

CONSULTANCY AGREEMENT

1400/000/009

PARTIES:

- 1) "The Company": SOUTH AFRICAN NATIONAL INDUSTRIAL PARTICIPATION (PROPRIETARY) LIMITED, a private company with limited liability incorporated in accordance with the laws of the Republic of South Africa; with registration number 1992/009353/07.
- 2) "The Consultant": Hlongwane Consulting (Proprietary) Limited a private company with limited liability incorporated in accordance with the laws of the Republic of South Africa, with registration number, 1999/021633/07, whose registered office is at Primegro Place, 18 Rivonia Road, Illovo, Sandton, South Africa.

(Hereinafter referred to collectively as "Parties" or individually as "Party".)

INTRODUCTION:

- A) The Consultant is able to offer consultancy services by assisting the Company to market and implement projects pursuant to the South African Government's National Industrial Participation Programme promoting exports, local sales and investments in and from the Republic of South Africa ("NIP Projects"). The Consultant has the required skill, knowledge and experience within the Republic of South Africa and internationally.
- B) In reliance upon that skill, knowledge and experience the Company wishes to engage the Consultant to provide services, in particular, in relation to project identification, development, marketing and implementation, for projects which the Consultant might identify or which have been assigned to it. The Consultant has agreed to accept the engagement on the following terms.

THEREFORE IT IS AGREED AS FOLLOWS:

1. CONSULTANCY SERVICES

- 1.1 The Company engages the Consultant to provide the consultancy services more particularly described in the schedule hereto ("the Services") and the Consultant agrees to provide the Services upon the terms and conditions hereinafter mentioned.
- 1.2 The Company manager responsible for the implementation of this Agreement is the General Manager or such other manager as the Company may designate to the Consultant from time to time.
- 1.3 The Consultant will commence performing work for the Company on 1st August 2003, notwithstanding the date of signature of this Agreement. The Consultant's agreement with the Company shall be restricted to the specific work detailed in clause (a) and (b) of the Introduction to this Agreement.
- 1.4 References in this Agreement to the Consultant include, where necessary in the context, references to employees of the

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Consultant, and the Consultant undertakes that it shall do all things necessary and take all necessary steps to ensure that all of its employees are aware of the contents of this Agreement and that its employees shall abide by the contents of this Agreement.

- 1.5 It is specifically recorded that no employee of the Consultant is an employee of the Company, and that nothing in this Agreement serves to constitute or appoint such employee or employees of the Consultant as employees of the Company.
- 1.6 None of the employees of the Consultant are entitled to any of the rights or benefits available to employees of the Company, including, *inter alia*:
- 1.6.1 annual leave, paid leave, sick leave, maternity leave, or family responsibility leave;
 - 1.6.2 medical aid membership or contributions to a medical aid scheme;
 - 1.6.3 membership of a provident or pension fund or provident or pension fund benefits;
 - 1.6.4 bonus entitlement, salary or wage increment;
 - 1.6.5 severance pay or any other retrenchment benefit in terms of the Company's policy or labour legislation, or any collective agreement.
- 1.7 The Consultant shall take the necessary steps to ensure that its employees specifically waive any right to rely upon any provisions of the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997 and the Employment Equity Act 55 of 1998, or any amendment to such Acts, in relation to the Company, and the Consultant shall ensure that its employees, in waiving such rights to rely upon the provisions of any such Acts or amendments to these Acts in relation to the Company, do so in the full and express knowledge that they are aware of the definitions of employee appearing in each of the aforementioned Acts or the amendments to such Acts, and that they are not employees as defined of the Company in any of the aforementioned Acts or amendments to such Acts.
- 1.8 The Company and the Consultant specifically record that this Agreement shall not be applied or interpreted by the parties as creating an expectation of further agreements of an identical or similar nature after the termination of this Agreement.

2. DURATION

This Agreement shall commence on 1st August 2003 and shall be for a period of 5 years from that date. This Agreement may be cancelled by agreement between the Parties or in terms of Clause 7 of this Agreement. The obligations of the Company toward the Consultant under the provisions of Clause 4 shall survive the expiry date of this Agreement.

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3. CONSULTANT'S OBLIGATIONS

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- 3.1 The Services shall be performed with all reasonable skill, care and diligence and in a professional manner.
- 3.2 Subject to Clause 3.1 it is the responsibility of the Consultant to provide the Services in such a manner that the object of this Agreement is fulfilled.
- 3.3 The Consultant will act at all times in the interests of the Company and undertakes to follow and be guided by the Company's project management, corporate governance and other established procedures, as advised, governing the implementation of National Industrial Participation Projects.
- 3.4 The Consultant and its employees shall not enter into any undertakings or commitments on behalf of the Company, unless specifically authorised in writing, nor shall the Consultant and its employees have the authority to incur any debt or other liability or obtain any credit facility either in the name of or on behalf of the Company without having obtained the written authority of the Company signed by a duly authorised representative of the Company.
- 3.5 The Consultant shall not assign or cede any obligations or rights under this Agreement to another party, in whole or in part, unless with the written permission of the Company.
- 3.6 The Consultant shall observe all applicable laws, ordinances, proclamations, rules, regulations and service standards relating in any manner to the performance by the Consultant of its work in terms of this Agreement.

4. FEES AND BONUS PAYMENTS

- 4.1 In consideration of the provision of the Services the Company shall pay to the Consultant a fee of ZAR8,175,000 (eight million one hundred and seventy five thousand South African Rand) on or about 1st August 2003 and thereafter a fee of ZAR1,875,000 (one million eight hundred and seventy five thousand South African Rand) commencing September 1st 2003 inclusive per calendar quarter (plus Value Added Tax if applicable) payable in advance by not later than the 7th day of the relevant calendar month.
- 4.2 Furthermore on the basis that the Government of the Republic of South Africa does not terminate the Tranche 3 of the Hawk/Gripen Agreement dated 3rd December 1999 between the Government of the Republic of South Africa and BAE SYSTEMS then:
- 4.2.1 On formal written confirmation to the Company by the Department of Trade and Industry of the Government of the Republic of South Africa of successful achievement by the Company of clause 4.3.2.1 (discharge of at least investments of USD300,000,000 and exports of USD 2,000,000,000 of NIP by April 2004) of the Hawk/Gripen

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Agreement dated 3rd December 1999 between the Government of the Republic of South Africa and BAE SYSTEMS (hereinafter referred to as 'Milestone 1') and formal written confirmation to the Company by the Department of Trade and Industry of the Republic of South Africa that there are no penalties arising which are attributable to such Milestone 1, the Company shall pay to the Consultant, upon receipt of an invoice, a bonus payment of ZAR22,500,000 (twenty two million five hundred thousand South African Rand), (plus Value Added Tax if applicable), within 30 days of receipt of such confirmation and such invoice.

4.2.2 In addition to the bonus payment referred to in clause 4.2.1 above, on formal written confirmation to the Company by the Department of Trade and Industry of the Government of the Republic of South Africa of successful achievement by the Company of clause 4.3.2.3 (discharge of at least investments of USD 2,000,000,000 and exports of USD 5,200,000,000 of NIP by April 2011) of the Hawk/Gripen Agreement dated 3rd December 1999 between the Government of the Republic of South Africa and BAE SYSTEMS (hereinafter referred to as 'Milestone 3') and formal written confirmation to the Company by the Department of Trade and Industry of the Republic of South Africa that there are no penalties arising which are attributable to such Milestone 3, the Company shall pay to the Consultant, upon receipt of an invoice, a bonus payment of ZAR30,000,000 (thirty million South African Rand), (plus Value Added Tax if applicable), within 30 days of receipt of such confirmation and such invoice.

4.3 If the currency exchange rate between the South African Rand and the United States Dollar prevailing at the payment date of any payment due under this Clause 4 has varied from the exchange rate of ZAR7.5=US\$1 then the amount to be paid will either be the original amount specified in this Agreement or the original amount specified adjusted by the same extent as the exchange rate has varied, whichever is the greater.

4.4 The fees and bonus payments referred in this clause shall be the only payments that the Consultant is entitled to claim from the Company in the respect of the Services to be provided as described herein.

5. SUPPORT

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to putting into effect or maintaining the terms and conditions of this Agreement.

6. ANTI-CORRUPTION

6.1 The Consultant represents and warrants:

- 6.1.1 that everyone involved in the performance of the Services on behalf of the Consultant understands that the Company will not tolerate bribery in the conduct of its business; and
- 6.1.2 that the Consultant has taken all steps which it considers necessary to inform itself about the provisions of the OECD Anti-Bribery Convention and any other legislation of the Republic of South Africa or elsewhere concerning corrupt practices and which may be relevant to the performance of this Agreement.

6.2 The Consultant represents and warrants that the Consultant has not, whether by itself or in conjunction with any other person, corruptly given promised or offered, and will not, whether by itself or in conjunction with any other person, corruptly give promise or offer any gift, loan, fee, consideration or advantage of any nature whatsoever.

6.2.1 to any person, whether for the benefit of that person or another person as an inducement to, or as a reward for, or otherwise on account of any member, officer or servant of a public body or any person otherwise in a public office doing or forbearing to do anything in respect of any matter or transaction whatever, whether actual or proposed; in which that public body is concerned; or

6.2.2 to any agent as an inducement or reward for doing or forbearing to do or for having done or forbore to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

For the purposes of this clause 6.2, the term 'public body' shall include, but shall not be limited to, any government, including any department, agency or instrumentality of any such government, the armed forces of any government, any other national, regional or local governing or administrative body, and any other body which exercises authority over or in relation to the public at large in any jurisdiction; and the term 'agent' shall include, but shall not be limited to, any person employed by or acting for another.

7. **EXPENSES**

Except as otherwise agreed in writing, all outgoings and expenses incurred by the Consultant in the provision of its services shall be borne by the Consultant.

8. **TERMINATION**

8.1 This agreement may be terminated:

8.1.1 by written notice given by one Party to the other provided that the Party to whom such notice has been given has

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committed a material breach of this Agreement and fails to rectify such breach within 14 days of receipt of written notice, requiring the defaulting Party to remedy such breach in terms of the scope of this Agreement; or

8.1.2 summarily by written notice given by one Party to the other provided that the Party to whom such notice is given has previously been given a written notification as required by the preceding paragraph and that Party is guilty of a similar breach within a concurrent period of 6 months.

8.2 The Parties agree that notwithstanding that this Agreement may be terminated in terms of this clause 8, the Parties shall nevertheless remain bound by and comply with the provisions of clauses 5 and 9 which clauses shall survive termination of this Agreement.

8.3 In addition to a Party's right to terminate this agreement as a result of material breach, the Company shall be entitled to terminate this Agreement without notice should any of the following events arise:

8.3.1 the Consultant is liquidated (whether provisionally or finally);

8.3.2 the Consultant has any judgment in excess of ZAR50,000 (fifty thousand South African Rand) taken against it and fails to satisfy such judgment within 10 days thereof or to rescind the judgment within the period of time prescribed in the relevant rules of court;

8.3.3 the Consultant falsifies any document or record required by the Company or commits any act of fraud or dishonesty in dealing with the Company or clients or in respect of any matter arising from the terms of this Agreement;

8.3.4 the Consultant commits any act which in the reasonable opinion of the Company adversely affects or is likely to affect the goodwill, reputation, business or professional standing of the Company.

9. **CONFIDENTIAL INFORMATION**

9.1 The Consultant undertakes both during the term of this Agreement and thereafter not to disclose to any third party without the consent of the Company confidential or sensitive information, whether commercially or otherwise, concerning the Company, its organisation, personnel, business activities or NIP Projects which may have been learned or imparted to it during the performance of this Agreement.

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- 9.2 The Consultant shall observe all national security and other regulations of the Republic of South Africa applicable to the safeguarding of the secrecy of the Company's business or operations. The Consultant is required not to copy confidential or sensitive information, whether commercially or otherwise, except when strictly necessary in performance of the Services.
- 9.3 Upon demand from the Company to return all confidential or sensitive information, whether commercially or otherwise, and written records to the Company upon the termination of this Agreement.

10. INDEMNITIES

- 10.1 As a consequence of the current practice of the South African Revenue Services ("SARS") regarding independent contractor arrangements, the Consultant indemnifies the Company against any loss that it may suffer (which includes PAYE, SITE, interest and penalties) as a result of the SARS demanding payment of any sum from the Company arising out of the Consultant's relationship with the Company. The Consultant shall provide the Company, on request, with the Consultant's documentation and motivation to the SARS which procured the Consultant's present, or any future, tax directive. To the extent that the Consultant has not provided the Company with a tax directive, the Company shall be entitled, at its sole discretion, to deduct income tax from any payment due and owing to the Consultant.
- 10.2 The Consultant hereby indemnifies and holds the Company harmless against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses or other liabilities caused, whether negligently or otherwise, to the Company by the non-observance or non-compliance by the Consultant of its duties and obligations under this Agreement and/or statutory duties and obligations applicable to the Consultant.
- 10.3 The Consultant hereby waives any claim that it may have against the Company or any of the Company's employees in the event of any loss, accident, injury or death which occurs to the Consultant, its property, its employees, its mandatories or its agents while on the Company's premises or any other premises on which the Company requires the Consultant to work, and whether such loss, accident, injury or death results from any negligent act or omission on the part of the Company and its employees, mandatories, agents or other independent contractors of the Company or from the use of defective materials or equipment by the Company and its employees, mandatories, agents or other independent contractors of the Company or from any human or mechanical error, default or failure occurring on the said premises, or from any other cause whatsoever, howsoever arising.

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11. NOTICE

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11.1 Any notice or communication required or permitted by this Agreement to be given by either party to the other shall be valid and effective only if given in writing.

11.2 Any notice to be given in terms of this Agreement shall be either served by personal delivery or by sending the same by registered post or recorded delivery in which event, unless the contrary is proved, it shall be deemed to have been received 7 days after posting (any receipt issued by the postal authorities shall be conclusive evidence of the fact and date of posting of any such notice).

11.3 For all purposes under this Agreement and in particular under this Clause, the Parties choose as their *domicilio citandi et executandi* the following physical and postal addresses:

11.3.1 The Company Physical 1st floor,
Tumberry Building
Roox Street
Fourways
Gauteng

Postal PostNet #246
Private Bag X033
Rivonia 2128
Gauteng

11.3.2 The Consultant Physical Primegro Place
18, Rivonia Road
Illovo
Sandton

Postal P.O. Box 652174
Benmore 2010

12. MISCELLANEOUS

12.1 This Agreement contains the entire agreement between the Parties in respect of the Services and shall supersede any prior representation, understandings or agreements made between the Parties in respect of the Services.

12.2 The terms and conditions of this Agreement shall not be varied or waived, except by an agreement in writing signed by the Parties. Such variation or waiver shall then only be effective for the purpose and to the extent for which it was granted.

12.3 The waiver (whether express or implied) by a Party of any breach of any of the terms or conditions of this Agreement by the other Party shall not prejudice any remedy that the waiving Party has in respect of any continuing or other breach of the terms and conditions of this Agreement.

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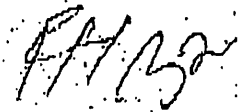
12.4 No favour, delay, relaxation or indulgence on the part of a Party in exercising any power or right conferred on any such Party in terms of this Agreement shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this Agreement.

12.5 The termination of this Agreement shall not prejudice the rights of a Party in respect of any antecedent breach or non-performance by the other Party of any of the terms or conditions of this Agreement.

12.6 This Agreement shall be governed and construed in all respects in accordance with the laws of the Republic of South Africa.

12.7.1 Any dispute arising from or in connection with this Agreement shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by one arbitrator appointed by the Foundation. The place of arbitration shall be Johannesburg, South Africa and the language of the arbitration shall be English.

The decision of the arbitration shall be binding and final and, should one of the Parties so request, the other shall agree that such decision be made an order of court. The costs of the arbitration shall be at the discretion of the arbitrator.

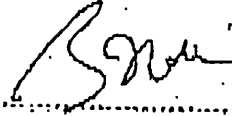
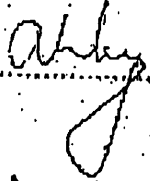


Signed at Johannesburg on 10th September 2003.

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Witness:

for SANIP
(Proprietary) Limited



Name: ALISON MEYER

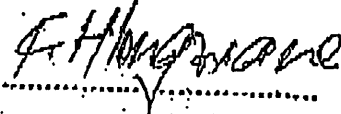
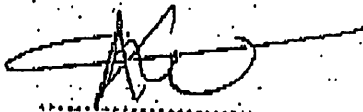
Name: B. J. COENRAAT

Title: General Manager

Signed at JOHANNESBURG on 10 SEPTEMBER 2003.

Witness:

for Hlongwane
Consulting (Propriety)
Limited



Name: ANOBILE MKHANE

Name:

Title

Schedule of Services:-

- To advise on the marketing and implementation of projects which promote exports, local sales and investments in and from the Republic of South Africa and in respect of which the Company is granted credits under and pursuant to the South African Government's National Industrial Participation Programme ("NIP Projects").
- To liaise and advise in respect of NIP Projects.
- To take all reasonable and necessary steps to ensure that the Company is granted or is able to claim NIP credits from the South African Government as a result of its involvement in any NIP Project.
- To use, follow and be guided by the Company's project management, corporate governance and other established procedures/tools, as advised, which govern or control the implementation of NIP Projects.
- To carry out any other associated tasks relating to the marketing and implementation of NIP Projects as may be reasonably required by the Company.

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