office.
- (d) Embarking on a new venture, diversification or expansion.
- (e) Alteration in the Joint Company's objects clause, as set forth in its Memorandum of Association.
- (f) Change in the name of the Joint Company.
- (g) Alteration of the Articles of Association of the Joint Company.
- (h) Obtaining long-term loans exceeding Rs. _____ other than overdrafts for working capital.
- (i) Making any loan/advance of Joint Company's funds in excess of Rs. _____.
- (j) Sale, exchange, surrender or disposal of any asset of the Joint Company, involving a value exceeding Rs. _____.

(k) Approval of the annual business plan.

(l) Appointment or removal of auditor of the Joint Company.

6.12 The business and operations of the Joint Company shall be conducted in accordance with an annual business plan approved by the Parties.

6.13 The Joint Company shall submit to each party monthly financial report in a form mutually agreed upon between the parties and such other statement and reports containing financial, production or other business information as may from time to time reasonably be requested by either party.

6.14 The Joint Company shall at all times be operated as an independent enterprise for the profit of all its shareholders and all dealings or transactions with or on behalf of any shareholders of the Joint Company shall be on such term no more favourable than would be accorded to any person in the ordinary course of business taking into consideration bulk sales, offers and contracts.

7. Dividend Policy

Subject to the approval of the Board, a minimum of _____ % of the surplus available for distribution of dividend shall be distributed by the Joint Company each year as dividend.

8. Records

8.1 The Joint Company shall keep true and accurate accounting records of all operations and such records shall be open for inspection to the parties or to their duly authorised representative at all reasonable times.

8.2 The auditor of Joint Company shall furnish copies of its final reports to the Parties within _____ days after the end of the financial year of the Joint Company.

8.3 Until otherwise agreed to by the parties in writing, the financial year of the Company shall be ending on 31st March every year.

9. Effective Date

As soon as this Agreement is signed, each of the parties shall be obliged to take every reasonable step to co-operate in obtaining the

necessary Governmental approvals and licenses provided for in this agreement and to take other steps reasonably necessary to further the objects of this agreement. The parties shall not be obligated, however, to proceed with any other actions required by this Agreement unless otherwise contemplated herein, until the "Effective Date". The "Effective Date" of this Agreement shall be the date mutually determined by the Parties in writing after all the conditions set forth in clause 5.1 of this Agreement have been fulfilled or waived by the Parties.

10. Applications for Approvals

10.1 Party of the FIRST PART shall file all necessary applications for licences and approvals required from the Government of India for the setting up of the project.

10.2 Party of the SECOND PART shall file all necessary applications for any license or approval required under the law of _____.

10.3 Each party shall take all reasonable steps to ensure that the requisite approvals are obtained from their respective Government speedily.

10.4 Each party shall co-operate and assist the other party in their efforts of obtaining the requisite approvals. The various informations required by the Governments for the approvals shall be provided by the party concerned speedily and within reasonable time.

11. Transfer of Shares

11.1 It is agreed that neither party shall sell, transfer, assign, mortgage, pledge or otherwise encumber or deal with any or all shares of the Joint Company without consent of the other Party, except as is hereinafter provided:

(a) Transfer of the shares by the party to its associate companies or the sale of shares held by the associate company to their concerned party.

(b) Transfer of director's qualification share so long as the beneficial ownership of such share is retained by the respective party.

11.2 (a) Subject to clause 11.1 above, should a Party or its Associate Company desires to sell any of the shares held by it in the Joint Company, such party shall first offer or have offered the said shares to the other party by notice of the same.

(b) Such offer shall contain the price at which the shares for sale are offered by the Party or its Associate Company. The offeree shall within _____ days of receipt of the notice of offer accept the offer and pay the price (subject to the provisions of sub-clause (d) below) of the said shares within _____ days of acceptance. In case the offeree desires to accept the offer, without accepting the price contained in the offer, offeree shall within the said period of _____ days, be entitled to exercise its option to purchase the shares subject to the condition that the price of the shares shall be as valued by the auditors of the Joint Company whose valuation shall be final. However, the Party or its Associate Company making the offer shall have the right to withdraw the offer in case the price asked by them is not accepted. The price for the shares shall (subject to the provisions of sub clause (d) below) be paid immediately after _____ days of such valuation, unless the party or its Associate Company elects to withdraw its offer within the said _____ days of such valuation.

(c) It is expressly agreed that the offeree may nominate any other person to purchase the shares offered to it or any part thereof.

(d) In case any approval of an authority in India is required for such sale of shares, the offeree shall make an application for the same within _____ days after acceptance or the valuation contemplated in sub clause (b) above, as the case may be. The price for the shares shall then be paid within _____ days after receipt by the offeree of the necessary approval(s). If for any reason whatsoever the said approval(s) is (are) not received within _____ days of the making of _____ application (or such further period as agreed to by the parties) the offeror shall be at liberty to withdraw the offer.

(e) In the event that the offeree fails for any reason whatsoever to observe any of the time limits set forth hereinabove, the offer shall lapse and the offeror shall be at liberty, for a period of _____ days from the lapse of the offer, to transfer the offered shares to a third party or parties at a price not lower than and/or on conditions not more favourable than those offered in the offer.

12. Competition with the Joint Company

12.1 The party of the FIRST PART or its Associate Companies will

not set up any project to manufacture such products as are being or will be produced by the Joint Company in India or abroad except with the written permission of the party of the SECOND PART.

12.2 The party of the SECOND PART or its Associate Company shall not export to India the products manufactured or similar to those manufactured by the Joint Company.

12.3 The party of the SECOND PART or its Associate Company will not set up any other manufacturing facilities either by themselves or with any other person whether resident of India or not for the manufacture of the products being manufactured or to be manufactured by the Joint Company.

12.4 The party of the SECOND PART shall not provide any technical know-how, equipment or any other services to any third party for the purposes of the setting up of projects for the manufacture of the products being manufactured by or to be manufactured by the Joint Company.

12.5 All business confidential or proprietary information received by either Party or their Associate Companies as a result of this agreement or discussions preceding such Agreement, whether direct or indirect, shall be treated by the recipient as confidential and shall not be disclosed in any manner nor used for any purpose except as herein contemplated.

13. *Provision of Technical know-how and other services*

13.1 It is agreed that the party of the SECOND PART shall provide technical know-how and other services to the Joint Company as per the agreed terms and conditions.

13.2 The party of the SECOND PART shall execute the agreement of provision of technical know-how and other services within 30 days of the incorporation of the Joint Company as per the draft agreement annexed as Schedule 'D' of this agreement.

14. *Termination*

14.1 This agreement may be terminated as follows :

(i) The Party of the FIRST PART may terminate this Agreement by giving a Notice of Termination in writing to the other Party if:

(a) the Technical know-how and other Services Agreement which is contemplated by the parties to be executed and performed between the Joint Company and the party of the SECOND PART is terminated due to the default of the party of the SECOND PART under such agreement.

(b) if the party of the SECOND PART defaults in the performance of any material undertaking under this Agreement and fails to correct such default to the reasonable satisfaction of the party of the FIRST PART within _____ days after written notice of such default is provided to the party of the SECOND PART.

(ii) The Party of the SECOND PART may terminate this Agreement by giving a Notice of Termination in writing to the other party if:

(a) the Technical know-how and other Services Agreement which is contemplated by the Parties to be executed and performed between the Joint Company and Party of the SECOND PART is terminated due to the default of the Joint Company under such agreement.

(b) if the party of the FIRST PART defaults in the performance of any material undertaking under this Agreement and fails to correct such default to the reasonable satisfaction of the party of the SECOND PART within _____ days after written notice of such default is provided to the party of the FIRST PART.

(iii) Either Party may terminate this Agreement upon _____ days prior written notice to the other Party if any basic premise or term of this Agreement is breached by the other Party and such other Party shall have failed to remedy such breach within _____ days of written notice having been served on the Party in breach, by the party so wishing to terminate the Agreement.

Notwithstanding the foregoing, in any such event, the parties shall endeavour to resolve the differences caused by such breach/defaults and shall negotiate in good faith to determine if there is a method to resolve such differences and correct any breach/defaults so that this Agreement might continue without termination.

14.2 This agreement may be terminated by either Party in the event, due to strike, riot, earthquake, storm, fire, explosion, act of God, war, acts of the Government of India or Government of the _____ or any

other cause similar hereto because of which the continued operation of this Agreement or business activities of the joint Company are interrupted, prevented or delayed for a period exceeding _____ months.

14.3 This Agreement may be terminated by either Party in the event that the other Party becomes insolvent or has a Receiver appointed over its assets or execution or distress is levied upon all or substantially all its assets or is ordered to be wound up (except that where any such event is only for the purpose of amalgamation with another or reconstruction and the resultant company is acceptable to the Party desiring termination as a shareholder of Joint Company which acceptance will not be unreasonably withheld).

14.4 This Agreement may be terminated by either Party in the event that there is a deadlock between the Parties with respect to the Management or operations of the Joint Company which deadlock remains unresolved for a period of _____ months following written notice thereof from one Party to the other. In such case this Agreement will automatically terminate at the end of such _____ month period.

14.5 This Agreement may be terminated by either Party in the event that Joint Company becomes insolvent or goes into liquidation or is ordered to be wound up or has a Receiver appointed over or execution or distress is levied upon all or substantially all of its assets.

15. *Effect of Termination*

15.1 If this Agreement is terminated pursuant to clause 14.1 then unless otherwise agreed, the Party terminating this Agreement shall be entitled to require the Party in breach to sell its own and its Associate Companies' shareholding in the Joint Company to the public at large by a public offer thereof.

15.2 If this Agreement is terminated pursuant to clause 14.2 or 14.4 then unless otherwise agreed, the Party terminating this Agreement shall be entitled to sell its own and its Associate Companies' shareholding in the Joint Company to the public at large by a public offer thereof.

15.3 If this Agreement is terminated pursuant to clause 14.3 then the Party terminating this Agreement shall be entitled to require the Party in default to sell its own and its Associate Companies' shareholding in the Joint Company at the option of the terminating Party.

- (a) to the terminating party or its Associate Companies on the terms and conditions as set forth in clause 11 hereof; or
- (b) to the public at large by a Public offer.

16. Arbitration and Applicable Law

16.1 This agreement shall be governed by and construed in accordance with the Laws of India.

16.2 Any dispute arising out or in connection with this agreement, including any question regarding its existence, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The tribunal shall consist of three arbitrators, one of whom shall be nominated by each party and the third to be appointed by the London Court of International Arbitration. The arbitration shall take place at _____ and the language of the arbitration shall be English. The parties shall abide by and perform any award rendered by the arbitrators and a judgement may be entered upon the award in any court having jurisdiction.

17. Force Majeure

17.1 If the performance of this Agreement or of any obligation of either party is prevented, restricted or interfered with by reasons of fire, explosion, strike, casualty or accident, epidemic, cyclone, earthquake, flood, or war, revolution, or requirement of any government or any subdivision, authority or representative of any such government; or any other act whatsoever, whether similar or dissimilar to those enumerated, beyond the reasonable control of any or both of the parties hereto; the party so affected, upon giving prompt notice to the other party shall be excused from such performance to the extent of such prevention, restriction or interference for the period it persists provided that the party so affected shall use its best efforts to avoid or remove such causes of non-performance, if possible, and shall continue performance hereunder with the utmost dispatch whenever such causes are removed.

17.2 If the force majeure persists for a continuous period of _____ months or more, the parties shall meet and decide about the future course of action.

18. Notice

18.1 Unless another form of notice is specified for a specific purpose under this Agreement, notices required or permitted by this Agreement shall be sufficiently given if mailed by registered or certified air mail or postage prepaid and directed by one party to the other party at the respective addresses of business. Either Party may change the address at which notice is to be received by duly notifying the other Party.

19. Miscellaneous Matters

19.1 *Non-Agency* : Nothing in this Agreement shall be construed to constitute the Joint Company as an agent of any party for any purpose.

19.2 *Entire Agreement* : This agreement constitutes the entire Agreement between the Parties and supersedes any and all prior agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof and no agreement or understanding varying or extending this Agreement shall be binding on any party unless made in writing and signed by a duly authorized officer or representative of each Party, which writing must contain an express reference to this Agreement.

19.3 *Assignment* : This Agreement and the obligations expressed herein shall not be assigned by either Party except with the prior written consent of the other Party. Notwithstanding the foregoing, any successor in interest to either Party shall be liable to the other Party for the full and proper performance of this Agreement. In the event of any permitted assignment, the Party making the assignment shall continue to be bound jointly and severally with the assignee for the proper performance of the obligations of this Agreement.

19.4 *English language* : All correspondence and technical documentation between the parties shall be in the English language.

19.5 *Continuation of Performance* : The parties shall continue performance of their respective obligations herein contained, notwithstanding any arbitration proceeding unless such obligations itself is the subject matter of such arbitration.

19.6 *No Waiver* : Failure of either party hereto to exercise any right hereunder or to claim for fulfillment of any term hereof will not relieve,

exempt or affect in any manner, the rights of the other party including the right to demand at any time strict and complete fulfillment of any or all provisions of this Agreement.

19.7 *List of Schedule* : The following schedules to the Agreement form an integral part of the agreement :

- Schedule 'A' --- Cost of Project and Means of Financing
- Schedule 'B' --- Time schedule for Payment of Capital
- Schedule 'C' --- Draft Agreement for provision of Technical Know-how and other services.

IN WITNESS WHEREOF, THE PARTIES have caused this Agreement to be executed by their duly authorised representatives in the presence of:

PARTY OF THE
FIRST PART

PARTY OF THE
SECOND PART

3—Technical Collaboration Agreement

This Agreement is made on this----- day of----- by and between----- a corporation organised and existing under the law of----- and having its principal place of business at----- (hereinafter referred to as 'SELLER' which expression shall unless excluded by or repugnant to the context or meaning thereof include its successors and permitted assigns) of the ONE PART and ----- a company incorporated and existing under the Companies Act, 1956 and having its registered office at----- (hereinafter referred to as "BUYER" which expression, unless excluded by or repugnant to the context or meaning thereof shall include its successors and permitted assigns) of the OTHER PART.

WHEREAS the SELLER has represented that it is the owner of and possesses technical know-how data, formulae, information, knowledge, experience and skill, necessary and required for manufacture of----- and also possesses technical know-how, information, data, skills and expertise in respect of erection and commissioning of plants for the aforesaid product.

AND WHEREAS the BUYER desires to obtain and the SELLER has agreed to provide to the BUYER various services in India for erection and commissioning of equipment and plant for the manufacture of-----

NOW THEREFORE the parties hereto, in consideration of the premises set forth hereinabove and of the mutual covenants and undertaking set forth hereinafter, hereby agree as follows:

1. Definitions

In this Agreement the following expressions shall, unless repugnant to the context thereof, have the meaning as respectively assigned to each of them hereunder:

1.1 Agreement shall mean this Technical Collaboration Agreement including all Annexures hereto and all subsequent amendments hereto made specifically in writing by the authorised representatives of the parties in accordance with the provisions contained herein.

1.2 Process shall mean the process developed and owned by the SELLER for producing the PRODUCT and as briefly described in Annexure 1 to the AGREEMENT.

1.3 Product shall mean the product of the quality and type as specified in Annexure-2 to the AGREEMENT produced according to the PROCESS.

1.4 Plant shall mean the plant to be set up at _____ in India in accordance with the KNOW-HOW for the production of the PRODUCT adopting the PROCESS and having the rated capacity as stipulated in Annexure 3 to the AGREEMENT.

1.5 Site shall mean the site in the State of _____ India at which the PLANT is to be located.

1.6 Technical Documentation shall mean the basic technical documentation designs and drawings in respect of the PROCESS and KNOW - HOW including data, information and process engineering.

1.7 Know-How shall mean all formulae, processes, process description, process parameters and all technical know-how, data, information, basic design and basic engineering, product and raw material specifications, equipment specification for the PLANT, quality control and inspection procedures of the PRODUCT and raw materials, preliminary layout study contained in the "TECHNICAL DOCUMENTATION" and all accumulated knowledge, experience and skill owned or possessed by the SELLER and whether patented/patentable or not.

1.8 Indian Engineering Consultant shall mean the Indian consultant and/or contractor to be appointed by the BUYER, acceptable to the SELLER, or the BUYER itself for inter alia, carrying out the detail design and engineering of the PLANT, assistance in procurement of the INDIGENOUS EQUIPMENT and construction and erection/supervision of the PLANT.

1.9 Date of Commissioning shall mean the date on which the raw materials have been fed into the PLANT and the first production of the PRODUCT has been commenced.

1.10 Date of Start-up shall mean the date on which, after the DATE OF COMMISSIONING, at least _____ tonnes of the PRODUCT have been produced in the PLANT.

1.11 Date of Acceptance shall mean the date on which the SELLER has successfully proved or is deemed to have proved the performance guarantees as set out in Annexure 2, 3 and 7 to the AGREEMENT in accordance with the provisions of the AGREEMENT and whereupon the PLANT has been accepted by the BUYER and a certificate of PLANT acceptance to this effect has been signed by the BUYER to the SELLER.

1.12 Net sale price means the price realised from the sale of the product net of excise duty and sales tax.

1.13 Effective Date shall mean the date on which this agreement shall come into force and effect in accordance with the provisions of clause 11 hereof.

1.14 Month, Quarter, year shall have reference to the Roman calendar.

2. Scope of the Agreement

THE AGREEMENT covers, inter alia, the supply of the TECHNICAL DOCUMENTATION, provision of KNOW-HOW and services including provision of SELLER's technicians, training of BUYER's personnel and the grant of licence by the SELLER for the use thereof by the BUYER as provided herein.

3. Seller's Obligations

3.1 The SELLER shall provide to the BUYER the TECHNICAL

DOCUMENTATION containing basic designs, drawings and informations in respect of PROCESS and KNOW-HOW and the same shall be delivered at _____ or at such other place outside India as may be mutually agreed by and between both the Parties hereto. The SELLER shall also provide to the BUYER complete know-how and other services including training of BUYER's personnel. The TECHNICAL DOCUMENTATION and KNOW-HOW shall be correct and complete in all respect and shall be such as shall enable the INDIAN ENGINEERING CONSULTANT for performing design, engineering, erection, commissioning, operation, maintenance of the plant and shall enable the BUYER to erect, commission, start-up, operate and maintain the PLANT and to produce thereat the PRODUCT of the quality and quantity, with the consumption of raw materials and utilities as specified herein.

3.2 The SELLER shall deliver the TECHNICAL DOCUMENTATION to the BUYER within _____ from the effective date. On receipt of the TECHNICAL DOCUMENTATION, the BUYER shall issue to the SELLER a receipt thereof. The issue of such receipt by the BUYER to the SELLER shall not however relieve in any manner the SELLER of its obligations of correctness and completeness, and its obligations hereunder, and the SELLER shall, up to the DATE OF ACCEPTANCE, at its cost remove and/or rectify all deficiencies and/or defects therein promptly notwithstanding anything to the contrary contained herein.

3.3 The SELLER shall provide to the BUYER the following technical assistance and services by deputing SELLER'S TECHNICIANS to India for:

(i) Review and checking of all detail design and engineering including all drawings for compliance with the KNOW-HOW to be performed by the INDIAN ENGINEERING CONSULTANT.

(ii) Review and checking of specifications for compliance with the KNOW-HOW of all bought out equipment other than the FOREIGN EQUIPMENT as approved by the SELLER.

(iii) Provide erection supervision services for the equipment.

(iv) Supervision of commissioning and start-up of the PLANT.

(v) All other services elsewhere provided herein.

3.4 The performance guarantees hereunder of the SELLER shall be provided by the Seller through performance guarantee test run(s) in accordance with the provisions herein contained.

3.5 The TECHNICAL DOCUMENTATION to be provided hereunder by the SELLER shall be supplied to the BUYER outside India in 2 (two only) reproducible copies and 6 (six only) blue prints and in English language.

3.6 The TECHNICAL DOCUMENTATION shall be in metric system.

3.7 The SELLER shall provide and make available to the BUYER after receipt of due notice, whenever required by the BUYER, competent and qualified technicians/specialists (herein referred to as "SELLER'S TECHNICIANS") in sufficient number for the purpose of supply of technical supervision services to the BUYER and/or the INDIAN ENGINEERING CONSULTANT and/or its sub-contractor(s) in the performance of the detail engineering, erection, commissioning, start-up and operation of the PLANT and also supervision of performance guarantee test run(s), subject to the provisions of clause 7.3 hereof.

3.8 The SELLER shall, in addition to the aforesaid, as and when required by the BUYER, depute such number of SELLER'S TECHNICIANS as may be required by the BUYER from time to time during the term of AGREEMENT, subject to the provisions of clause 7.3 hereof.

3.9 The SELLER shall not at anytime withdraw any of SELLER'S TECHNICIANS deputed to the BUYER without the prior written consent of the BUYER which shall not be withheld unreasonably. If however the BUYER is in arrears with any payment by more than _____ days, the SELLER shall be entitled to withdraw any and/or all of SELLER'S TECHNICIANS without any further notice.

3.10 SELLER agrees that neither SELLER nor their Technicians shall make any claim against BUYER for any loss and/or damage to SELLER'S property or person caused due to their own negligence. However, SELLER shall be liable for any loss or damage that may be suffered by the person or property of BUYER or third parties due to the negligence of SELLER'S TECHNICIANS in the execution of their duties.

3.11 In fulfilling its obligations hereunder, the SELLER shall abide by all applicable code, rules, regulations, directions, notifications, etc., in force in the State of India as made known to the SELLER by the BUYER in writing. In the event of any change(s) in such codes, laws and/or regulations, etc, after the EFFECTIVE DATE which necessarily require changes and/or modification in the TECHNICAL DOCUMENTATION the SELLER shall make all necessary changes and/or modifications therein, subject to the provisions set out in clause 3.12 herein below.

3.12 In the event the SELLER has to make any change and/or modifications relating to the TECHNICAL DOCUMENTATION or KNOW-HOW or any of its obligations under this agreement by reason of any change in applicable codes, laws and regulations or if the BUYER requires any modifications which do not affect the performance guarantee given herein and also do not require any additional cost to be incurred by the SELLER thereunder and also is practically possible for the SELLER, SELLER shall carry out the same within a reasonable time.

However, if such changes or modifications require adjustment in the consideration payable hereto, the SELLER shall submit in writing to the BUYER an estimate of the adjustments in consideration and in time schedule. If such estimates are agreed to, the parties shall enter into a supplementary agreement and only after such agreement has been entered into and approved by the concerned Indian authorities including Reserve Bank of India, if required, the SELLER shall carry out such modifications.

3.13 SELLER undertakes to perpetually supply or arrange to supply at international prices all proprietary raw materials, consumables and components to successfully manufacture the PRODUCT.

4. Training of Buyer's Personnel and Technical Services

4.1 Prior to the Date of Commissioning, SELLER shall upon written request received from the BUYER, arrange to impart training to BUYER's personnel in the manufacture of product and in the inspection, operation and maintenance of the plant and the manufacture, inspection and quality control of the products at SELLER'S plants or at the plant of one of its associate companies. The timing of such training visits of BUYER'S personnel and the number of BUYER'S personnel involved in each such training visit shall be mutually agreed to by the parties hereto and will be

limited to _____ man months. All salaries and living and travelling expenses incurred by such BUYER'S personnel shall be borne by BUYER. Such training will be imparted in English.

4.2 The personnel sent by BUYER shall be permitted to take notes or make sketches in connection with the information given to them and BUYER shall ensure that their personnel treat such information and notes as strictly confidential and shall not disclose such information to third parties except as provided hereunder.

4.3 SELLER shall, as part of the training of BUYER's personnel, explain the technical documentation, drawings, writings and specification relating to Technical Documentation and Know-how including operation and maintenance manuals to BUYER's personnel and shall impart to them know-how and experience associated with the production of products which is not covered by such technical documentation, drawings, writings and specifications and shall give them an opportunity to acquaint themselves with the techniques relating to the production of PRODUCT. This training will be imparted by qualified and English speaking personnel of SELLER.

4.4 At any/all times during the term of this agreement, SELLER shall, upon written request from BUYER, arrange to provide to the technical personnel of BUYER at its Plant or at the Plant of its associate companies, as per agreed schedule for periods not exceeding in the aggregate _____ man months per year to study the maintenance and operation of machinery and equipment comprised in the plant as also of process and techniques in the TECHNICAL DOCUMENTATION for the production of the PRODUCT, any change or improvement therein used by or known to the SELLER within the scope of this agreement and to confer with SELLER any problems arising out of BUYER's Technical operation and/or practice of Technical Documentation within the scope of this Agreement and to provide advice, clarification and/or additional information sought by such personnel from SELLER. All salaries of such BUYER's personnel and their boarding, lodging, travelling and other expenses shall be borne by BUYER.

4.5 BUYER's personnel shall be subject to SELLER's company regulations at Seller's factory and shall be subject to their laws and customs and shall follow the same at all times during their stay at SELLER's plant.

4.6 SELLER shall familiarise BUYER's technicians at SELLER's plant at _____ with the design and engineering as used in the plant as contained in TECHNICAL DOCUMENTATION to enable them to undertake eventual independent performance of the plant.

4.7 The tentative details of training to be provided to BUYER'S personnel in different areas is as per Annexure 4.

5. Grant of Licence

5.1 The SELLER hereby grants to the BUYER a non-exclusive (or exclusive) right and licence to manufacture the PRODUCT in the PLANT with the KNOW-HOW including the PROCESS in India and to sell and market the PRODUCT worldwide except to the countries as mentioned in Annexure-5.

5.2 The SELLER has option to convert the exclusive licence as stipulated in clause 5.1 hereinabove to a non-exclusive right if the BUYER ceases commercial production any time for a continuous period of _____ months after _____ year from the date of START UP.

5.3 The BUYER shall notwithstanding anything to the contrary contained herein be entitled to and shall have the right to use and practice the KNOW-HOW and to manufacture therewith the PRODUCT in the PLANT after the expiry of the term of the AGREEMENT or its earlier termination due to the default of the SELLER without any further payments whatsoever to the SELLER.

5.4 The SELLER hereby grants to the BUYER a non-exclusive right and licence under all its applicable patents, if any, for the respective lives of such patents to the extent applicable to the KNOW-HOW including the PROCESS and the TECHNICAL DOCUMENTATION for the production of the PRODUCT in India and grants to the BUYER the right to market the PRODUCT worldwide (with the exception of the countries as mentioned in Annexure-5) notwithstanding the expiry of the term of the AGREEMENT or its earlier termination due to the default of the SELLER and all the payments due and payable hereunder shall constitute full compensation therefor.

5.5 The BUYER shall be entitled to sub-licence the KNOW-HOW to any other party in India on terms mutually agreed upon in writing by all

the parties concerned, including the SELLER, subject to any approval of the Government of India as may be required.

5.6 The SELLER hereby grants to the BUYER the right to the use of a label stating, "manufactured in technical collaboration with-----" for promoting the PRODUCT during the term of the AGREEMENT.

6. Obligations of the Buyer

6.1 The BUYER shall follow in the implementation and practice of the TECHNICAL DOCUMENTATION and KNOW-HOW, the instructions given by the SELLER in respect thereof.

6.2 The BUYER shall at its cost provide the necessary raw materials and utilities as specified in the TECHNICAL DOCUMENTATION, the qualified local personnel necessary for the erection, commissioning and START-UP of the PLANT for the conducting of the performance guarantee test run(s) under the supervision and directives of the SELLER. The SELLER, however, shall supply to the BUYER a written list of all relevant requirements for test run(s) at least ----- months prior to the DATE OF START-UP.

6.3 The BUYER shall procure, obtain and maintain any and all requisite licences, approvals, permits and/or authorisations at its cost as are necessarily required for the fulfilment of SELLER's obligations in India. The SELLER shall provide all such information and assistance which may be required by the BUYER in this regard. Where any application, licence or authorisation is required to be made or obtained by the SELLER, he shall apply for and obtain the same and the BUYER in such a situation shall render all reasonable assistance to the SELLER in this behalf.

6.4 The BUYER shall give to SELLER's and/or its sub-contractors' personnel free access to the PLANT.

6.5 The BUYER shall pay to the SELLER the consideration agreed to be paid as per clause 7 hereof.

6.6 The BUYER agrees that he or his technicians shall not make any claim on the SELLER for any loss and/or damage to BUYER's property or person caused due to their own negligence. However, BUYER shall be liable for any loss or damage that may be suffered by the person or property of SELLER or any of its personnel or third parties due to the negligence of the BUYER's technicians in the execution of their duties.

7. Consideration and Payments

7.1 The BUYER shall pay to the SELLER subject to applicable Indian taxes the following amounts:

(i) a lump sum payment of _____ towards the supply of TECHNICAL DOCUMENTATION;

(ii) a further lump sum payment of _____ towards the provision of KNOW-HOW and services including training of BUYER's personnel and grant of licence.

The aforesaid lump sum payments shall be paid in three equal instalments as detailed below:

(a) 1/3 within _____ days from the date of requisite approval of the collaboration agreement by the Government of India including Reserve Bank of India;

(b) 1/3 within _____ days from the date of transfer of TECHNICAL DOCUMENTATION;

(c) 1/3 within _____ days from the DATE OF START UP.

7.2 During the term of this Agreement the BUYER also agrees to pay to the SELLER within _____ days of the close of each quarter, beginning _____ year after the Effective Date of this Agreement, regardless of the particular manner of manufacture used by BUYER (whether with SELLER's technology or not), an amount ("Periodic payment") equal to _____ percent of the total domestic Net Sale Price of all products sold or otherwise transferred by BUYER to any third party within India during the preceding quarter and _____ percent of the total export Net Sale Price of all products exported or otherwise transferred by Buyer to any third party outside India during the preceding quarter.

Buyer agrees to pay a liquidated late payment charge of _____ percent per annum on all Periodic payments that become overdue.

7.3 In addition to above, the BUYER shall pay Rs. _____ per man-month to the SELLER for the deputation of SELLER's Technicians for supervision services as set out in clause 3.7 and 3.8 hereof. The payment in this regard shall be made by the BUYER to the SELLER within _____ days from the date of presentation of SELLER's bill. The SELLER shall raise the bills on quarterly basis covering the actual man-months served by its technicians during the preceding quarter.

7.4 The basic periodic payments and payments for technicians as provided for in this Agreement shall be made free of any deductions except taxes imposed on SELLER under the law of India which taxes must be deducted from the said payments. In the event of the return of goods to the BUYER by its customers of PRODUCT for which a periodic payment has been made, the BUYER shall be allowed a credit in the amount of such periodic payment from the Periodic payment that next becomes owing from BUYER to SELLER.

The BUYER shall also send to the SELLER an official tax receipt or prescribed tax deduction certificate for all taxes required to be withheld by BUYER on SELLER's behalf.

7.5 The BUYER agrees to keep at its principal office in India, full, true and accurate books of account and records, relating to the manufacture, sale or other disposition of its PRODUCT in such detail as will enable the SELLER to ascertain what periodic payments are due. The SELLER through independent chartered accountants or equivalent agent, of its own selection (or employees thereof) as its duly accredited representatives, shall have access to such records and books during reasonable business hours once in each quarter/calendar year¹ to inspect the same and make excerpts therefrom for the purpose of verifying the accuracy of the reports and payments as required under this Agreement. These accountants may report to SELLER only the amount of Periodic Payments due and payable and SELLER will neither request nor accept any other information.

7.6 The BUYER agrees to make quarterly reports to Seller in respect of all Products for which a Periodic payment is due under this Agreement by virtue of its having been sold or otherwise transferred by BUYER during the preceding quarter. The said reports shall be in such form as SELLER may reasonably request and shall set forth at a minimum:

- (a) the total of all Net Sales Prices by BUYER during that quarter; and
- (b) the total number of units sold (sales volume) of Product by Buyer during said quarter.

The said reports shall be forwarded to Seller not later than the day following the close of each quarter.

1 One of these is to be deleted.

8. Patent Indemnity

8.1 The SELLER hereby warrants that the licence granted hereunder by the SELLER to the BUYER and the use and practice by the BUYER of the KNOW-HOW including the PROCESS and/or the TECHNICAL DOCUMENTATION supplied by the SELLER to the BUYER pursuant hereto, does not infringe any patent, copyright, registered design or other industrial property rights of any person in India. In the event that an action, suit or proceeding is brought by any person in India against the BUYER based on any such infringement, the BUYER shall promptly give written notice thereof to the SELLER and the SELLER shall defend the said action for the BUYER at SELLER's cost.

8.2 The BUYER shall fully cooperate with the SELLER in the defence of any such infringement action and shall render all reasonable assistance to the SELLER in all such proceedings and shall have the right to be represented in any such proceedings at its cost and expense.

8.3 Without prejudice to the aforesaid, if at any time any third party raise any objection, claim or demand on any account whatsoever, in respect of the implementation/further implementation of the AGREEMENT, both the Parties hereto shall, without any delay, on receipt of notice of any such objection, claim or demand by any third party, cooperate with each other and determine the manner in which the same should be dealt with.

9. Warranty and Performance Guarantees

9.1 The SELLER warrants that the TECHNICAL DOCUMENTATION, KNOW HOW and other services shall be complete and be such as to enable the INDIAN ENGINEERING CONSULTANT to undertake the detail design and engineering so as to enable the BUYER to erect, commission, startup, operate and maintain the PLANT and to produce thereat the PRODUCT of the quality and in the quantity and with the consumption of raw materials and utilities as guaranteed hereunder.

9.2 The SELLER warrants that the PLANT designed, engineered, erected, commissioned operated and maintained in accordance with the KNOW-HOW and TECHNICAL DOCUMENTATION shall produce the PRODUCT of the quality as provided herein and with the consumption of raw materials and utilities as guaranteed hereunder.

9.3 The PLANT erected, commissioned, operated and maintained in accordance with the KNOW- HOW and TECHNICAL DOCUMENTATION shall produce the PRODUCT of the quality as set out in Annexure-2 hereto and shall have a capacity as set out in Annexure-3 hereto with the consumption of raw materials and utilities as specified in Annexure-7 hereto.

9.4 The performance guarantees and warranties given by SELLER under this Agreement are subject to the following conditions:

(i) The INDIAN ENGINEERING CONSULTANT has performed the engineering in compliance with the KNOW- HOW and TECHNICAL DOCUMENTATION.

(ii) The PLANT is erected, operated and maintained in accordance with the KNOW - HOW and TECHNICAL DOCUMENTATION.

(iii) The raw materials, auxillary materials and utilities used for the production of the PRODUCT at the PLANT are as per the specifications as set out in Annexure - 6 hereto and such raw materials, auxiliary materials are available continuously in sufficient quantities and in due time.

(iv) The recommended number of qualified and trained personnel of the BUYER are operating the PLANT.

(v) The PLANT has been erected and commissioned under the supervision of SELLER's TECHNICIANS in accordance with the provisions herein contained and minimum man months technical supervision services thereof have been rendered by the SELLER.

9.5 After the erection of the PLANT, it shall be commissioned by the BUYER under the direction and supervision of SELLER's TECHNICIANS. The BUYER shall operate the PLANT and at all times hold the full management responsibility for its operation and the execution of SELLER's written directives given pursuant hereto.

9.6 After the DATE OF COMMISSIONING the PLANT shall be started up by the BUYER under SELLER's supervision.

9.7 Once the PLANT reaches stable operating conditions as indicated by a continuous run of not less than days in achieving a minimum of percent of the designed capacity producing the PRODUCT, both the Parties hereto shall agree upon the date of commencement of the performance test run for proving the performance guarantees given

hereunder by the SELLER, and if no agreement is reached as aforesaid, the performance test run shall be held within ten days after the PLANT has run _____ percent of design capacity producing the PRODUCT for a minimum period of seven days as set out hereinabove.

9.8 The detailed procedure for the performance test run shall be agreed in writing by both the Parties hereto well in advance of the commencement thereof. Both the Parties hereto agree that the average figures arrived at for various guarantee figures over the period of the performance test run shall be taken as the basis for determining whether the performance guarantees are met or not.

9.9 The performance test run for proving the performance guarantees hereunder shall be of _____ consecutive days duration. During the performance test run the plant shall be operated by BUYER's personnel under the supervision of SELLER's TECHNICIANS in accordance with SELLER's written operating instructions. Any and all results and/or data during the performance test run shall be jointly compiled by both the Parties hereto and initialled by their authorised representatives.

9.10 If the results of the said performance test run show that the performance specifications as set out in Annexures - 2,3 and 7 hereto are met, the BUYER shall sign a certificate of plant acceptance within _____

days from the date on which the performance test run was completed and the SELLER shall thereupon be deemed to have fulfilled its performance guarantee obligations hereunder. The date on which this certificate has been signed by the BUYER shall be deemed as the DATE OF ACCEPTANCE.

9.11 In case of performance guarantee test being unsuccessful, the parties shall examine the cause of the failure jointly and the party being responsible for the cause shall take necessary action quickly.

9.12 If within a period of _____ months from the date of commissioning of the plant the performance test could not be held under this agreement for reasons attributable to BUYER and guarantees and warranties could not be proved for reasons not attributable to SELLER despite SELLER's best efforts, SELLER will be deemed to have fulfilled its obligation in regard to the performance guarantee provided.

9.13 If the performance guarantees and warranties could not be proved under the performance test held pursuant to this Agreement

within _____ months of the date of commissioning of the Plant due to reasons attributable to SELLER or if performance test could not be held or completed within _____ months of the commissioning of the Plant for reasons substantially attributable to SELLER, SELLER shall be liable for losses and/or damages that may be suffered or incurred by BUYER and SELLER hereby agrees to indemnify and to keep indemnified BUYER in respect of the said losses and/or damages.

The liquidated damages shall be _____.

9.14 Neither party shall be liable to the other for any indirect or consequential loss or damage.

10. Improvements, Other Technical Assistance and Training

10.1 The SELLER shall provide and disclose to the BUYER free of charge during the term of the AGREEMENT any and all improvements and/or innovations and/or developments and/or modifications to the TECHNICAL DOCUMENTATION and KNOW-HOW including the PROCESS and PRODUCTS and the BUYER shall be entitled to use and practise the same at the PLANT without being required to pay any sum whatsoever to the SELLER for the same.

10.2 During the term of the AGREEMENT the SELLER shall accept BUYER's technical personnel for the exchange of views free of charge regarding operation and maintenance of the PLANT at its existing plants at _____. The timing, the number of persons to be delegated by the BUYER and the duration of such visit(s) shall be mutually agreed by and between both the parties hereto. Any and all cost of such visit(s) including any and all expenses related to travelling, insurance, sustenance, etc., of said personnel shall be borne by the BUYER.

10.3 The SELLER agrees to provide to the BUYER all possible assistance, if so required by the BUYER, for the development of the market for the PRODUCT. The assistance could be in any form including the training of an agreed number of BUYER's sales personnel at its existing plant at _____, supply of any information, such as quality specifications, testing methods relevant to the applications of the PRODUCT, etc. THE SELLER shall also provide to the BUYER any information available in respect of the end use of the PRODUCT. The terms and conditions for

visit(s) in connection with such assistance shall be agreed upon between both the parties hereto from case to case in due time.

10.4 In the event of the BUYER being desirous of setting up a research and development laboratory for the PROCESS and the PRODUCT as set out in the AGREEMENT, the SELLER shall provide to the BUYER all necessary assistance for setting up and operation of a research laboratory. The assistance as set out hereinabove shall be such as to provide information on the selection of equipment for such laboratory, to permit BUYER's representatives to visit the SELLER's existing research and development laboratory for a mutually agreed number of man-days on such terms as may be decided mutually between both the parties.

11. Commencement of Agreement

11.1 This Agreement shall come into force and effect on the last day of happening of all of the following events:

- a) The Agreement is signed and executed by the parties hereto.
- b) The Government of India has taken this Agreement on record.
- c) The Agreement is approved by the Government of _____

12. Term and Termination

12.1 The AGREEMENT shall come into force and effect from the EFFECTIVE DATE and shall remain in full force and effect for a period of _____ years from the Effective Date.

12.2 A party hereto may terminate this Agreement in the event of:

a) The other party committing a substantial breach of this Agreement and failing to rectify the same within _____ days of the receipt of a written notice in this regard from it; or

b) If a creditor takes possession of or a Receiver is appointed on the whole or a substantial part of the undertaking or assets of the other party; or

c) If the other party becomes insolvent or is taken into liquidation or an effective resolution for its winding up is passed by its shareholders; or

d) The sale of the whole or substantial part of the undertaking of the other party for any reason whatsoever.

15.7 Failure of any party at any time to require performance by the other party of any obligations hereunder shall not affect the right of such Party to require performance of that obligation and any failure by any party to notify or to take any action in respect of any breach of any provision of the AGREEMENT shall not be construed as a waiver thereof or of any continuing or succeeding breach of such provision or a waiver of any right under the AGREEMENT.

15.8.1 The BUYER shall keep secret and confidential the KNOW-HOW and the TECHNICAL DOCUMENTATION and shall not disclose the same to any third party without the prior consent in writing of the SELLER.

This secrecy clause shall continue in force until any and all of the KNOW-HOW and the TECHNICAL DOCUMENTATION have become part of the public domain.

15.8.2 The secrecy undertaking as per clause 15.8.1 hereof, however, shall not be applicable and the BUYER shall be under no obligation of secrecy hereunder in respect of any information or knowledge, if such information or knowledge:

- was in lawful possession of the BUYER or its contractors or vendors of equipment prior to the disclosure thereof by the SELLER and has not been obtained by it/them either directly or indirectly from the SELLER; or
- is, after disclosure by the SELLER, lawfully disclosed to the BUYER or its contractors or vendors of equipment by any third party having no obligations of secrecy to the SELLER; or
- has entered before or after the conclusion of the AGREEMENT into the public domain not through any act or omission of the BUYER or its contractors or vendors of equipment.

15.8.3 Disclosure of any part of the KNOW-HOW and/or the TECHNICAL DOCUMENTATION to the authority concerned of India or under appropriate agreements of secrecy to BUYER's engineering consultants or contractors or vendors of equipment or to persons engaged in the erection or commissioning or start up or operation or maintenance of the PLANT shall not be construed as a breach of the secrecy undertaking contained in clause 15.8.1 hereof.

Court of Arbitration in accordance with the said Rules. The venue of Arbitration shall be _____ . All arbitration proceedings shall be in the English language. Judgment upon the award rendered in such arbitration may be entered in any court having jurisdiction in India or _____.

14.3 Any arbitration award made in such arbitration proceeding shall be final and binding on both the parties hereto and shall be enforceable in any court having jurisdiction over the matter.

14.4 During the course of arbitration proceedings both the parties hereto shall continue to execute their respective obligations hereunder, except the obligations in respect of such matter(s) as is/are referred to arbitration.

14.5 The cost of arbitration shall be borne by the party(ies) as determined in the award.

15. Miscellaneous

15.1 The TECHNICAL DOCUMENTATION shall be in metric system and English language and any and all documents and/or correspondence under the AGREEMENT shall be in English.

15.2 The BUYER shall secure and/or assist the SELLER in securing any and all permissions as may be required in India for the performance of SELLER's TECHNICIANS.

15.3 Neither party shall be entitled to transfer or assign its obligations hereunder without the prior consent in writing of the other party.

15.4 Any and all amendments and/or supplements and/or alterations to the AGREEMENT shall be in written form and shall be effectual, if signed by the authorised representatives of both the parties hereto.

15.5 Any and all notices or communications with reference to the AGREEMENT shall be made by registered mail and shall be directed by one party to the other party at the respective address of business.

Either Party may, by a written notice to the other party, change the address for the purpose of notices hereunder.

15.6 The headings and numbers of the clauses hereof and Annexures hereto are for the sake of convenience only and shall not be construed or interpreted as affecting the contents or context or meaning of the provisions hereof.

15.7 Failure of any party at any time to require performance by the other party of any obligations hereunder shall not affect the right of such Party to require performance of that obligation and any failure by any party to notify or to take any action in respect of any breach of any provision of the AGREEMENT shall not be construed as a waiver thereof or of any continuing or succeeding breach of such provision or a waiver of any right under the AGREEMENT.

15.8.1 The BUYER shall keep secret and confidential the KNOW-HOW and the TECHNICAL DOCUMENTATION and shall not disclose the same to any third party without the prior consent in writing of the SELLER.

This secrecy clause shall continue in force until any and all of the KNOW-HOW and the TECHNICAL DOCUMENTATION have become part of the public domain.

15.8.2 The secrecy undertaking as per clause 15.8.1 hereof, however, shall not be applicable and the BUYER shall be under no obligation of secrecy hereunder in respect of any information or knowledge, if such information or knowledge:

- was in lawful possession of the BUYER or its contractors or vendors of equipment prior to the disclosure thereof by the SELLER and has not been obtained by it/them either directly or indirectly from the SELLER; or
- is, after disclosure by the SELLER, lawfully disclosed to the BUYER or its contractors or vendors of equipment by any third party having no obligations of secrecy to the SELLER; or
- has entered before or after the conclusion of the AGREEMENT into the public domain not through any act or omission of the BUYER or its contractors or vendors of equipment.

15.8.3 Disclosure of any part of the KNOW-HOW and/or the TECHNICAL DOCUMENTATION to the authority concerned of India or under appropriate agreements of secrecy to BUYER's engineering consultants or contractors or vendors of equipment or to persons engaged in the erection or commissioning or start up or operation or maintenance of the PLANT shall not be construed as a breach of the secrecy undertaking contained in clause 15.8.1 hereof.

15.8.4 In the event of the BUYER being obliged to provide access to the personnel of the indigenous research and development institution or organisation identified by any statutory authority for the purpose of examining the technology absorption or adaptation or improvement plans, the SELLER shall not have any objection to providing such access to the personnel of such institution or organisation to the PLANT or laboratory of the BUYER. Any disclosure of data to such personnel shall not constitute breach of secrecy.

15.9 If any of the terms or provisions of the AGREEMENT is or becomes void or ineffective, the effectiveness of all other terms and provisions of the AGREEMENT shall not be affected and both the Parties hereto shall use their best efforts to replace any such ineffective or void terms or provisions by effective terms or provisions producing the same or equivalent effects as the effect of the void or ineffective terms or provisions.

15.10 The AGREEMENT provides for any and all liabilities and/or obligations of both the Parties hereto and no obligation and/or liability other than those expressly stipulated in the AGREEMENT shall be assumed by either party.

15.11 The AGREEMENT shall be made in duplicate and both the copies shall be deemed to be originals, one each of which shall be retained by each Party to the AGREEMENT.

16. List of Annexures

16.1 The following Annexures to the AGREEMENT are an integral part of the AGREEMENT.

- Annexure 1 Brief description of the PROCESS
- Annexure 2 Quality and type of the PRODUCT
- Annexure 3 Capacity of the Plant
- Annexure 4 Details of training to be provided by the
SELLER to BUYER's personnel.
- Annexure 5 List of countries where Export is not
permitted to the BUYER.
- Annexure 6 Specification of the Raw Materials and the
the Utilities.
- Annexure 7 Material Consumption Data

IN WITNESS WHEREOF, both the Parties hereto have duly executed the AGREEMENT on the day and in year first above written.:

4—Supplement to Technical Collaboration Agreement

THIS SUPPLEMENTAL AGREEMENT is made this _____ day of _____ by and between _____ a corporation organised and existing under the laws of _____ and having its principal place of business at _____, (hereinafter referred to as "SELLER" (which expression shall unless excluded by or repugnant to the context or meaning thereof include its successors and permitted assigns) of the ONE PART and _____ a company incorporated and existing under the laws of India and having its Registered office at _____, India (hereinafter referred to as "BUYER" which expression unless excluded by or repugnant to the context or meaning thereof shall include its successors) of the OTHER PART.

WHEREAS BUYER and SELLER have entered into an agreement dated _____ to provide to BUYER various services abroad for imparting TECHNICAL DOCUMENTATION and various services in India for erection and commissioning of equipments and plant for manufacture of _____;

AND WHEREAS in consideration of SELLER providing TECHNICAL DOCUMENTATION and KNOW-HOW, the BUYER has agreed to pay a lump sum of Rs. _____ inclusive of applicable Indian taxes payable in three instalments as provided in Clause _____ of the Technical Collaboration Agreement dated _____;

AND WHEREAS the BUYER has proposed and SELLER has accepted that clause _____ of the said Technical Collaboration Agreement should be amended to provide for revised amount of instalment payments.

NOW therefore it is mutually agreed between the parties that clause _____ of the said Technical Collaboration Agreement dated _____ is substituted by the following new clauses to read as under:

- 1.
- 2.
- 3.
- 4.
- 5.

The provisions of this Agreement are supplemental to and not derogative of Technical Collaboration Agreement and to the extent of any inconsistency between the provisions of this agreement and the said agreement, this agreement shall prevail. Save and except as aforesaid the provisions of the Technical Collaboration Agreement shall remain in full force and effect and continue to be binding on the parties.

IN WITNESS WHEREOF the parties hereto have put their hands hereunto on the _____ day of _____ and year first above written.

FRANCHISE

Preliminary Note

In the words of Hon'ble Mr. Justice S.P. Bharucha (Judge Supreme Court of India) in his Foreword to Abell and Sen's *FRANCHISING IN INDIA* (Eastern Law House, 1998). "Franchising, to put it rather broadly, is the permission given by the proprietor of a brand name to another to manufacture and sell the product, or provide the service, in his particular area, utilising the brand name and the proprietors' designs, know-how and expertise, while strictly complying with the proprietors' standards as to the quality of the product or service and incidental matters that ensures that the reputation of the product or service is not diminished."

Franchising helps big corporations to expand their business and popularise their brand names without risking large sums of money by way of direct investment. The local dealer who acts as a franchisee is able to operate at a lesser cost and utilise his local market knowledge while getting the advantage of financial and technical know-how lent by the franchisor and the good-will attached to the brand name of the latter.

The European Community Commission in its study (1978) has identified five different types of franchise, namely

- (1) manufacturer and wholesaler;
- (2) manufacturer and retailer;
- (3) wholesaler and retailer;
- (4) service industry and retailer;
- (5) undertaking in the same distributive group (the voluntary chain group).

The Commission has also classified franchises as industrial distribution and service franchises.

Among the well known foreign brands which have developed franchises in India are McDonald's (burgers), K.F.C., (fried chicken), Pepsi and Coke. We also have well known Indian franchises such as Shahmaz Beauty parlours, Titan Watches, Tanishq Jewellery, Tata/Maruti Service Stations, and Vimal Raymond/Bombay Dyeing Showrooms (textiles).

Here we are giving a specimen of the more common form of franchising, namely, a unit franchise, meaning the right to operate one unit or outlet of the franchised business:

PRECEDENTS

1—Franchise Agreement to Operate an Outlet

THIS AGREEMENT is made on _____ between AB etc., _____ (hereinafter called "the Franchisor") of the one part and CD etc., _____ (hereinafter called "the Franchisee") of the other part.

WHEREAS the Franchisor is the owner of and possesses the data, formulae, information, knowledge, expertise and technical know-how (hereinafter called "the know-how") in _____ (hereinafter called "the Service");

AND WHEREAS the Franchisor desires to spread the business of the above Services and is willing to grant to the Franchisee the rights set out herein for this purpose;

AND WHEREAS the Franchisee is willing to have those rights with a view to providing the Services from the premises described in the Schedule I hereto (hereinafter called the "Premises") under the name and style of _____ (hereinafter called "the Marks") which is detailed in the Schedule II hereto, as directed in the Franchisor's operation manual.

NOW THEREFORE, in consideration of the covenants hereinafter contained, the parties hereto mutually agree as follows :

1. Interpretation clause

In this Agreement the following expressions shall, unless the context otherwise requires, have the meanings respectively assigned to them hereunder :

1.1 References to the parties hereto shall include, subject to the terms, of this Agreement, their respective successors and assigns.

1.2 'Business' means the business of providing and marketing the Services.

1.3 'Equipment' means the equipment from time to time required by the Franchisee for use in the Business.

1.4 "Manual" means the manual provided by the Franchisor to the Franchisee together with all additions and amendments thereto from time to time.

1.5 "Secret or confidential information" includes confidential information provided by the Franchisor to the Franchisee through letter, correspondence, memorandum or otherwise for the purpose of or relating to the Service connected with the Business.

2. *Rights Franchised*

Subject to the covenants hereinafter contained the Franchisor grants to the Franchisee the rights to carry on Business, to utilise the know-how and to use the Marks in accordance with the provisions of this Agreement.

3. *Period*

This Agreement shall subsist for a period of _____ years commencing on _____ day of _____ 2000.

4. *Renewal*

If after a period of _____ years from the commencement and at least three months before the expiration of this Agreement, the Franchisee requests the Franchisor in writing for renewal of this Agreement, and if the Franchisee has not committed a breach of any terms and conditions of this Agreement, the Franchisor shall renew this Agreement for a further period of _____ years from the date of expiration of this Agreement on such terms and conditions as currently being offered to new Franchisees at that time.

5. *Franchisee's Obligations*

5.1 *Obligation relating to Marks*

The Franchisee undertakes that---

(a) he shall use the marks only for the purposes of promoting the Business and Services.

(b) he shall abide by all the reasonable directions of the Franchisor in connection with the use and presentation of Marks.

(c) the equipment regularly used by the Franchisee in the Business and Services shall carry such words, devices or designs and in such colour and manner, as may be directed by the Franchisor.

PRECEDENTS

1—Franchise Agreement to Operate an Outlet

THIS AGREEMENT is made on _____ between AB etc.,
_____ (hereinafter called "the Franchisor") of the one part and CD
etc., _____ (hereinafter called "the Franchisee") of the other part.

WHEREAS the Franchisor is the owner of and possesses the data, formulae, information, knowledge, expertise and technical know-how (hereinafter called "the know-how") in _____ (hereinafter called "the Service");

AND WHEREAS the Franchisor desires to spread the business of the above Services and is willing to grant to the Franchisee the rights set out herein for this purpose;

AND WHEREAS the Franchisee is willing to have those rights with a view to providing the Services from the premises described in the Schedule I hereto (hereinafter called the "Premises") under the name and style of _____ (hereinafter called "the Marks") which is detailed in the Schedule II hereto, as directed in the Franchisor's operation manual.

NOW THEREFORE, in consideration of the covenants hereinafter contained, the parties hereto mutually agree as follows :

1. Interpretation clause

In this Agreement the following expressions shall, unless the context otherwise requires, have the meanings respectively assigned to them hereunder :

1.1 References to the parties hereto shall include, subject to the terms, of this Agreement, their respective successors and assigns.

1.2 'Business' means the business of providing and marketing the Services.

1.3 'Equipment' means the equipment from time to time required by the Franchisee for use in the Business.

1.4 "Manual" means the manual provided by the Franchisor to the Franchisee together with all additions and amendments thereto from time to time.

(f) *Access to customers and personnel*

The Franchisee shall permit the Franchisor and/or his duly authorised agent to interact with the customers and the Franchisee's personnel to know about the Services being provided by the Franchisee.

(g) *Insurance*

The Franchisee shall ensure with a reputed insurance company in an adequate sum against all reasonably foreseeable risks relating to the rendering of Services connected with the Business including product liability arising out of any act, omission or negligence of the Franchisee or any other person for whom Franchisee is responsible. Insurance should cover all liability in respect of death or injury to customers, Franchisee's personnel or third persons and damage to property. Franchisee shall provide copies of such insurance policies and proof of premium payments to the Franchisor upon its request and abide by the directions of the Franchisor in this behalf.

(h) *Indemnity*

The Franchisee shall indemnify and keep indemnified the Franchisor from and against all loss, damage or liability suffered by the Franchisor due to any act, omission or negligence of Franchisee.

(i) *Notice about Franchisee status*

The Franchisee shall clearly indicate on his letter-head and correspondence with the public and customers that he is a Franchisee of the Franchisor. The Franchisee shall prominently display this fact on the notice board at his premises from where Services relating to Business are being rendered by it.

(j) The Franchisee shall not be entitled to demise, assign, or let out the know-how of the Services connected with the Business to any other person.

- (k) The Franchisee shall comply with all the reasonable requirements of the Franchisor which are consistent with the terms and conditions of this Agreement and which are necessary for the efficient discharge of the Services connected with the Business.
- (l) The Franchisee shall obtain prior written consent of the Franchisor before making any structural change in the trading style of the Franchisor.

6. *Franchisor's obligations*

The Franchisor shall :

- (a) assist the Franchisee in establishing and efficiently discharging the Services connected with the Business.
- (b) provide to the Franchisee a Manual regarding the Services connected with the Business;
- (c) keep the manual upto date with necessary alterations, amendments and improvements;
- (d) impart training and refresher courses to the Franchisee and his personnel who are engaged in rendering Services connected with the business at the cost detailed in Schedule III to this Agreement;
- (e) render such reasonable continuing assistance and advice as may be required for the efficient discharge of Services connected with Business;
- (f) notify its requirements to the Franchisee from time to time as per provisions of Clause 5.3 (k);

7. *Consideration and Payment*

The following amounts shall be paid by the Franchisee to the Franchisor:-

- (i) franchise fee of Rs. _____ on the date of execution of this Agreement;
- (ii) monthly fee for Service management equivalent to _____ percent of the previous month's turnover;

- (iii) training cost as per provisions of Schedule III to this Agreement;
- (iv) monthly contribution of a sum equivalent to _____ percent of the previous month's turnover or Rs. _____ per month/annum whichever is higher, towards Franchisor's Promotion and Advertising Fund.

8. *Transfer/demise of business*

8.1 The Franchisee shall not be entitled to assign, delegate or transfer the Franchise or any rights or obligations under this Agreement.

8.2 With the prior written permission of the Franchisor the Franchisee may sell or otherwise transfer the Business to any person subject to following conditions:

(a) The proposed transferee should be willing and able to meet the Franchisor's standards in all respects;

(b) The Franchisee has not committed any breach of the terms and conditions or covenants of this Agreement;

(c) The Franchisee shall pay to the Franchisor :

(i) a sum of _____ percent of the sale price, if the Franchisor has introduced the purchaser;

(ii) a sum of _____ percent of the sale price, if the Franchisor has not introduced the purchaser.

8.3.1 Following shall be submitted by the Franchisee to the Franchisor:

(a) a copy of the written proposal by the proposed transferee regarding purchase of franchised Business;

(b) the proposed transferee's financial status and business experience; and

(c) any other information which the Franchisor wants in this regard.

8.3.2 The Franchisor shall have the first option to purchase the franchised Business on the same amount and on the same terms and conditions as the proposed transferee has offered within a period of 30 (thirty) days from the date of receipt of a copy of the written proposal along with other papers as mentioned in Clause 8.3.1 above.

- 8.3.3 If the Franchisor declines to exercise or fails to exercise such option within a period of 30 (thirty) days as required in Clause 8.3.2, it shall be deemed that the Franchisor has consented to the proposed transfer.

9. Termination

- 9.1 A party hereto may terminate this Agreement in the event of:
- (a) The other party committing a substantial breach of this Agreement and failing to rectify the same within _____ days of the receipt of a written notice in this regard from it;
 - (b) If a creditor takes possession of or a Receiver is appointed on the whole or substantial part of the undertaking or assets of the other party;
 - (c) If the other party becomes insolvent or is taken into liquidation or an effective resolution for its winding up is passed by its shareholders.
- 9.2 Notwithstanding anything contained in Clause 9.1 the Franchisor may terminate this Agreement if:
- (a) the Franchisee fails to pay any sum to the Franchisor as per provisions of this Agreement within _____ days following its due date;
 - (b) the Franchisee fails to submit any document to the Franchisor as per provisions of this Agreement or as per requirement of Franchisor according to the provisions of this Agreement within _____ days following its due date;
 - (c) The Franchisee winds up or takes any step to wind up the Business;
 - (d) the Franchisor's intellectual property rights relating to the Services are challenged by the Franchisee.
- 9.3 If a part of this Agreement is held to be void or found to be unenforceable and the Franchisor is of the opinion that the exclusion of unenforceable part of the Agreement will adversely affect the Franchisor's right to receive payment or remuneration

for the Franchisor's Mark or its know-how, then the Franchisor shall have right to terminate this Agreement on _____ days notice in writing to the Franchisee.

- 9.4 _____ days notice shall be required for termination of this Agreement as per provisions of Clauses 9.1 and 9.2 hereinabove.
- 9.5 Expiration or termination : This Agreement shall be without prejudice to any right or obligation which has accrued to the parties hereto with respect to any antecedent breach of any provision of this Agreement by any party hereto.
- 9.6 After the termination of this Agreement ---
- (a) All the documents, papers, stationery or other article bearing the Marks shall be returned by the Franchisee to the Franchisor whether any such document, paper, stationery or other article was supplied by the Franchisor or not;
 - (b) The Franchisee shall not make use of the Marks;
 - (c) The Franchisee shall neither pretend nor act like a Franchisee of the Franchisor;
 - (d) The Franchisee shall neither pretend nor act as an associate of the Franchisor;
 - (e) Any commendations or references provided by the Franchisor to the Franchisee during the subsistence of this Agreement shall not be disclosed to third person.
 - (f) The Franchisee shall keep secret and confidential the know-how and any technical or confidential information which it has obtained during or as a result of this Agreement and it shall not be disclosed to third persons.
- 9.7 The secrecy undertaking as per Clause 9.6 (f) hereof, however, shall not be applicable and the Franchisee shall be under no obligation of secrecy hereunder in respect of any information or knowledge, if such information or knowledge

was in lawful possession of the Franchisee or its agent prior to the disclosure thereof by the Franchisor and had not been obtained by him either directly or indirectly from Franchisor;

or, is after its disclosure by the Franchisor, lawfully disclosed to the Franchisee or its agent by any third party having no obligations of secrecy to the Franchisor;

or, has entered before or after the expiration or termination of this Agreement into the public domain not through any act of omission of the Franchisee or its agent.

- 9.8 The Franchisee shall not for a period of _____ years from the date of expiration or termination of this Agreement carry on, directly or indirectly, any business which competes with the Services or is similar to the Business within a radius of _____ kilometres from the premises from where the franchised Business was being carried by the Franchisee.

10. Patent

- 10.1 The Franchisor hereby warrants that the franchise granted hereunder by the Franchisor to the Franchisee and the use and practice by the Franchisee of the know-how including the process and/or the Manual supplied by the Franchisor to the Franchisee pursuant hereto, does not infringe any patent, copyright, registered design or other intellectual property rights of any person in India. In the event that an action, suit or proceeding is brought by any person in India against the Franchisee based on any such infringement, the Franchisee shall promptly give written notice thereof to the Franchisor and the Franchisor shall defend the said action, suit or proceeding for the Franchisee at the Franchisor's cost.
- 10.2 The Franchisee shall fully cooperate with the Franchisor in the defence of any such infringement action and shall render all reasonable assistance to the Franchisor in all such proceedings and shall have the right to be represented in any such proceedings at his cost and expense.

10.3 The Manual, photographs, documents, papers and other articles supplied by the Franchisor to the Franchisee during the subsistence of this Agreement is the property of Franchisor. The Franchisee undertakes that it will neither copy it nor permit it to be copied out for any purpose other than the rendering of the Services connected with the Business. The Franchisee further undertakes that he will not disclose the content or concepts of the Manual, know-how and secret and confidential information to any third person and he will not himself make use of it whether directly or indirectly for purposes otherwise than in providing the Services connected with the Business.

11. Entire Agreement

- 11.1 The manual supplied by the Franchisor to the Franchisee is part of this Agreement.
- 11.2 This Agreement along with the Manual constitutes the entire Agreement between the parties and supersedes any and all prior agreements and understandings, whether written or oral, between the parties with respect to the subject-matter hereof and no agreement or understanding varying or extending this Agreement shall be binding on any party unless made in writing and signed by a duly authorised officer or representative of that party, which writing must contain an express reference to this Agreement.

12. Severability

Any provision of this Agreement which is held to be invalid or unenforceable for any reason shall be ineffective to the extent of such invalidity or unenforceability only, without affecting in any way the remaining provisions hereof.

13. Warranties

The Franchisee shall give warranty to its customers only to the extent the Franchisee is authorised by the Franchisor in this behalf or as is given in the Manual in force at the relevant time. The Franchisee shall alone be responsible for the warranty given in excess of its authority.

14. Indemnity

The Franchisee shall indemnify and keep the Franchisor fully indemnified against all claims, demands, damages, losses, expenses and costs which the Franchisor may suffer or incur as a result of breach of any provision of this Agreement.

15. Force Majeure

- 15.1 If the performance of this Agreement or of any obligation of either party is prevented, restricted or interfered with by reasons of fire, explosion, strike, casualty or accident, epidemic, cyclone, earthquake, flood, war or requirement of any Government or authority or representative of any such Government or any other cause whatsoever, beyond the reasonable control of parties hereto, the party so affected, upon giving prompt notice to the other party shall be excused from such performance to the extent of such prevention, restriction or interference for the period it persists, provided that the party so affected shall use its best efforts to avoid or remove such causes of non-performance, if possible, and shall continue performance hereunder with the utmost despatch whenever such causes are removed.
- 15.2 If the *force majeure* persists for a continuous period of _____ days, the Franchisor may require the Franchisee—
- (a) to pay all the money payable to Franchisor within _____ days from the date of written notice given by the Franchisor to the Franchisee in this behalf; and
 - (b) to stop the Business until further notice by the Franchisor to the Franchisee in this behalf.

16. Arbitration Clause

The Schedules referred to hereinabove :

Schedule I

(Premises)

Schedule II

(Relating to Services Marks)

Schedule III

(Relating to Payment)

IN WITNESS WHEREOF, etc.

GIFT

Preliminary Note

Gift is defined in Sec. 122 of the Transfer of Property Act as a voluntary transfer of certain existing movable or immovable property without valuable consideration.¹ It is made by one party and accepted by or on behalf of the other. Without acceptance the transfer is not complete² and if the donee dies before acceptance the gift is void (Sec. 122). The acceptance may be made either orally or implied by conduct (e.g., by taking possession of the property) or in writing. It may be express or implied. The best and the safest course is to join the donee as a party to the deed and state about acceptance in the deed of gift, or if the deed is in the form of a deed poll to have a separate endorsement of acceptance made on the deed and signed by the donee. A minor may be a donee, and gift in his favour can be accepted by his natural guardian. However, if the gift is onerous, the obligation cannot be enforced against him during his minority; when he becomes major he must either accept the burden or return the gift.³ A Pujari may accept it on behalf of the Idol.⁴ It has been held that no interest can be created in favour of an unborn person, but when the gift is made to a class or series of persons, some of whom are in existence and some are not, it does not fail in its entirety; it is valid with regard to the persons who are in existence at the time of the testator's death and is invalid as to the rest.⁵

Under the Hindu law, the Karta of a coparcenary can make a gift, by way of reasonable provision for the sake of maintenance of the Karta's daughter regard being had to the financial and other relevant circumstances of the family. This right is not confined to the occasion of marriage. It is regarded a moral obligation which continues to subsist till discharged. The quantity that may be gifted depends on facts of each case.⁶ The Explanation to Sec. 30 Hindu Succession Act, which permits the interest of a male Hindu in a Mitakshara coparcenary property to be disposed of by will, does not however extend to gifts.⁷ As alienation of joint family property can only be for legal necessity or

1 *Sonia Bhatta v. State of U.P.*, A 1981 SC 1274; (1981) 2 SCC 585.

2 *Gomatibai v. Mattulal*, (1996) 11 SCC 681; A 1997 SC 127.

3 Mulla's Transfer of Property Act, 7th Edition p. 786.

4 *Jagadindra Nath Roy v. Hemanta Kumari Debi*, 32 Cal 129 PC; See also, *Dhaneshwarbuwa v. Charity Commr.*, (1976) 2 SCC 417 (para 27 : Trustee accepting the gift on behalf of Sansthan). See Preliminary notes under TURSIS, etc., post.

5 *Bajrang Bahadur Singh v. Thakurani Bakhtraj Kuer*, A 1953 SC 7 (para 14).

6 *Guramma P.C. Deshmukh v. Mallappa*, A 1964 SC 510.

7 *M.S.B.Y. Board v. Subramania*, A 1973 Mad 277.

for the benefit of the family, a gift of a substantial i.e., more than reasonable portion of joint family property to charity is invalid.⁸ Where however a father as Karta made a gift of property in favour of his married daughter who had become a destitute, the gift whereby he acknowledged his moral liability (even in the absence of legal liability) to maintain her was upheld.⁹

Gift or Release

Where a Trust deed required the trustees to give the net income from the trust property to S during her lifetime and after her death to transfer the property absolutely to S's children, then a release deed executed by S surrendering her life interest in favour of her children was held to amount to release and not to a gift. The transaction being unilateral it could not be a gift.¹⁰

How Drafted

The deed should be drafted as a deed of transfer, with recitals, if necessary. As there is no consideration, none need be expressed although consideration of "natural love and affection" is generally expressed in all cases of gift to relations, and "consideration of esteem and regard" is expressed when the gift is in favour of some person for whom the donor has regard, e.g. when the donee is his religious preceptor.

Property

A gift should be about existing property only and if any future property is included it will be void to that extent (Sec. 124). A gift of land with "water", trees, etc., is not, unless expressly specified, to be construed as including running water of a river but only stationary or static water in ponds and wells.¹¹

Conditional Gift

A gift is ordinarily absolute and irrevocable, but a condition of revocation on the happening of a specified event not depending on the will of the donor is valid (Sec. 126) and a gift may be burdened with obligations. A gift with the condition that the donee shall not alienate the property the condition itself shall normally be void (Sec. 10 and 12) and the gift cannot be revoked on the ground of its breach.¹²

8 *Niramathi v. Kambalam*, A 1998 Mad 185; cf. *Raghavamma v. Chench*, A 1964 SC 136 (on bequest); *Kesaram v. Jajala*, 1998 AIHC 1780 (AP) (on bequest).

9 *Laxmappa v. Balawa*, (1996) 5 SCC 458.

10 *Commr. of Gift Tax v. Ansuya Sarabhai*, (1998) 9 SCC 194.

11 *S N Ranade v. Union of India*, A 1964 SC 24.

12 *Mt. Brij Devi v. Shiva Nanda Prasad*, A 1939 All 221.

It is also not revocable if the donee does not honour the donor's pious wish (not expressed as a condition) that the donee shall maintain the donor.¹³ A grant of land burdened with service may not be resumable, while a grant of land made by way of remuneration attached to an office may be resumed with the abolition of that office.¹⁴

On distinction between creation of vested rights and contingent rights see preliminary note under Compromise, Composition and Family Settlement, *ante*.

How Made

A gift of immovable property of whatever value must be made by a registered deed signed by the donor and attested by at least two witnesses (Sec. 123).¹⁵ The Transfer of Property Act does not apply to gifts governed by Muslim law which may be made orally (accompanied by delivery of possession).¹⁶ Where, however, donor (husband) and donee (wife) both live in the house, (the subject of gift), mere declaration of fact of delivery of possession is sufficient, and reservation by the donor of his right to reside and manage the property and to collect rents and to change tenants does not detract from his intention to make a valid gift.¹⁷

Under Muslim law also, acceptance of gift by the beneficiary is necessary, hence unless the deed recites such acceptance it will be invalid.¹⁸ In territories where Transfer of Property Act does not apply, a gift may be made orally or by an unattested deed. A gift of movable property may be made by a registered deed or by delivery of the property. A fixed deposit in bank is not a movable property and its gift cannot be made by delivery of the receipt. It is an actionable claim for which a deed is required.¹⁹

A grant is normally interpreted strictly against the grantor and in favour of the grantee,²⁰ (except in case of Government grants : See below).

13 *M. Vekatasubbaiah v. M. Subbamma*, A 1956 AP 195; see also *Tila Bewa v. Mana Bewa*, A 1962 Orissa 130.

14 *State of Orissa v. Ramchandra*, A 1964 SC 685.

15 On 'signature' and 'attestation' see INTRODUCTION Part I-Preliminary, *ante*.

16 *State of U.P. v. Syed Abdul Jalil*, (1973) 2 SCC 26; *C.T.D. A. Pathunma v. Pokku*, A 1998 Ker 134 (Gift by husband in favour of wife. Both living together in the house donated. Formal delivery sufficient); *Noorbibi v. Ayeshabibi*, A 1999 Guj. 27 (Similar to preceding Kerala case cited).

17 *Halimbibi v. Abdul Rehman*, 1998 AIHC 1553, Guj.

18 *Abdur Rehman v. Attifa Begum*, A 1998 Kant 39.

19 *Maiyan Dalip Rajeshwari Debi v. Mohan Vikram Sah*, A 1945 All 409.

20 *Sahebzada Md. Kamgarh Shah v. Jagdish Chandra*, A 1960 SC 953.

When Gift Suspended or Revoked

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part as the case may be (Sec. 126).

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded (Sec. 126).

Every assignment without consideration is not a gift.¹ Intention of parties is the determining factor for construction of a gift deed.²

Government Grants

Government grants are always subject to the terms and conditions mentioned in the deed, notwithstanding anything to the contrary contained in the Transfer of Property Act, vide Sec. 3, Government Grants Act (formerly known as Crown Grants Act). In case of any ambiguity, a Government Grant is to be construed in favour of Government and not in favour of grantee.³

Stamp Duty

It is same as on a Conveyance (Art. 23) as per amount or value of the consideration of such conveyance as set forth therein or the market value of the property which is the subject of such conveyance, whichever is greater (Art. 33).

Registration

Registration of gift of immovable property, and also, if a deed is at all executed, of movable property, is compulsory, under Sec. 123 of the Transfer of Property Act and Sec. 17 (1) (a), Registration Act, whatever may be the value. As the Registration Act applies to the whole of India and to Muslims also, if a gift is made by a deed, the deed must always be registered. However registration is not compulsory if gift is made earlier and the deed is subsequent.

(For charitable and religious endowments, also see TRUSTS, etc., post)

1 *Himalaya House Co. v. C.C.R. Authority*, (1972) 1 SCC 726.

2 *Ram Gopal v. Nandlal*, A 1951 SC 139.

3 *Mohsin Ali v. State of M.P.*, (1975) 2 SCC 122 (case law discussed). Gift of residential house to retiring employee by Ruler held in the light of surrounding circumstances to confer only right of residence for life; *Rajinder Chand v. Sukhi*, A 1957 SC 286.

4 *I.G. Registration v. Tavvaba Begum*, A 1962 AP 109 (FB); *Chota Uddanda Saheb v. Mastan Bi*, A 1957 Pat 271; *K.P. Abdulrahiman v. Kunlu Mohd.*, A 1975 Ker. 150.

2. Covenants

The grantee hereby covenants with the grantor as follows:

(1) *To Erect Mosque*

He will within—— years from date hereof erect a mosque of the value of Rs.—— on the said premises and will not use the said premises for any other purpose whatsoever.

(2) *Open to All*

Such mosque when erected shall be open to all persons professing the religion of the grantee for worship and prayer and for no other purpose.

(3) *To Keep in Repairs*

The grantee and his successors will at all time hereafter keep such mosque in good and substantial repair and will at his or their own cost perform all ceremonies of worship therein according to the religion professed by the grantee.

(4) *Conditions of Reversion of Grant*

- a) If the grantee fails to erect a mosque within the said period of—years, the said premises shall revert to the grantor.
- b) If the said premises shall cease to be used for the purpose of a mosque then the said premises and all buildings thereon shall revert to the grantor.

(5) *As clause 3 in Form 1.*

IN WITNESS WHEREOF, etc.

4—Gift to Government with Conditions Attached

THIS DEED OF GIFT, etc.

WHEREAS the donee requires the land described in the schedule hereto for the purpose of constructing an escape of Salempur Minor, Upper Division, Eastern Jamna Canal;

AND WHEREAS the donor has offered to give to the donee the land described in the schedule hereto belonging to him for the aforesaid purpose on the conditions hereinafter appearing and the donee has accepted the said offer.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of said agreement the donor hereby transfers to the donee ALL that, etc., TO HOLD the same to the donee and its successors so long as the donee shall use the said site and building for the purpose of education of girls at-----.

2. The donee hereby accepts the said gift and agrees with the donor that if and whenever the donee ceases to use the said site and building premises for the purposes of a school for girls or for any other educational institution for the education of girls under the control of the donee the same shall revert to the donor.

3. *As clause 3 in Form 1.*

IN WITNESS WHEREOF, etc.

3—Grant of Land for Building a Mosque

THIS GRANT is made on the-----day of-----BETWEEN AB, etc., (hereinafter called "the grantor") of the one part AND CD, etc., (hereinafter called "the grantee") of the other part.

WHEREAS the grantee on the-----day of----- applied to the grantor for the grant of land for the purpose of building a mosque thereon;

AND WHEREAS the grantor has agreed with the grantee to grant to him for the said purpose the land hereby transferred belonging to the grantor on the terms and conditions hereinafter contained;

AND WHEREAS the grantee has accepted the said grant for the said purpose and on the terms and conditions hereinafter contained.

NOW THIS DEED WITNESSES as follows :

1. *Grant of Land*

In pursuance of the aforesaid agreement and in consideration of the grantee's covenants hereinafter contained and for the purpose of promoting religious worship the grantor hereby grants and transfers to the grantee ALL THAT plot of land, etc., TO HOLD the same to the grantee and his successors according to the custom of succession in the management of religious endowments recognized by the religion professed by the grantee for the purpose of a mosque and for no other purpose in accordance with the covenants and the provisions hereinafter contained;

(collectively called "the College") with a view to donating it to the Government after construction.

2. The Donors offered to transfer to the Donee the *Dharamshala*, which is free from all encumbrance, and the Donee has accepted the offer.

3. By a resolution passed by the Donors at a meeting held on ----- they have authorised----- to take necessary action for the transfer of the *Dharamshala* building to the Donee and to sign papers in this connection.

NOW THIS DEED WITNESSES as follows :

1. The Donors transfer to the Donee all the rights and interest in the *Dharamshala* building along with the movable and immovable property described in the schedule TO HOLD the same absolutely for ever subject to the following terms and conditions :

- (a) The Donee shall name the *Dharamshala* as----- and this name shall not be changed under any circumstances whatsoever.
- (b) (i) The *Dharamshala* except the shops shall be used only for the stay of the relatives and attendants of the patients visiting the college or being treated thereat.
- (ii) The shops constructed in the *Dharamshala* may either be used for the purpose mentioned in sub-clause (i) or be let out on rent for meeting expenditure on the maintenance and running of the *Dharamshala*.
- (c) (i) The Donee shall constitute a committee including of at least two nominees of the donors to supervise the running and maintenance of the *Dharamshala*.
- (ii) The committee shall function in accordance with the rules to be framed by the Donee.
- (d) The Donors shall bear all expenditure on the maintenance and running of the *Dharamshala* up to the date of its transfer to the Donee and the Donee shall bear all expenditure after that date.
- (e) The Donors may, with the written permission of the Donee, carry out any repairs to or provide any amenities for the occupants of the *Dharamshala* or make any additional constructions in *Dharamshala* at the cost of the Trust.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement the donor hereby transfers to the donee ALL THAT land described in the schedule hereto TO HOLD the same absolutely for ever subject to the conditions hereinafter contained.

2. The donee hereby covenants with the donor that if at any time the donee no longer requires the said premises for use for the purpose aforesaid the donee will return the same to the donor after having removed therefrom the materials of any construction made by the donee thereon.

3. As clause 3 in Form 1.

IN WITNESS WHEREOF, etc.

5—Gift in the Form of Deed Poll (Short Form)

I, AB, etc., in consideration of natural love and affection for my sister CD, etc., (hereinafter called "the donee") hereby transfers to the donee ALL that property specified in the schedule hereto TO HOLD the same to the donee absolutely for ever (*or*, for her life).

2. As clause 3 in Form 1.

*The Schedule herein re-
ferred to*

* * * *

Dated _____

Signed _____

I, the donee aforesaid, do hereby accept the above gift.

Dated _____

Signed _____

6—Gift to Government for Hospital

THIS DEED OF GIFT made on the _____ day of BETWEEN the Trustees of _____ Charitable Trust, (called "the Donors") AND the Governor of Uttar Pradesh (called "the Donee").

WHEREAS _____

1. The Donors with the permission of the Government of Uttar Pradesh (called "the Government") constructed a *Dharamshala* in the compound of the _____ Medical College and its associated hospitals

GUARANTEE

Preliminary Note

A contract of guarantee is a contract to perform a promise to discharge the liability of a third person in case of the latter's default (Sec. 126, Contract Act). If the guarantee extends to a series of transactions it is called a "Continuing Guarantee" (Sec. 129). In a continuing guarantee, the consideration is supplied from time to time and is therefore divisible, while in case of other guarantees, the consideration is entire and indivisible moving from the person to whom guarantee is given once and for all. (See INDEMNITY *post.*)

A continuing guarantee can be revoked at any time as to future transactions by notice from the surety of the debtor (Sec. 130), and determines on the death of the surety so far as regards transactions after his death (Sec. 131). A change in the constitution of a debtor firm also determines a continuing guarantee (Sec. 38, Partnership Act). But the revocation is permissible and determination takes place in the above events only in the absence of a contract to the contrary. Therefore, if it is intended to keep the continuing guarantee alive in spite of the death of the surety or change in the constitution of the debtor firm, or to guard against a revocation by the surety, an express contract to the contrary should be embodied in the deed of guarantee. But a guarantee for which the consideration is entire and indivisible, is not, except under express stipulation, determinable by notice of revocation or death of the surety or change in the constitution of any firm. Therefore in the case of such a guarantee any stipulation for revocation or determination will have to be expressly made in the deed. The liability of the surety is co-extensive with that of the principal debtor, unless otherwise provided by the contract (Sec. 128). In case of any variance without the surety's consent in the terms of the contract between the principal debtor and the creditor, the surety is discharged (Sec. 133). Likewise the surety is discharged by release or discharge of the principal debtor, (Sec. 134), or when the creditor compounds with, or gives time to, or agrees not to sue the principal debtor (Sec. 135), or by the creditor's act or omission impairing the surety's eventual remedy (Sec. 139). The surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the guarantee was given, and if the creditor parts with such security, the guarantor or surety is discharged to the extent of its value (Sec. 141). However, the loss contemplated is by voluntary act of the creditor and not by involuntary act. These rights of the surety can however be waived by the surety if the creditor obtains from him a contract to that effect (*Citi Bank's case*, A1982 Del 487; *Raju Shethy's case*, A 1992 Kant 108; *Canara Bank's case*, (1991) 22 Comp. Cas 298). It is therefore not unusual for banks and financial institutions to obtain such waiver from the guarantors (1997 AIR Jour. 199; article on "Contracting Out" by V. Adhvaran).

- (f) If the Government intends to make any additional constructions or alterations in the *Dharamshala* building, it shall first give an offer in writing to the Donors to make the requisite additions or alterations, as the case may be, at the cost of the Trust, in accordance with the plan approved by the Government. If the Donors show their inability or fail to carry out the requisite additions or alterations within a reasonable time, the Government may carry out additions and alterations itself at the Government's cost.

2. *As clause 3 in Form 1.*

3. The Donee shall bear stamp duty¹ and registration charges on this Deed.

4. Unless there is anything repugnant to the subject or context, the expression "Donors" and "Donee" in the case of the former include their respective successors and assigns and in the case of the latter his successors in-office and assigns.

The Schedule

* * * *

IN WITNESS WHEREOF, etc.

¹ As the donee is the Government, this term means that no stamp duty shall be payable on the deed: Sec. 3, Stamp Act.

PRECEDENTS

1—Deed of Continuing Guarantee for Securing the Balance due on Account with a Bank¹

THIS DEED of guarantee made on the _____ day of _____
BETWEEN AB, etc., (hereinafter called "the Surety") of the one part
AND the _____ Bank having its head-office at _____ (hereinafter called
"the Bank") of the other part.

WITNESSES as follows :

Guarantee

In consideration of the Bank opening and keeping a cash credit account of the firm CD, etc., and making advances to and for the accommodation of the said firm CD, the Surety, hereby guarantees to the Bank the payment of all sums of money that may be due from the said firm CD from time to time on the general balance of the said account subject to the covenants hereinafter contained.

The surety and the Bank hereby mutually agree as follows :

(a) *Limiting the Guarantee*

That the liability of the Surety shall not at any time exceed the sum of Rs. _____ with interest thereon at _____ percent per annum.

(b) *Continuing Guarantee*

That the guarantee hereby given shall be a continuing guarantee and shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times hereafter of any sum or sums of money for the time being due upon such general balance as agreed but shall, subject to the aforesaid limit, extend to cover and be a security for all future sums at any time due hereafter.

(c) *Forbearance of Obligee not to Terminate Surety's Liability*

That the neglect or forbearance of the Bank in enforcing payment

¹ See also NOTICE, *post* precedents Nos. 54 and 55 for notices determining continuing guarantee.

In Halsbury's Law of England Fourth Edition (para 335) it has been categorically stated that "A transaction which causes no loss of securities or a loss not attributed to the fault of the creditor, will not discharge the guarantor". Thus the loss contemplated under Sec. 141 is by voluntary act of the creditor and not otherwise¹.

The Bank guarantee has a dual aspect. It is a contract between the Bank and the beneficiary of the guarantee and it is also a security given to the beneficiary by a third party. It is in the nature of a special contract depending upon the happening of a specific event. The obligations thereunder are independent of the obligations arising out of a specific contract between the parties. This has become the legal base of the banking system and in the world of commerce it is a well known business transaction commonly employed.²

Stamp Duty

The stamp duty is payable under Article 57 ("Security Bond").

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- 1 *Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd.*, A 2002 SC 1841
 - 2 *Syndicate Bank v. Vijay Kumar*, (1992) 2 SCC 330; *Hindustan Steel Works Construction Ltd. v. Tarapore Co.*, A 1996 SC 2268; (1996) 5 SCC 34; *U.P. State Sugar Corpn. Ltd. v. Simac International Ltd.*, (1997) 1 SCC 568; A 1997 SC 1644.

may be due to you on that account on demand with interest at _____ percent per annum till payment but my liability shall not at any time exceed the sum of Rs. _____ with interest at the aforesaid rate.

I also agree that this guarantee, which is to be considered as a continuing guarantee, is not determinable on any payment or payments and shall continue in force in spite of any change in the constitution of your firm and in spite of your granting to EF, etc., time or any other such indulgence, and shall not determine even by my death but shall continue in force until one calendar month's notice to determine it shall be given to you by me or by my legal representative.

Dated _____

Yours faithfully,

(See also Forms of Security Bonds under "Bonds")

3—Guarantee by Directors of a Company to Bankers for Limited Amounts (in the Form of a Letter)

To
The Punjab National Bank
New Delhi

Dear Sir,

In consideration of your agreeing to grant to the Indian Cold Storage Co. Ltd., Meerut, at our request, a credit overdraft to the extent of Rs. _____ we, the undersigned being the Directors of the said company, hereby guarantee to you the payment of all moneys which shall any time be due from the said company to you on the balance of their account with you not exceeding Rs. _____ (such balance to include all interest, commission and other charges and expenses which you may in the course of your business charge in respect of any advance or discount made to the said company or on their account or for keeping the said account with you) and we hereby agree as follows :

(a) that this guarantee shall be a continuing guarantee to the extent at any time or times hereafter of any sum or sums of money for the time being due upon such general balance within the limit aforesaid;

(b) that this guarantee shall be in force and subsisting whether the whole of the said sum of Rs. _____ shall be actually advanced by you or not ; and

of any moneys, the payment whereof is intended to be hereby secured or the giving of time by the Bank for the payment thereof shall not in any way release the Surety of his liability under the guarantee herein contained.

(d) *Guarantee not to be Affected by Change in Constitutions nor by Death of Surety*

(i) That the guarantee hereinbefore contained shall not be affected by any change in the constitution of the Bank or in the constitution of the said firm CD.

(ii) That the guarantee hereinbefore contained shall not be affected by the death of the Surety but shall continue in force till two calendar months after notice in writing has been given to the Bank by the Surety or his legal representatives as the case may be.

(c) *Settled Account to be Conclusive Evidence*

That any account settled between the Bank and the said firm CD shall be conclusive evidence against the Surety of the amount due on the said account and shall not be questioned by the Surety.

(f) *Interpretation Clause*

That the expressions "Surety" and "Bank" hereinbefore used shall, unless such an interpretation is repugnant to the context, include in the case of the "Surety" his heirs, successors, representative and assigns and in the case of the "Bank" its successors and assigns.

IN WITNESS WHEREOF, etc.

2—Guarantee to a Trading Firm for Supplying Goods to a Shopkeeper (in the Form of a Letter)

To
CD and Co.
New Delhi

Dear Sirs,

In consideration of your supplying goods or otherwise giving credit to EF, etc., I hereby guarantee the payment of all sums of moneys that

WHEREAS ——— a Company within the meaning of the Companies Act, 1956 having its registered office at ——— (hereinafter called "the Contractor") has by a Deed of Agreement made on the ——— agreed with the Purchaser to supply certain Plant, Machinery and Equipment in accordance with the terms, specifications and conditions therein contained;

AND WHEREAS in accordance with the terms and conditions of the aforesaid Agreement the Purchaser has to make to the Contractor an advance payment of UK pounds (*or*, US Dollars) ——— equivalent to Rs. ——— (Rupees ——— only) being equivalent to ——— % of the total F.O.B. value of the contract price, and such payment is to be secured by a Bank Guarantee;

AND WHEREAS the Bank has at the request of the Contractor agreed to guarantee the refund of the said advance in case the Plant, Machinery and Equipment of the value aforesaid is not delivered to the Purchaser in accordance with the terms and conditions of the said agreement, and the Purchaser has agreed to make the said advance on such security;

NOW THIS DEED WITNESSES as follows :

1. In consideration of the Purchaser having agreed to advance a sum of ——— to the Contractor, through the Bank, the Bank do hereby guarantee that if the Contractor shall fail to supply to the Purchaser the Plant, Machinery and Equipment of the value of Rs. ——— in accordance with the specifications and conditions contained in the Deed of Agreement dated the ——— and/or any amendments or modifications in the aforesaid Agreement made between the Purchaser and the Contractor on ———, the Bank shall repay to the Purchaser such amount or amounts, as the Bank may be called upon to pay to the maximum aggregate of Rs. ———

PROVIDED FIRSTLY that the liability of the Bank under this deed shall not at any time exceed the said advance of Rs. ———

AND PROVIDED SECONDLY that the guarantee hereunder furnished shall be released as soon as the Contractor has supplied to the Purchaser the Plant, Machinery and Equipment of the value of Rs. ——— in accordance with the aforesaid Deed of Agreement.

2. This Guarantee of the Bank will come into force immediately upon payment of the sum of Rs. ——— being received by the Bank for and on

(c) that you may grant time or other indulgence to or compound with the said company without affecting this guarantee PROVIDED always and we hereby covenant that (1) we shall respectively be liable on this guarantee only to the extent of the sums set opposite to our respective names in the schedule hereto, and (2) that if during the continuance of this guarantee any of us shall die or shall cease to be a director of the said company and if the said company shall be unable to substitute a guarantor or guarantors in his or their place who shall be satisfactory to you, then the said company may pay to you the amount which in the said schedule shall be set opposite to the name or names of the person or persons who shall so die or cease to be a Director or Directors as aforesaid and such payment shall be accepted by you in full satisfaction of all claims against such person or persons in respect of this guarantee.

Signed, etc.

The Schedule herein referred to

Names of Directors	Rs.
AB	—
CD	—
EF	—

4—Deed of Guarantee by a Bank on Behalf of a Company for the Performance of a Contract²

THIS DEED OF GUARANTEE made this _____ day of _____ between the Bank of _____ (hereinafter called "the Bank") of the one part, and the Governor of _____ (hereinafter called "the Purchaser") of the other part;

² In *State of Bihar v. Hindustan Construction Co.*, A 1998 Bom 331 (DB) (para 14), interim injunction was issued, for preventing irretrievable harm and injustice, against invocation (by the employer against the contractor) of a performance guarantee where it was clear from the employer's own circular that the construction work had been stopped due to non-availability of funds with the employer. The other guarantee relating to advance received by the contractor was however held to be validly invoked.

number _____ for _____ offered to supply and/or execute the work as contained in Tenderer's letter No. _____ dated _____ ;

AND WHEREAS the Tenderer is required to furnish to you a Bank Guarantee for the sum of Rs. _____ as Earnest Money against the Tenderer's offer as aforesaid;

AND WHEREAS We _____ (*name of Bank*) have, at the request of the Tenderer, agreed to give you this guarantee as hereinafter contained;

NOW THEREFORE in consideration of the premises We, the undersigned, hereby covenant that the aforesaid tender of the Tenderer shall remain open for acceptance by you during the period of validity as mentioned in the tender or any extension thereof as you and the Tenderer may subsequently agree and if the Tenderer shall for any reason back out, whether expressly or impliedly, from his said tender during the period of its validity or any extension thereof as aforesaid, WE hereby guarantee to you the payment of the sum of Rs. _____ on demand, notwithstanding the existence of any dispute between you or your authorised representative and the Tenderer in this regard³ AND WE hereby further agree as follows:-

(a) That you may without affecting this guarantee grant time or other indulgence to or negotiate further with Tenderer in regard to the conditions contained in the said tender and thereby modify these conditions or add thereto any further conditions as may be mutually agreed upon between you and the Tenderer.

(b) That the guarantee hereinbefore contained shall not be affected by any change in the constitution of our Bank or in the constitution of the Tenderer.

³ This is an unconditional bank guarantee which the bank is bound to honour. This is however subject to two exceptions in which case courts may grant injunction in favour of the bank against encashment. First, a fraud which would vitiate the very foundation of the guarantee. Second, where encashment of the bank guarantee would result in irretrievable harm or injustice to the party on whose behalf the guarantee is given. *UP State Corporation Ltd v. Summa International*, (1991) 130 C.C. 663, A 1991 SC 1644 (C.C. Law), *Dwarkanesh Sugar Industries Ltd. v. Prem Heavy Engineering Works*, A 1997 SC 2477; (1997) 6 SCC 450; *Hindustan Steel Works Construction Ltd. v. Tarapore & Co.*, A 1996 SC 2268.

behalf of the Contractor from the Purchaser and shall continue in force till the supply of Plant, Machinery and Equipment of the value of Rs. _____ aforesaid is effected as testified by documents and invoices (or, as certified by the Purchaser).

3. The Guarantee hereinbefore contained shall not be affected by any change in the constitution of the Bank or of the Contractor.

4. Any account settled between the Purchaser and the Contractor shall be the conclusive evidence against the Bank of the amount due and shall not be questioned by the Bank.

5. The neglect or forbearance of the Purchaser in enforcement of payment of any moneys the payment whereof is intended to be hereby secured or the giving of time by the Purchaser for the repayment hereof shall in no way relieve the Bank of their liability under this Deed.

6. The expressions "the Bank", "the Purchaser" and "Contractor" hereinbefore used shall include their respective successors and assigns.

IN WITNESS WHEREOF _____ FOR AND ON BEHALF OF
THE BANK AND SECRETARY TO GOVERNMENT OF _____
IN _____ DEPARTMENT for and on behalf of the Governor have
signed this deed on the day and year first above written.

for AND ON BEHALF OF THE BANK

for AND ON BEHALF THE GOVERNOR,

WITNESS : 1. _____

WITNESS : 2. _____

**5—Bank Guarantee in Lieu of Earnest Money
Deposit for Tender**

To,

Sir,

WHEREAS _____ a company within the meaning of the Companies Act, 1956 having its registered office at _____ (hereinafter called "the Tenderer") have in response to your Tender Notice against specification

7—Hire of a Vehicle

AN AGREEMENT made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the owner") of the one part and CD, etc., (hereinafter called "the Hirer") of the other part;

WHEREBY IT IS AGREED AS FOLLOWS:—

1. The owner shall let and the hirer shall take on hire the vehicle—
(full description) bearing registration No. _____ along with its driver and cleaner from the _____ day of _____ for the term of _____ months hence next ensuing.
2. The hirer shall during the continuance of this agreement pay to the owner by way of rent for the hire of the said vehicle, compensation for the use and depreciation of the same and the pay and all allowances for the driver and cleaner as aforesaid, the sum of Rs. _____ per day.
3. The payment under clause 2 hereinbefore shall be made to the owner within fifteen days after the expiry of the term of this agreement (or, by the seventh day of every month).
4. The owner shall at his own expense keep the said vehicle in good and substantial repair and condition and will keep the hirer indemnified against all loss of or damage to the said vehicle from whatsoever cause the same may arise.
5. The hirer may determine the hiring at any time by returning the said vehicle to the owner, and shall thereupon forthwith pay to the owner all moneys then payable to him under this agreement.
6. The petrol and oil for plying the vehicle will be provided by the hirer.

(Other conditions as in forms 2 and 3).

IN WITNESS WHEREOF, etc.

3. *Covenant to Pay Land Revenue by Lessee*

The lessee will during the said term pay the land revenue and cesses now assessed or which may hereafter be assessed on the demised property.

4. *Covenant to Repair*⁸

The lessee will during the said term (*or*, continuance of the said tenancy) keep the demised premises and the fixtures, paintings and decorations thereof in good and tenantable repair, order and condition (*or*, in as good condition as they were (will be) in when the lessee was (will be) put in possession⁹ and will permit the lessor and his agents with or without workmen or others at all reasonable times to enter the demised premises and inspect condition thereof, and will repair and make good all defects of which notice in writing will be given by the lessor to the lessee within———calender months after the giving of such notice.

5. *Covenant to Insure*¹⁰

The lessee will insure and shall at all times during the said term (*or*, continuance of the tenancy) keep insured the demised premises with all buildings, erections and fixtures now thereon or which may hereafter be constructed or erected thereon against loss or damage by fire in the sum of Rs.——— in an Insurance Company approved by the lessor and will, whenever required, produce to the lessor the policy of such insurance and the receipts for the last premium in respect of the same and will apply all money received under the policy in reinstating the premises destroyed or damaged.

6. *To Insure against Fire*

The lessee will during the said term (tenancy) keep the demised premises insured against loss or damage by fire in the sum of Rs.——— at least in some Insurance Company of repute and will whenever required

8 See Preliminary Note on this covenant. A covenant for repair is implied by Sec. 108(m) of the Transfer of Property Act. It is however expedient that this express covenant may be inserted as it is more extensive than an implied covenant.

9 Under this covenant it is not sufficient that the premises should remain in a reasonably habitable condition but they should be kept in as good condition as they were when the lessee obtained possession.

10 See Preliminary Note on this covenant.

1. In consideration of the premises the Bank hereby undertakes to pay to AB on demand the sum of Rs.-----
2. The Bank shall pay to AB on demand the sum under clause 1 above without demur and without requiring AB to invoke any legal remedy that may be available to it, it being understood and agreed **FIRSTLY** that AB shall be the sole judge of and as to whether the Contractor has committed breach or breaches, if any, of the terms and conditions of the **said contract and the extent of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by AB from time to time and his demand in that regard shall be final and binding on the Bank AND SECONDLY** that the right of AB to recover from the Bank any amount under this guarantee shall not be affected or suspended by reason of the fact that any dispute or disputes have been raised by the Contractor with regard to their liability or that proceedings are pending before any tribunal, arbitrator(s) or court with regard thereto or in connection therewith **AND THIRDLY** that the Bank shall immediately pay the sum under clause 1 above to AB on demand and it shall not be open to the Bank to know the reasons of or to investigate or to go into the merits of the demand or to question or to challenge the demand or to know any facts affecting the demand **AND LASTLY** that it shall not be open to the Bank to require proof of the liability of the Contractor to pay the amount, before paying the sum demanded under clause 1 above.
3. This guarantee shall come into force immediately and continue in force and remain valid till six months after the completion of all works under the said contract, which according to the terms of the said contract, should be six months from the probable date of completion viz., the day of----- . If, however, the period of the completion of the works under the said contract is for any reason extended and upon such extension if the Contractor fails, before the term of this guarantee expires, to furnish a fresh or renewed guarantee for the extended period, the Bank shall pay to AB the said sum of Rs.----- or such lesser sum as AB may demand.
4. This guarantee shall not be affected by any change in the constitution of the Bank or of the Contractor.
5. AB and the Contractor will be at liberty to carry out any modifications to the said contract during the term of the said contract and any extension thereof, and notice of such modifications and extensions to the Bank is hereby waived by the Bank.

(c) That any account settled between you and the Tenderer shall be conclusive evidence against us of the amount due hereunder and shall not be questioned by us.

(d) That this guarantee commences from the date hereof and shall remain in force till the Tenderer, if his tender is accepted by you, furnishes the security as required under the said specifications and executes a formal agreement as therein provided or till four months after the period of validity or the extended period of validity, as the case may be, of the tender, whichever of these is earlier.

(e) That the expressions "the Tenderer" and "the Bank" herein used shall, unless such an interpretation is repugnant to the subject or context, include their respective successors and assigns.

Yours faithfully,

6 - Bank Guarantee in lieu of Security Deposit

THIS DEED OF GUARANTEE made on the _____ day of _____ 19 _____ BY _____ (hereinafter called "the Bank") of the one part IN FAVOUR OF AB, etc., of the other part;

WHEREAS by an Agreement No. _____ dated _____ made between (1) CD, etc., (2) EF, etc., all carrying on business in partnership under the firm name of _____ at _____ (hereinafter called "the Contractor") and the said AB, the Contractor has undertaken the construction of _____ on the conditions contained in the agreement hereinbefore referred (hereinafter called "the said contract");

AND WHEREAS in accordance with clause _____ of the said contract the Contractor is desirous of furnishing a Bank Guarantee in the sum of Rs. _____ towards security deposit valid upto six months beyond the date of completion of the works under the said contract;

AND WHEREAS AB has agreed to accept a guarantee from the said Bank on condition expressly that the Bank on demand from AB and without demur pay to AB the aforesaid sum of Rs. _____

AND WHEREAS at the request of the Contractor the Bank has agreed to give its guarantee as hereinafter contained;

NOW THIS DEED WITNESSES as follows:

terms, conditions and agreements of any and all duly authorised modifications of the said contract that may hereafter be made, notice of which (modifications) to us is hereby being waived, then this obligation to be void, otherwise to remain in full force and virtue.

This guarantee shall come into force on-----and shall remain in force till----- . Any neglect or forbearance of the Government in enforcing payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by the Government for the payment thereof shall not in any way release the Surety of its liability under the guarantee herein contained.

Any account settled between the Government and the Principals shall be conclusive evidence against us (the Surety) of the amount due hereunder and shall not be questioned by us.

The guarantee herein contained shall not be affected by any change in the constitution of the Principals or the Surety.

This guarantee shall be governed by the laws of India for the time being in force and be subject to the jurisdiction of Indian Courts.

IN WITNESS WHEREOF, etc.

8—Form of Guarantee in favour of State Financial Corporation

THIS DEED OF GUARANTEE made this _____ day of between AB etc. (hereinafter called "the Guarantor") of the one part, and _____ State Financial Corporation etc. (hereinafter called "the Corporation") of the other part.

WHEREAS the Corporation has agreed to grant to _____, a company incorporated under the Companies Act, 1956 having its registered office at _____ (hereinafter called the Borrower-Company, which expression shall include its successors and assigns) a term loan of Rs. _____ (Rupees _____ only) upon security of a simple mortgage/ equitable mortgage and/or deed of hypothecation (hereinafter collectively called "the mortgage");

AND WHEREAS the Guarantor has agreed for the repayment of the above said loan in case of default by the Borrower-Company.

NOW THIS DEED WITNESSES as follows :

6. Notwithstanding anything hereinbefore contained, the liability of the Bank under this guarantee is restricted to Rs. _____ (Rupees _____) only and the guarantee shall remain in force till the _____ day of _____ 19_____, unless claim or demand under this guarantee is presented to the Bank within six months from that date all the rights of AB under this guarantee shall be forfeited and the Bank shall be released and discharged from all obligations hereunder.

IN WITNESS WHEREOF, etc.

7—Form of Guarantee as Security⁴

Sum of bond (in words and figures)	Contract No. and particulars	Date of contract
------------------------------------------	---------------------------------	---------------------

KNOW ALL MEN BY THESE PRESENTS, that we having our registered head office at _____ are held and firmly bound unto the Governor of the State of _____ (hereinafter called "the Government") in the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our administrators and successors, firmly by these presents.

THE CONDITION of this obligation is that whereas _____ having their registered office at _____ (hereinafter called "the Principals") have entered into a certain contract with the Government, numbered and dated as shown above.

NOW THEREFORE if the Principals shall well and truly perform and fulfil all the undertakings, covenants, terms, conditions and agreement of the said contract during the original term of the said contract and any extension thereof that may be granted by the Government with or without notice to us and during the life of any guarantee required by the contract, and shall also well and truly perform and fulfil all the undertakings, covenants,

⁴ Only the express terms of the guarantee will be looked into. Sections 91 and 92 Evidence Act disallow any evidence to add to or detract from the express terms: *New India Ass. Co. Ltd. v. Kusumanchi Kameshwara Rao*, (1997) 9 SCC 179.

Corporation by a registered notice addressed to the Guarantor on its address herein below contained.

9. The Guarantor hereby agrees that any amount due from the Borrower-Company to the Corporation shall be recoverable under the—— (Note: *Mention the name of the Act, if any, under which moneys due to a public sector Corporation under an agreement can be recovered as arrears of land revenue. In the absence of such statutory provision this clause is to be omitted*) Act (as amended from time to time) as arrears of land revenue and further that it shall not be necessary for the Corporation to take recovery proceedings against the Borrower-Company before taking recovery proceedings under the said Act against the Guarantor.⁵

10. The Guarantor further agrees that the relevant provisions of the State Financial Corporation Act, 1951, may be invoked, if needed, against it.

11. Period of guarantee

12. Arbitration clause etc.

IN WITNESS WHEREOF, etc.

9—Form of Counter-Guarantee⁶

IN CONSIDERATION of your having, at our request executed a Guarantee Deed dated—— in favour of—— Bank (hereinafter called “the Bank”) to secure a loan of Rs.—— and interest, we hereby covenant and agree with you as under :

(1) That we shall within thirty days of demand pay to you all moneys which you may become liable to pay under the guarantee aforesaid together with interest at one per cent per annum over and above the rate charged by the Bank from us.

(2) That we shall not declare dividend in any year unless the repayment of instalment with interest for that year under the said loan has been paid to the Bank.

5 A deed in these terms was interpreted in *Pawan Kumar Jain v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd.*, A 1998 All 57 and it was held that in case of default by the borrower, revenue recovery proceedings can be taken against the guarantor as well.

6 See also, Form No.9 under INDEMNITY, *post*.

1. In consideration of the Corporation having agreed to advance a sum of Rs. _____ to the Borrower-Company, the Guarantor hereby guarantees to the Corporation that if the Borrower-Company fails to repay the above said loan amount, the Guarantor shall repay to the Corporation all such amount that may be due from the Borrower-Company to the Corporation subject to the covenants hereinafter contained.
2. The guarantee herein contained shall be enforceable against the Guarantor notwithstanding that the securities specified in the mortgage or any of them shall at the time when proceedings are taken against the Guarantor hereunder be outstanding or unrealised.
3. The guarantee herein contained shall be enforceable against the Guarantor notwithstanding that no action of any kind has been taken by the Corporation against the Borrower-Company and an intimation in writing sent to the Guarantor by the Corporation that a default or breach has been committed by the Borrower-Company shall be treated as final and conclusive proof of the facts stated therein.
4. The Guarantor hereby agrees that any amount appearing due from the Borrower-Company in the books of accounts of the Corporation kept in the ordinary course of business shall be conclusive evidence against the Guarantor of the amount due on the said account and shall not be questioned by the Guarantor.
5. In order to give effect to the guarantee herein contained the Corporation shall be entitled to act as if the Guarantor was the principal debtor to the Corporation for all payment guaranteed by him as aforesaid to the Corporation.
6. The Guarantor hereby waives all rights which the Guarantor may become entitled to as surety to compete with the Corporation in obtaining payment of the moneys due or to become due to the Corporation in respect of the said loan in favour of the Corporation as against the Borrower-Company.
7. The Guarantor hereby agrees that it shall not be necessary for the Corporation to sue the Borrower-Company before suing the Guarantor for the amount due hereunder.
8. The Guarantor also hereby agrees that the liability to repay the amount due to the Corporation shall arise on demand being made by the

HIRE AND HIRE PURCHASE

Preliminary Note

A contract of hire in respect of movables is a contract of bailment and is governed by the provisions of Chapter IX of the Contract Act.¹ The provisions of the Contract Act are, however, not exhaustive on bailments. A bailment may arise even without any contract. Houses and shops are also often the subject of hire purchase agreements. It is generally public authorities like housing boards and development authorities that grant such facility to members of the public in their housing schemes.²

A hire purchase agreement has two elements: (i) the element of bailment, and (ii) element of sale, in the sense that it contemplates eventual sale. The element of sale fructifies when the intending purchaser exercises the option after fulfilling the terms of the agreement. Upon all the terms of the agreement being satisfied, a sale takes place of the goods which till then had been hired. The property does not pass, it may be noted, when the agreement is made but only passes when the option is finally exercised after compliance with all the terms of the agreement.³ The intending purchaser is known as the hirer so long as the option to purchase is not exercised. The hirer is not bound to buy, but the other side has the obligation undertaken by him to sell. Under the agreement, possession of the goods is delivered by the owner thereof to the hirer on condition of the agreed amount in periodical instalments being continued to be paid. Before the property passes, the hirer, in the absence of agreement to the contrary, has a right to terminate the agreement.⁴

In this system the hirer is let out the article on a monthly hire after making the payment of an initial amount in the form of premium. This amount varies according to the value of the article, as well as the practice prevailing in a particular Company, or firm, but the general pattern is to charge 20 to 25 per cent of the value. The price of the article has to be paid in periodic instalments by way of hire, on the condition that when all the instalments are so paid the property in the article will automatically pass to the hirer. At the same time there is no obligation on the part of the hirer to pay all the instalments and purchase the article. He has merely an option and may, if he so likes, return the article during the period of hire. In law such an agreement does not amount to

1 The Hire Purchase Act though enacted in 1972 has not yet been brought into force. It may be noted here that this Chapter deals only with movables.

2 *State of Gujarat v. Memon Md. Haji Hasan*, A 1967 SC 1885 : (1967) 3 SCR 938.

3 See SALE *post*.

4 *K.L. Johar v. Dy. C.T.O.*, A 1965 SC 1082; *Vasantha v. V.K. Eleyalwar*, A 2001 S 3367

5 *Dalpat Rai v. Manohar Lal*, A 1974 Raj. 61; *K. Narayan v. Laxmi Narasimham*, A 1955 Hyd 104 (FB).

(3) That we shall pay to you guarantee commission at the rate of one percent per annum quarterly in advance.

(4) [*Insert other conditions as may be required*].

[*For other forms of Guarantee, see under BONDS, ante; under LICENCE and MORTGAGE, post*].

a condition is added that the goods shall become the property of the hirer on the hirer making a certain number of payments. Such agreement should be drafted like hire contracts with the usual conditions, but with a clause or clauses providing for the said option to purchase. The additional clause should be carefully drafted so as to provide for that option or for the property in the goods passing to the hirer on the payment of all the instalments *and* on the hirer duly observing the conditions of hire contract. Two points should be carefully borne in mind in drafting this clause, viz.

(1) *It should not amount to an agreement to buy* but should only give the hirer an option to purchase, for, under the agreement to buy the hirer having got possession of the goods would be able to give good title to anyone who takes the goods on sale or pledge from him without notice of the hire-purchase contract (vide Sec. 30(2) Sale of Goods Act 1930) and the intention of the owner will thereby be defeated. But if the agreement does not amount to an *agreement to buy* and gives the hirer only an *option to buy*, the hirer cannot give a valid title to any one, even if the latter takes the goods without notice.⁷

(2) There should be an express stipulation that the property in the goods shall not pass to the hirer until all the instalments have been paid. In the absence of this clause, the power to seize the goods in default of payment of instalments might be held to make the agreement a contract of sale. The owner has in him vested not only his contractual right under the agreement but also a reversionary interest in the goods which form the subject of agreement.⁸ Similarly, the agreement confers two distinct sets of rights on the hirer, viz. the benefit of the hiring-which constitutes the bailment part of the contract and the option to purchase which it is now established constitutes a separate and proprietary right. Each of the two interests of both, the owner and the hirer, is capable of separate assignment.

Minimum Payment Clause

In order to provide for depreciation of the article taken under the hire purchase agreement, it is usual to insert a "minimum payment" clause which provides that in the event of the determination of the agreement by the hirer or the owner, the hirer shall be liable to pay 50 per cent of the total price after deduction of the instalments already paid by the hirer.

Types of Agreement

The system prevails in two forms. One is where the hirer enters into a direct contract with the owner, while in the other a financier intervenes. The financier advances the money for payment of the price and gets a hire purchase agreement executed in his favour after the hirer has settled the bargain with the owner. The article is delivered to the hirer who takes the responsibility against loss and destruction of the article. Generally there is a guarantor who also signs the agreement as a surety.

- v sale or an agreement to sell but is treated as a mere contract of bailment with certain variations relating to contemplated sale.⁶

Deed of Hire

The hire deed is drafted in the form of an agreement. The statutory rights and obligations provided in the Contract Act need not be provided in the agreement. For instance, the hirer's responsibility for care of goods (Sec.151), or the option of the owner to terminate the agreement on the hirer's breach of conditions of hire (Sec. 153). All other conditions agreed upon should be clearly mentioned.

Duty of Hirer as Regards Care

Under Sec. 151, the hirer is bound to take as much care of the goods hired as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value and under Sec. 152, the hirer is not responsible for the loss, destruction or deterioration of the goods hired if he has taken such care. A provision to these effects is unnecessary. But if the parties intend to vary the statutory obligations in any way, the exact contract should be entered in the agreement. For instance, they may agree that the hirer shall be liable for loss or damage to the goods, *from whatever cause resulting*, even in spite of the fact he has taken the necessary care. Such a condition is often necessary as it may be difficult for the owner to prove the negligence of the hirer.

Condition of Breach

Under Sec. 153, the contract would be voidable if the hirer does **any act with regard to the goods hired** inconsistent with the conditions of hire. But if it is intended to provide for the option of termination in any other case, e.g. in case of non-payment of rent or non-insurance of goods, etc., an **express** condition will be necessary.

Hire Purchase

This is a form of hire contract under which the hire is payable in instalments and an option is given to the hirer to purchase the goods hired or

6 *Instalment Supply Co. (P) Ltd v. Union of India*, A 1962 SC 53.

7 See *Greenwood v. Halguette*, (1874) 12 BLR 42, relied on in *Roopchand Jankidas v. The National Bank*, A 1919 Cal 540 (at 541, col. 1); 46 Cal 342.

8 *Mc Entire v. Crossby*, (1895) AC 457; *D.E. Kasisab v. N.T. Engineer*, A 1965 Mad 257; See also *K.A. Mathai v. Kora Bibbukutty*, (1996) 7 SCC 212 (Financier has right to resume possession of the property, - in this case, a bus, in the event of the purchaser's failure to pay instalments).

PRECEDENTS

1—Agreement to Lend a Spinning Plant

THIS AGREEMENT made, etc.

WHEREAS AB owns a Wool Spinning plant (hereinafter called "the plant") installed on AB's freehold land situate at _____ in the town of-----;

AND WHEREAS the said Plant is lying closed for the last several years and CD's offer to take it on hire has been accepted by AB on the conditions hereinafter appearing;

NOW THESE PRESENTS WITNESS as follows :

1. The plant will remain in the use and possession of CD for a period of seven years ending with-----unless this agreement is sooner terminated under the power reserved in this deed. During the period of the plant remaining in the use and possession of CD, CD shall also be entitled to use the land and the building in which the plant is installed. Such use and possession of the land and the building shall be that by way of licence only, the licence being automatically terminable on the expiration or sooner determination of the hire of the plant.

2. CD shall pay to AB as rent for the hire of the said plant the sum of Rs.-----per year in advance and shall also pay to AB a fee of Rs.-----per year for the use and possession of the land and the said building.

3. CD will not lend or transfer the plant to any other person.

4. CD will not remove the said plant or any part thereof from the premises where it is presently installed.

5. CD will keep the plant in good order and condition and will, on the expiration of the said term or earlier termination of this agreement, return the same to AB in the same condition in which it has been lent, reasonable wear and tear excepted, and all loss or damage due to breakage or any other cause shall be made good by CD at his own cost.

6. CD will keep the plant insured against damage or loss by fire or theft in the joint names of AB and CD, at least in the sum of Rs. _____ with an Insurance company and shall punctually pay all premia and produce to AB, when required by him, the receipt for the last premium payable in respect of such insurance.

Stamp Duty

The stamp duty is the same as on agreement.

Registration

Registration is not compulsory. However, in U.P. an agreement to sell immovable property is compulsorily registrable. Accordingly hire purchase agreement relating to immovable property will also require registration in U.P.

3. The said crusher shall be delivered to the hirer at the cost of the said AB.

4. The hirer shall keep the said crusher during the period of hire in good order and condition and shall not part with or suffer the same to go out of his possession and shall keep the same free and exempt from all attachments or other legal process and shall on the expiry of the period of hire, return the same to the said AB in as good a condition as it is at the time of hiring, reasonable wear and tear excepted.

5. In case of non-observance or non-performance by the hirer of any of the provisions hereinbefore contained the said AB shall be at liberty forthwith to terminate this agreement and to retake possession of the said crusher without prejudice to his right to recover damages for breach of agreement.

IN WITNESS WHEREOF, etc.

3—Hire of Electric Fan

AN AGREEMENT made, etc. (as in Form 2).

WHEREBY IT IS AGREED as follows :

1. The said AB shall let to the hirer and the hirer shall take on hire from the said AB for a period of _____ months from the _____ an electric table fan No. _____ of _____ make _____ model on a monthly rent of Rs. _____.

2. The hirer shall pay the aforesaid rent at the office of the said AB at _____ or at such other place or places as the said AB may from time to time appoint, monthly in advance before the _____ day of every month.

3. For hiring during a portion of a month half rent will be charged if the hiring is for not more than fifteen days and full rent will be charged for hiring for more than fifteen days.

4. The hirer will not let out the fan on hire to any other person nor will he remove it for use outside the limits of the city.

5. If the fan does not suit the requirements of the hirer, he may return it within the first week of hiring and in that case will pay a nominal hire of Rs. _____ for the period of trial.

7. If the plant or any part of it is injured or destroyed by fire or lost by theft all moneys received in respect of such insurance shall be paid forthwith to AB who shall, as the case may require, apply such moneys either in making good the damage done or in replacing the plant or such part by other articles of similar description and value and such substituted articles shall become subject to the provisions of this agreement in the same manner as the articles for which they are substituted.

8. AB or his nominees may at all reasonable times inspect the plant, its working and efficiency and CD will furnish to him or them such information as he or they may require concerning the plant and its working.

9. In case of non-observance or non-performance by CD of any of the provisions of this deed AB may terminate this agreement, seize, and retake possession of the plant and accessories.

10. Any earlier relaxation or indulgence granted by AB to CD shall not in any way prejudice the rights of AB under this agreement.

11. It is hereby declared that no workman or other labour, whether permanent or temporary, of AB is presently employed in the said plant.

12. A list of the plant and the tools and spares is enclosed as Annexure I.

13. *Arbitration clause.*

14. *Stamp duty clause.*

IN WITNESS WHEREOF, etc.

2—Hire of a Crushing Machine

AN AGREEMENT made the _____ day of _____ BETWEEN AB, etc., of the one part AND CD, etc., (hereinafter called "the hirer") of the other part;

WHEREBY IT IS AGREED as follows :

1. The said AB shall let to the hirer and the hirer shall take on hire from the said AB for a period of one year from the _____ one crusher (*full description*) (hereinafter called "the crusher").

2. The hirer shall pay to the said AB as rent for the hire of the said crusher the sum of Rs. _____ in advance before the delivery of the said crusher to the hirer.

(c) permit the owner or his authorised agents at all reasonable times to inspect and examine the condition of the said goods;

(d) keep the goods insured against all losses or damage by fire, tempest or theft up to the value of Rs ----- with an Insurance Company to be approved by the owner and shall keep the insurance alive during the continuance of the agreement. He shall pay all sums of money received in respect of such insurances to the owner who shall apply such money in making good the loss by replacement of such damaged part or parts or the entire goods of similar description and value, whereupon such substituted part or parts or goods shall become subject to this agreement in the same manner as the original goods.

(Other conditions settled and necessary according to the nature of the goods).

5. If the hirer shall make default in the punctual payment in full, of the said monthly hire, or in the observance or performance of any of the provisions of this agreement, on his part to be observed and performed, the hiring shall immediately determine.

6. On the determination of the hiring the owner may without notice or demand retake possession of the said goods and for that purpose may by himself or by his agent or servants, enter into or upon any premises occupied by the hirer and search the same, if necessary, for the hired goods.

7. The hirer may terminate this agreement at any time by returning the said goods at the owner's place of business.

8. If the hiring is terminated by the hirer under Clause 7, such termination shall not prejudice the owner's right to recover the hire upto the date of such termination nor his right to recover damages for any prior breach of this agreement by the hirer, [and the hirer shall not be allowed credit or set off for or on account of any payments previously made by him].

9. *(Minimum Payment Clause as in Form No. 5 below).*

10. Any time or other indulgence granted by the owner shall not prejudice or affect his strict rights under this agreement.

IN WITNESS WHEREOF, etc.

5 Minimum Payment Clause

At the termination of this agreement either at the instance of the hirer or the owner, the hirer shall pay to the owner by way of compensation for depreciation of the said article such sum as with the amount previously paid for hire shall make up a sum equal to not less than one half of total amount payable under the agreement.

6—Agreement for Hire (with option to Purchase) with a Financier and a Guarantor

THIS AGREEMENT made this day --- BETWEEN AB, etc., (hereinafter called "the owner") of the first part and CD, etc., (hereinafter called "the hirer") of the second part and EF, etc., (hereinafter called "the guarantor") of the third part.

WHEREAS the owner on the request of the hirer has purchased the motor vehicle described in the schedule hereto from the dealer in order to let the same to the hirer on the terms and conditions hereinafter appearing and the guarantor has agreed to guarantee the payment of the hire and performance of other conditions by the hirer in accordance with the terms of this agreement.

WHEREBY in consideration of the above it is agreed between the parties as follows :

Paras 1, 2, 3 and 4 (a), (c) and (d), same as in Form No.4. For para 4 (b) substitute the following :

(b) will keep the vehicle registered in the name of the owner, and pay all taxes, rates, duties and licence fee or any other charges levied by any authority under any law or rules for the time being in force in respect of the said vehicle, during the continuance of the agreement.

Paras 5, 6, 7, 8 and 9 same as in Form No.4.

10. The guarantor further agrees that in consideration of the premises, and in case of breach of the terms of this contract by the hirer, he shall restore possession of the vehicle to the owner and shall pay such sums of hire of the vehicle as may have fallen due to the owner along with any other sum that may become payable to the owner.

Para 11 same as para 10 in Form No.4.

IN WITNESS WHEREOF, etc.

7 Hire of a Vehicle

AN AGREEMENT made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the owner") of the one part and CD, etc., (hereinafter called "the Hirer") of the other part;

WHEREBY IT IS AGREED AS FOLLOWS :

1. The owner shall let and the hirer shall take on hire the vehicle _____ (*full description*) bearing registration No. _____ along with its driver and cleaner from the _____ day of _____ for the term of _____ months hence next ensuing.
2. The hirer shall during the continuance of this agreement pay to the owner by way of rent for the hire of the said vehicle, compensation for the use and depreciation of the same and the pay and all allowances for the driver and cleaner as aforesaid, the sum of Rs. _____ per day.
3. The payment under clause 2 hereinbefore shall be made to the owner within fifteen days after the expiry of the term of this agreement (*or*, by the seventh day of every month).
4. The owner shall at his own expense keep the said vehicle in good and substantial repair and condition and will keep the hirer indemnified against all loss of or damage to the said vehicle from whatsoever cause the same may arise.
5. The hirer may determine the hiring at any time by returning the said vehicle to the owner, and shall thereupon forthwith pay to the owner all moneys then payable to him under this agreement.
6. The petrol and oil for plying the vehicle will be provided by the hirer.

(*Other conditions as in forms 2 and 3*).

IN WITNESS WHEREOF, etc.