

**AGREEMENT FOR PROMOTING A COMPANY**

AGREEMENT

BETWEEN

\_\_\_\_\_

AND

\_\_\_\_\_

TO PROMOTE A COMPANY TO BE KNOWN AS \_\_\_\_\_

THIS AGREEMENT made at \_\_\_\_\_ the \_\_\_\_ day of \_\_\_\_\_, 2000 BETWEEN \_\_\_\_\_ LTD., a Company incorporated under the Companies Act, 1956 having its registered office at \_\_\_\_\_ (Hereinafter referred to as "A" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) of the ONE PART AND MR. B, Resident of India residing at \_\_\_\_\_ (Hereinafter referred to as "B" which expression shall unless repugnant to the context or meaning thereof include his/her heirs and legal representatives) of the OTHER PART;

WHEREAS:-

A. The parties hereto have agreed to jointly promote and incorporate a company in India to carry on the business of \_\_\_\_\_;

B. The parties hereto have agreed to subscribe to the shares of such company subject to the condition that they shall enter into an Agreement in terms of these presents;

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

1.

a. The parties shall jointly promote forms and incorporate a private company limited by shares under the Companies Act, 1956 or any statutory modification or re-enactment thereof for the time being in force under the name \_\_\_\_\_ (Hereinafter called "the Company").

b. The registered office of the Company shall be situated in Mumbai at \_\_\_\_\_ or at such other place as may be mutually agreed upon between the parties in writing.

c. The Company shall, upon its incorporation, carry on the business of \_\_\_\_\_. The parties hereto shall ensure that no other business activity is undertaken by the Company at any time without the prior written consent of both parties hereto.

2. The Memorandum and Articles of Association of the Company shall be in a form mutually agreed upon in writing between the parties hereto. The Memorandum and Articles of Association shall include such of the provisions contained herein as can be lawfully included therein. Any alteration of the Memorandum or Articles of Association of the Company shall be made only with the prior written consent of the parties hereto.

3.

a. The authorised share capital of the Company upon incorporation, shall be Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) consisting of \_\_\_\_\_ equity shares of each. The paid-up share capital of the Company upon incorporation shall be Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) consisting of \_\_\_\_\_ equity shares of \_\_\_\_\_ each fully paid. The initial subscription by the parties hereto to the aforesaid paid-up share capital of the Company shall be Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) each. The issue of any further capital by the Company shall be made at each time and in such manner as is mutually agreed upon between the parties from time to time.

1.

2.

3.

4.

a. "A" shall subscribe for in cash at \_\_\_\_\_ and hold \_\_\_\_\_ of the total issued, subscribed and paid-up equity capital of the Company for the time being and from time to time.

b. "B" shall subscribe for in cash at par and hold \_\_\_\_\_-of the total issued, subscribed and paid-up equity capital of the Company for the time being and from time to time.

5. Unless the parties hereto shall have otherwise accorded their prior consent in writing in that behalf, any further issue of capital by the Company shall be made in such manner as to ensure that the participation by each of the parties hereto in the total issued and paid-up equity share capital of the Company for the time being shall, subject to clause 10 and 11 hereof, at all times be and remain in the same proportion as that provided in clause 4 above.

6.

a. The Board of Directors of the Company shall consist of not less than four not more than eight directors.

b. The day to day management of the Company shall be looked after by the Managing Director. Any major acquisition of property, substantial expansion of business activities or diversification or matters of policy shall be with the prior consent of \_\_\_\_\_.

c. So long as "A" and "B" each hold not less than 25% of the paid-up equity capital of the Company for the time being, they shall at all times have equal representation on the Board of Directors of the Company. "A" and "B" shall be entitled at any time to remove any of their representatives on the Board by written notice and to appoint another or others in their place.

d. So long as "A" holds not less than 26% of the paid-up equity shares capital of the Company for the time being it shall be entitled to nominate the Chairman of the Board. The Chairman of the Board shall also be the Chairman of all general meetings of the Company. The Chairman shall not have a casting vote, in the case of an equality of votes, both at Board Meetings and general meetings.

e. "B" shall be the first Managing Director of the Company and shall be so appointed by the Board of Directors of the Company as such for an initial period of ten years renewable for a further period of ten years. The Company shall enter into an agreement with "B" setting out of the terms and conditions of his/her appointments as Managing Director, including his/her remuneration and perquisites, within two months from the date of its incorporation. The Agreement shall be in a form mutually agreed upon between the parties in writing. No alteration or modification of each Agreement with the Managing Director shall be made without the prior written consent of "A".

f. Notwithstanding anything to the contrary hereinabove contained, B's appointment as Managing Director shall cease and be terminated upon his/her shareholding in the Company being reduced for any reason whatsoever below 26% of the paid-up equity share capital of the Company for the time being.

g. None of the Directors of the Company shall be required to hold any qualification shares.

7. Both parties hereto jointly and severally shall vote and act as members of the Company and with respect to the shares of the Company held by them so as to ensure that Directors of the Company held by them so as to ensure that Directors of the Company are at all times appointed and maintained in office in conformity with the provisions of clause 6 hereof. If at any time the provisions of clause 6 are not fully complied with the parties hereto jointly and severally agree to promptly take all necessary steps to ensure that the provisions of clause 6 hereof are fully implemented in letter and spirit.

8.

a. No resolution shall be passed or be deemed to be passed at any meeting of the Board of Directors of the Company or by circulation unless it has received the affirmative vote of "A" and "B" or in their absence at least one of the representatives on the Board of "A" and "B" respectively.

b. Any act, matter or thing or any resolution which, under the Articles of Association of the Company or the Companies Act, 1956, is permitted or required to be done or passed by the Company in general meeting shall invariably be done by or passed as a special resolution of the shareholders of the Company in general meeting unless the said Act expressly requires such act, matter or thing to be done by a resolution to be passed as an ordinary resolution of the shareholders in general meeting.

c. It is expressly agreed and declared that no dividend, interim or final, shall be declared or recommended by the Company for a period of not less than three years from the date of its incorporation and during such period the profits of the Company after tax, if any, shall be transferred to "Reserves and Surplus".

9.

a. The Auditors of the Company shall be such firm of Chartered Accountants as shall be approved in writing by both the parties hereto.

b. The Legal Advisors of the Company shall be:-

c. Neither the Auditors of the Company nor the Legal Advisors of the Company shall be changed without the prior written consent of both the parties hereto.

10. Neither party hereto shall sell or transfer his shares in the Company or any of them for a period of at least 5 years from the date of incorporation of the Company. Thereafter any sale or transfer of shares in the Company by either party shall be as provided in clause 11. Further neither party hereto shall, create any charge, lien pledge or other encumbrances on or in respect of his share in the Company or any of them without the prior written consent of the other. If at any time during the continuance of this Agreement either party hereto desires to sell or transfer all or any of the shares held by him in the Company he shall do so strictly in accordance with the provisions hereinafter provided.

11.

a. If either party desires at any time after 5 years from the date of incorporation of the Company to sell the whole or part of his/her shares in the Company/he/she/it shall first offer such shares in writing to the other. If the other does not accept in writing the offer within 15 days of receipt of the offer by his/her, the Offer or shall then be at liberty within 90 days thereafter to sell the shares so offered to any other persons of his/her/its choice at the same price and on the same terms and conditions as contained in the written offer in the first instance falling which the procedure contained in this sub-clause shall be repeated by the Offer or.

b. The provisions of sub-clause (a) of this clause shall not apply to a transfer of shares in the Company by "A" to a Company which holds more than 51% of the shareholding of A nor to a Company in which at least 51% of the shares are held by A, nor to a transfer of shares by "B" to his relatives up to 24% of the paid-up capital of the Company for the time being. The expression "relatives" for the purpose of this sub-clause shall have the same meaning as that assigned in the Companies Act, 1956.

12. The parties hereto agree and undertake not to disclose or divulge directly or indirectly to a third party any trade or business secrets or other secret or confidential information pertaining to the business, affairs or transactions of each other or of the Company or of clients or customers that may have been disclosed, imparted to or acquired by either or them from the other or from the Company.

13. The parties hereto jointly and severally undertake:-

a. that they shall ensure that they, their representatives, proxies and agents representing them at general meetings of the shareholders of the Company shall at all times exercise their votes in such manner so as to comply with, and to fully and effectually implement, the provisions of this Agreement.

b. That if any resolution is proposed contrary to the terms of this Agreement the parties, their representatives, proxies and agents representing them shall vote against it. If for any reason such a resolution is passed, the parties will, if necessary, join together and convene an extraordinary general meeting of the Company in pursuance of section 169 of the Companies Act, 1956 for implementing the terms of this Agreement.

14. The parties hereto shall jointly and severally procure and/or ensure that the Director or Directors of its choice on the Board of the Company shall at all times fully and effectually implement and comply with (including by exercise of voting rights at meetings of the Board or resolutions by circulation and on resolutions passed at a meeting of any Companies of the Directors) the provisions of this Agreement.

15. If either party shall commit a breach of any of the terms or provisions of this Agreement and shall fail to rectify such breach within 60 days from the receipt of written notice from the party complaining of the breach then the latter shall be entitled, without prejudice to its other rights and remedies under this Agreement or at law, to terminate the Agreement recorded herein by written notice.

16. Notwithstanding anything to the contrary herein contained this Agreement shall stand terminated forthwith upon A and/or B's shareholding in the Company being reduced for any reason whatsoever below 26% of the issued, subscribed and paid-up share capital of the Company for the time being.

17. No modification or alteration of this Agreement or any of its terms or provisions shall be valid or binding on the parties hereto unless made in writing duly signed by both the parties and by or on your behalf.

18. This Agreement is personal to the parties hereto and shall not be transferred or assigned in whole or in part by either party without the prior written consent of the other.

19. If any dispute or difference shall at any time arise between the parties to this Agreement as to any term, provision or matter contained herein or as to their respective rights, claims, duties or liabilities hereunder or otherwise howsoever in relation to or arising out of or concerning this Agreement, such dispute or difference shall be referred to the arbitration of two arbitrators, one to be appointed by each party and in the event of the arbitrators differing, to an umpire to be appointed by the said two arbitrators before entering upon the reference, the venue of such arbitration shall be in Bombay unless the parties otherwise agree in writing. Such arbitration shall be held under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

20. This Agreement represents the entire agreement between the parties hereto on the subject matter hereof and cancels and supersedes all prior agreements, arrangements or understandings, if any, whatever oral or in writing.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first hereinabove written.

SIGNED AND DELIVERED by the within named

In the presence of \_\_\_\_\_

SIGNED AND DELIVERED by the within-named

In the presence of \_\_\_\_\_