

FC 504.026

1200/498/072

THIS AGREEMENT is made this 11th day of November 1989 BETWEEN RED DIAMOND TRADING LIMITED whose registered office is at 65 Main Street, PO Box 3463, Road Town, Tortola, British Virgin Islands (the 'Company') of the one part and the company whose name and registered office is set out in Schedule A Part 1 hereto (the 'Consultant') of the other part

1. DEFINITIONS

1.1 In this Agreement:

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|----------------------|---|
| 'Territory' | means the country or countries described in Schedule A Part 2 hereto |
| 'Products' | means the product or products and service or services described in Schedule B Part 1 hereto |
| 'Services' | means the services to be provided by the Consultant to the Company brief details of which are set out in Schedule A Part 4 hereto |
| 'Customer' | means the party or parties described in Schedule B Part 1 hereto |
| 'Fee' | means the fee stipulated in respect of each Product in Schedule B Part 1 hereto |
| 'Effective Date' | means the date stipulated in Schedule A Part 5 hereto |
| the 'Principal' | means the person identified in Schedule A Part 6 hereto |
| 'Manufacturer' | means the company which designs, develops, manufactures and supports the Products |
| 'Termination Date' | means the date stipulated in Schedule B Part 3 hereto |
| 'Contract' | means a contract for the sale of Products to a Customer |
| 'Special Conditions' | means the additional terms and conditions (if any) set out in Schedule B Part 4 hereto |
| 'Agreement' | means this agreement together with Schedules A and B attached hereto |

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1.2 In this Agreement, a reference to:

- (i) A person includes a reference to (a) an individual, firm, body corporate, unincorporated association, partnership, entity, state or agency thereof and (b) that person's legal personal representatives, successors and permitted assigns
- (ii) A clause or sub-clause or schedule, unless the context otherwise requires, is a reference to a clause or sub-clause or schedule of this Agreement
- (iii) This Agreement or any other document or any specified provision hereof or thereof shall be construed as a reference to this Agreement or other document or that provision as from time to time amended or supplemented; and
- (iv) Any laws shall be construed as references to those laws as amended, extended, consolidated, re-enacted or replaced from time to time.

1.3 In this Agreement:

- (i) The headings used are inserted for convenience only and shall not be deemed to be any indication of the meaning of the clause to which they relate; and
- (ii) The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa.

2. APPOINTMENT

- 2.1 With effect from the Effective Date the Company hereby appoints the Consultant as an adviser to provide the Services to support the Company with regard to the possible sale by the Manufacturer of the Products to the Customer in the Territory. The Consultant hereby accepts the appointment and shall use its best efforts to perform its obligations under this Agreement.
- 2.2 The Consultant shall undertake, at its own expense, all the necessary activities to provide the Services in an efficient, timely and responsive manner. Throughout the term of this Agreement the Consultant shall maintain close liaison and contact with the Principal and will keep him informed of all matters which come to the Consultant's attention and are relevant to the provision of the Services.
- 2.3 This Agreement shall not constitute the Consultant an agent of the Company or the Manufacturer and the Consultant shall not hold itself out as such nor shall the Consultant have any authority to enter into any agreement or commitment on behalf of the Company or the Manufacturer.
- 2.4 During the term of this Agreement the Consultant shall not engage in any activities which would or might conflict with the interests or instructions of the Company or the Manufacturer and the Consultant shall, at all times, conduct itself

In a manner that will enhance the reputation of the Company and the Manufacturer of the Products.

- 2.5 This Agreement shall not preclude the Company and the Manufacturer of the Products from making any other arrangements which either of them may desire to assist with the sale of the Products in the Territory.
- 2.6 It is understood and agreed between the Company and the Consultant that the appointment of the Consultant hereunder reflects the particular expertise, organization and capabilities of the Consultant at the present time.
- 2.7 The Consultant shall not be entitled to assign this Agreement or to delegate, subcontract or otherwise transfer its rights and obligations hereunder.
- 2.8 The Company shall be entitled to terminate this Agreement by immediate written notice if there is a change in the management or control of the Consultant which the Company deems to be unsatisfactory, harmful or prejudicial to its interests.

3. REPRESENTATIONS AND WARRANTIES OF THE CONSULTANT

- 3.1 The Consultant represents and warrants that, in connection with the provision of the Services or any of them, except for lawful expenditures that are expressly permitted by applicable laws and the terms of this Agreement, the Consultant has not, whether directly or indirectly, offered, paid or conferred, promised to pay or confer, or authorized the payment or conferment of, and will not, whether directly or indirectly, offer, pay or confer, promise to pay or confer or authorize the payment or conferment of, any benefit of any nature whatsoever:
- (i) to any person who is an official, agent, officer, employee or representative of any government or the armed forces of any government, including any department, agency or instrumentality thereof and any person acting in an official capacity thereof or on behalf thereof
 - (ii) to the Customer of the Company or the Manufacturer
 - (iii) to any political party or any official of any political party
 - (iv) to any candidate for political office
 - (v) to any person while knowing or suspecting or having reason to know or suspect that any portion of such benefit may be offered, given or promised, whether directly or indirectly, to any of the foregoing persons.
 - (vi) to any person, whether directly or indirectly, where the intention was, or is, unlawfully to influence the sale of the Products (including any services to be provided in connection therewith)
- 3.2 The Consultant represents and warrants that this Agreement and the relationship created hereby between the Company and the Consultant does not (and will not) violate any laws of the Territory.

3.3 The Consultant represents and warrants that it is a corporation duly organised under the laws of the place of its incorporation with power to enter into this Agreement and to exercise its rights and perform its duties and obligations hereunder and all corporate and other action required to authorize the execution of this Agreement and the performance of its duties and obligations hereunder has been duly taken.

3.4 Neither the Company's employees nor the employees of the Manufacturer:

- (i) are permitted to receive any payment or benefit in kind in respect of their employment other than the remuneration paid by the Company and the Manufacturer
- (ii) are permitted to receive any shareholding or other interest in the Consultant

Accordingly the Consultant hereby warrants and agrees that no employee or former employee of the Company or the Manufacturer has any such interest (either direct or indirect) and that no such employee or former employee will be offered any such interest, payment or other benefit

4. REMUNERATION OF THE CONSULTANT

4.1 In the event that a Contract for the sale by the Manufacturer of any of the Products directly to the Customer is signed and becomes fully effective during the term of this Agreement set forth in Clause 6 below and in full payment for the provision by the Consultant of the Services, the Company shall pay to the Consultant the Fee at such times as set out in Schedule B Part 2 and to such bank account as set out in Schedule A Part 3 hereto.

4.2 Notwithstanding anything to the contrary expressed or implied in this Agreement no Fee shall be due or payable to the Consultant in respect of the sale of any of the Products if:

- (i) the payment of the Fee is precluded by the terms of the Contract or by any undertaking or affidavit required to be given by the Company or the Manufacturer in respect thereof or by the laws of the Territory
- (ii) the payment of the Fee is precluded by any exchange control or similar laws prohibiting the international remittance and transfer of money
- (iii) the Consultant is in breach of any of its obligations hereunder

4.3 The Company shall be deemed to have discharged its obligation to make payment of each instalment of the Fee upon the execution by its bank of instructions to transfer the relevant amount to the bank account referred to in Clause 4.1. If the Company is required, pursuant to any law or regulation, to make any deduction from any such payment it shall do all things in its power which may be reasonably necessary to enable or assist the Consultant to claim

exemption therefrom under any double taxation or similar agreement from time to time in force and shall give to the Consultant proper evidence as to the deduction and payment over to the relevant tax authorities of the tax withheld.

5. CONFIDENTIALITY

- 5.1 During the term of this Agreement, and after termination or expiration of this Agreement for any reason whatsoever, the Consultant shall:
- (i) except when strictly necessary for the purposes of providing the Services (and then only in accordance with instructions issued by the Company), preserve the strictest secrecy as to the Company's and the Manufacturer's business and activities and not disclose to any third party any information concerning such business and activities
 - (ii) not use any information concerning the business and activities of the Company for any purpose other than for the provision of the Services
- 5.2 The Consultant shall treat any information which it receives to which any government classifications apply (including classifications applied by the United Kingdom Government and the Government of the Territory) in accordance with the rules and procedures applied by such governments to such information.

6. TERM OF THE AGREEMENT

This Agreement shall commence and be effective from the Effective Date and (unless terminated earlier pursuant to Clause 7) shall remain in full force and effect until the Termination Date.

7. TERMINATION

- 7.1 It shall be a condition of this Agreement that the following events shall not occur and the Company may terminate this Agreement with immediate effect by notice to the Consultant on or at any time after the occurrence of any of the following events:
- (i) a breach by the Consultant of any of its obligations under this Agreement;
 - (ii) any representation or statement made by the Consultant in this Agreement or in any notice or other document or statement delivered by it pursuant to or in connection with this Agreement is or proves to have been incorrect or misleading when made;
 - (iii) the Consultant admitting or asserting that it is unable to pay its debts as they become due or the passing by the Consultant of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Consultant or the dissolution of the Consultant;

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- (iv) the making of an administration order in relation to the Consultant or the appointment of a receiver, administrative receiver, trustee or similar officer in respect of all or any part of the business or assets of the Consultant;
- (v) the Consultant proposing, threatening or making an arrangement or composition with its creditors generally or proposing, threatening or making an application to a court of competent jurisdiction for protection of creditors generally;
- (vi) any bad faith and/or dishonesty and/or negligence and/or any other act or omission on the part of the Consultant which, in the opinion of the Company and/or the Manufacturer, is or might be prejudicial to its or their interests;
- (vii) at any time it becomes unlawful for the Company to perform its obligations under, or to remain a party to, this Agreement;
- (viii) any actual change in the organisation, control or management of the Consultant which, in the opinion of the Company, does, will or might adversely affect the ability of the Consultant to perform or comply with any of its obligations under this Agreement;
- (ix) the Consultant ceasing, for any reason, to be able to exercise its powers and/or perform its obligations and/or otherwise to carry on business as Consultant under this Agreement

7.2 All rights and obligations of the Parties shall cease to have effect immediately upon the termination or expiration of this Agreement for any reason whatsoever except that termination or expiration shall not affect:

- (i) the accrued rights and obligations of the Parties at the date of termination or expiration; and
- (ii) the continued existence and validity of the rights and obligations of the Parties under those clauses or sub-clauses which are expressed to survive the termination or expiration of this Agreement and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.

7.3 The termination or expiration of this Agreement shall not give rise to any liability whatsoever on the part of the Company to pay any compensation or damages whatsoever to the Consultant, whether for loss of profits or goodwill or for any other damages of whatsoever nature, and the Consultant unconditionally and irrevocably waives any and all rights it may have (or acquire) to claim any compensation or damages or other monetary entitlement whatsoever under the laws of the Territory or any other laws.

7.4 The following clauses and sub-clauses shall survive the termination of this Agreement: 2.4, 5, 7, 10 and 11.

8. GENERAL MATTERS

- 8.1 This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes any prior agreements between the parties whether written or oral, and all such prior agreements are deemed to have been cancelled as of the Effective Date but without prejudice to any rights which have already accrued to either of the Parties.
- 8.2 No variation of this Agreement shall be valid unless it is in writing and signed by both Parties or by their duly authorised representatives.
- 8.3 No failure or delay on the part of the Company in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or a waiver of any other rights, powers or remedies nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right, power or remedy or the exercise of any other right, power or remedy; no waiver by the Company shall be effective unless it is given in writing by a duly authorised representative of the Company.
- 8.4 Time shall be of the essence in relation to the performance by the Consultant of each and every one of its duties and obligations under this Agreement.
- 8.5 Nothing in this Agreement (or in any of the arrangements described in or contemplated hereby) shall be deemed to constitute a partnership, consortium or joint venture between the Company and the Consultant.
- 8.6 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, or any indication to that effect is received by either of the Parties from any competent authority, the Parties shall consult with one another with a view to amending that provision in such reasonable manner as achieves the intention of the Parties without illegality or, at the discretion of the Company, the provision may be severed from this Agreement.
- 8.7 Where any matter requires an instruction from the Company or the approval, authority or consent of the Company such instruction, approval, authority or consent shall not be deemed to have been given unless given in writing by a duly authorised representative of the Company; and the Company may give or withhold any instruction, authority, approval, consent or acceptance in its unfettered discretion.

9. NOTICES

In the event that the Company elects to give or deliver any notice pursuant to the terms of this Agreement the Consultant acknowledges and agrees that it may be shown such notice but it shall not be entitled to retain the same or to make any copy of such notice. If, for any reason, it is not possible or practical to adopt the aforementioned procedure the Company shall be entitled to deliver its notice verbally.

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10. LAW

This Agreement and the rights and liabilities of the Parties herunder shall be governed by and construed in all respects in accordance with the laws of England.

11. ARBITRATION

Any dispute or claim arising out of or in relation to this Agreement shall be submitted to the arbitration in London of the London Court of International Arbitration under and in accordance with its rules at the date of such submission, which rules are deemed to be incorporated by reference within this clause. The tribunal shall consist of a sole arbitrator. The Parties hereto acknowledge that service of any notices in the course of such arbitration at their addresses given in this Agreement shall be sufficient and valid.

12. CUSTODY

It is understood and agreed between the Parties that this Agreement and the arrangements referred to herein shall be treated as strictly confidential both during the term of this Agreement and after its expiry. The signed originals of this Agreement shall be lodged by the Company for safe keeping with a custodian whose name and address shall be advised to the Consultant. The said custodian shall be instructed by the Company to permit inspection of the said originals by either of the Parties on the request of either of them but not to release the said originals except (i) at the written request of both Parties hereto, or (ii) to the solicitors of either Party for the purposes only of an arbitration in accordance with the terms hereof, or (iii) to another custodian to be held by him in accordance with this Clause 12.

Provided always that (a) if no contract as aforesaid for the sale of the Products to the Customer has been signed and become effective by the Termination Date or (b) when the Fee to which the Consultant is entitled has been paid or (c) when this Agreement has otherwise properly terminated, the Company shall have the right itself to withdraw the said originals and dispose of them.

AS WITNESS the hands of the duly authorised representatives of the Parties the day and year first before written

Signed by a duly authorised representative of the Company

Signature

Date

Signed by a duly authorised representative of the Consultant

Signature

Date

SCHEDULE A

Part 1

Consultant: Commercial International Corporation Ltd
Address: La Carriere
Le Hocq
St Clement
Jersey
Channel Islands

Part 2

Territory: South Africa

Part 3

BANKING DETAILS

Name and address of bank: Standard Chartered Bank (CI) Limited
Conway Street
St Helier
Jersey
Channel Islands

Name of account holder: Commercial International Corporation Ltd

Account number/sort code: 69998211

Method of payment: Express International Money Transfer

Part 4

Services: The provision of certain advice and various services as required by the Company to assist the Company with regard to its activities in the Territory including but not limited to those activities set out below:

Hawk/Gripen Aircraft Implementation Programme
Delivery of Defence Industrial Programme
Delivery of National Industrial Programme
Delivery of Additional Hawk/Gripen Aircraft Options

Part 5

Effective Date:

The Effective Date shall be the effective date of Contract in respect of the South African Procurement Package between British Aerospace Public Limited Company and the Government of South Africa

Part 6

Principal:

Marketing and Sales Managing Director of the Manufacturer or his nominee

SCHEDULE B

Part 1

Products:

For the purposes of this Agreement it is understood and agreed between the parties that the Consultant shall not receive fees in respect of the sale by the Company of specific products but shall be remunerated for the Services described in Schedule A Part 4

Fee and expenses:

£75,000 per annum (Seventy five Thousand Pounds Sterling (the 'Fee')

Part 2

Payment Conditions

1. The Fee shall be paid by the Company to the Consultant quarterly in arrears in four equal instalments of £18,750 (Eighteen Thousand Seven Hundred and Fifty Sterling) with the first instalment due one calendar quarter after the Effective Date.

2. The Fee includes all expenses incurred by the Consultant, including but without thereby limiting the scope of this provision, travel expenses and the costs of secretarial and administrative support.

Part 3

Termination Date:

One calendar year from the Effective Date. It is anticipated that the Termination Date may be extended on an annual basis for a further two year period subject always to mutual agreement and to Clause B.2