

2015-2018 ROUGH DIAMOND SUPPLY AGREEMENT¹

GLOBAL SIGHTHOLDER SALES (INTERNATIONAL), GLOBAL SIGHTHOLDER SALES (BOTSWANA), SIGHTHOLDER SALES SOUTH AFRICA AND THE SUPPLY OF CANADIAN UN-AGGREGATED GOODS FOR THE 2015-2018 SUPPLY PERIOD

Introduction

In allocating its finite availability of rough diamonds, De Beers Global Sightholder Sales (“GSS”)² recognises the need to:

- promote financial transparency and strength amongst its customer base;
- maintain ethical integrity through compliance with the Best Practice Principles and the BPP Assurance Programme (as defined in the Glossary of Terms);
- manage the De Beers Group’s commercial risk through the allocation of diamonds based on levels of demand from customers; and
- support the objectives of its producer partnership governments in respect of beneficiation.

GSS and the De Beers Group also have a legitimate interest in identifying existing value-adding routes to market for its availability of rough diamonds. This 2015-2018 Rough Diamond Supply Agreement (“**Supply Agreement**”) is intended to reflect these aims and the means by which they can be accomplished by diamond industry participants whilst building on the best traditions of the industry.

This Supply Agreement sets out the terms and conditions under which GSS allocates rough diamonds to its customers and, depending on the nature and demand of the customer, sets out the different methods by which such allocation may be made. To this end, the Supply Agreement includes, among other things, the following detail:

- (i) a description of the customers to which this Supply Agreement applies and the associated documentation which apply to such customers and their wider groups;
- (ii) details the manner in which supply is made available to GSS’ and the De Beers Group’s customers and the conditions which govern such supply;
- (iii) provisions regarding the form that GSS’ supply of rough diamonds will take and the price GSS will charge its customers for such supply;
- (iv) provisions relating to the treatment of information provided by GSS or the De Beers Group or its customers and the way in which information provided to GSS by its customers may be verified; and
- (v) provisions relating to termination or suspension of this Supply Agreement.

¹ Unless otherwise defined herein, defined terms used in this 2015-2018 Rough Diamond Supply Agreement shall have the meaning given to them in the Glossary of Terms.

² References in this Supply Agreement to GSS shall be taken to include a reference to GSS (International), GSS (Botswana), De Beers Sightholder Sales South Africa (Proprietary) Limited and the supply of Canadian Un-aggregated goods (as the case may be).

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1 Qualifications and Compliance Criteria

1.1 Customers

- 1.1.1 This Supply Agreement applies to the following two categories of GSS' customers:
- (i) Sightholders (Applicants that are eligible for an Intention to Offer (“ITO”) and to purchase Ex Plan Availability (as defined below)); and
 - (ii) Accredited Buyers (Applicants that are eligible to purchase Ex Plan Availability).
- 1.1.2 Applicants for Sightholder or Accredited Buyer status may also be invited by GSS to apply for Strategic Supply. Further detail on Strategic Supply is set out in paragraph 8 of this Supply Agreement.
- 1.1.3 References to “**Sightholders**” or “**Accredited Buyers**” in this document also include Applicants.

1.2 Compliance Criteria (incorporating the Best Practice Principles)

- 1.2.1 In order to be eligible for supply, Applicants applying for Sightholder or Accredited Buyer status must (in each case) meet certain mandatory criteria (the “**Compliance Criteria**”) which are set out in Annex 1 – Mandatory Compliance Criteria to this Supply Agreement. To qualify as a Sightholder (and therefore to qualify for an ITO subject to there being sufficient availability), Applicants, in addition to meeting the Compliance Criteria, must also meet certain demonstrated demand thresholds (“**Demonstrated Demand Requirements**”), which are set out in Annex 2 – Demonstrated Demand Requirements. Applicants that meet the Compliance Criteria but which do not qualify for an ITO will, subject to the provisions of this Supply Agreement, automatically be offered Accredited Buyer status.
- 1.2.2 The Best Practice Principles are a component part of the Compliance Criteria. Sightholders or Accredited Buyers (and each member of their respective Compliance Groups) must:
- (i) Participate in the BPP programme;
 - (ii) procure that their respective Substantial Contractors comply with the Best Practice Principles and participate in, and comply with, the BPP Assurance Programme; and
 - (iii) use their best endeavours to procure that their respective Non-Substantial Contractors comply with the Best Practice Principles.
- 1.2.3 GSS confirms that it complies with the current Best Practice Principles and BPP Assurance Programme and will continue to comply with the Best Practice Principles and BPP Assurance Programme (as published from time to time). GSS and the De Beers Group shall continue to provide leadership in the corporate responsibility arena by proactive management of reputational risk through the Best Practice Principles and BPP Assurance Programme which are designed to protect consumers' interests and safeguard the reputation and integrity of diamonds and the diamond industry as a whole.
- 1.2.4 In addition to the Compliance Criteria listed in Annex 1 – Mandatory Compliance Criteria to this Supply Agreement, an Applicant (including its Key Individuals) must demonstrate and continue to demonstrate throughout the Supply Period that it has

a good reputation in all its business dealings. GSS will take into account, amongst other things, any past conduct of the Applicant (or its Key Individuals) which would cast doubt on its general professional standards, integrity or probity.

1.2.5 Sightholders that qualified for supply in accordance with the 2012–2015 Supplier of Choice Documentation (“**Existing Sightholders**”) may be subject to transitional arrangements (“**Compliance Roadmaps**”) in respect of the “**Financial Compliance Criteria**” (which comprise the IFRS Compliance, Unqualified Audit and Maximum Leverage criteria, as referred to in Annex 1 – Mandatory Compliance Criteria to this Supply Agreement) for which such Sightholder is unable to demonstrate full compliance at the time of application to become a Sightholder for the Supply Period. Notwithstanding paragraph 2.1.1 below, GSS shall, having regard to the provision by such Sightholder of a Compliance Roadmap acceptable to GSS, determine:

- (i) whether the Sightholder is eligible to be a Sightholder; and
- (ii) the quantity and nature of Diamonds for which it has applied in each Sight Location that can be made available to it in accordance with this Supply Agreement, as amended from time to time.

Further detail in relation to Compliance Roadmaps can be found in the document entitled “Guidance and Template for Existing Sightholder Applicants’ Compliance Roadmaps” which formed part of the 2015-2018 Rough Diamond Distribution Application Process.

1.3 Applicant Group Definitions

1.3.1 The Supply Documentation (as defined below) applies to an Applicant’s Group. For the purposes of applying the Compliance Criteria, there are three definitions of “Group” (Commercial Group, Compliance Group, and Consolidation (IFRS) Group). Further detail on these definitions of “Group” is set out in Annex 5 to this Supply Agreement.

1.3.2 Save in respect of a Joint Venture, no entity or Key Individual can be part of more than one Commercial Group, Compliance Group or Consolidation (IFRS) Group, as the case may be.

1.4 Supply Documentation

1.4.1 GSS will publish the Best Practice Principles and the associated BPP Assurance Programme, Conditions of Sale, Supply Planning Fee Terms and Conditions, the Sightholder Signature Licence and the Ombudsman Terms of Reference. A current copy of each of these documents is published with this Supply Agreement. The documents referred to in this paragraph 1.4, and any documents referred to in those documents, shall together be known as the “**2015-2018 Supply Documentation**”.

1.4.2 GSS may from time to time amend any of the 2015-2018 Supply Documentation and any local variations of any or all of such documents. GSS will provide as much notice as is reasonably practicable regarding any such amendments. GSS will, wherever possible and reasonable, consult with the Sightholder or Accredited Buyer, and consider its reasonable representations, regarding any amendments. Amendments to the Best Practice Principles and BPP Assurance Programme will reflect and encourage evolving good practice in the diamond industry. Notwithstanding the foregoing, or anything to the contrary contained in the 2015-2018 Supply Documentation, GSS reserves the right to make any amendments to the 2015-2018

Supply Documentation with immediate effect and without consulting with, or notifying in advance, the Sightholder or Accredited Buyer, where GSS, in its sole and absolute discretion, considers that such amendments are required or appropriate to reflect or accommodate the requirements and/or objectives of a Diamond Producing Country, its government and/or any of its regulatory bodies, including, but not limited to, laws, regulations, directions and instructions made or given by such Diamond Producing Country (including its government and/or any of its regulatory bodies) and contractual obligations owed by GSS or any member of the De Beers Group to any such Diamond Producing Country (including its government and/or any of its regulatory bodies).

- 1.4.3 By agreeing to this Supply Agreement, the Sightholder or Accredited Buyer (as the case may be) agrees on its own behalf to be bound, and shall procure that each of its Key Individuals and each member of its Compliance Group shall be bound, by the terms of this Supply Agreement and the additional 2015-2018 Supply Documentation.
- 1.4.4 Only one member of a Commercial Group is eligible for appointment as a Sightholder or Accredited Buyer, although each member of such Commercial Group must comply with, and be bound by, the 2015-2018 Supply Documentation.
- 1.4.5 All obligations of the Sightholder or Accredited Buyer (and members of their respective Compliance Groups or Commercial Groups, as applicable) and Key Individuals in documentation entered into with GSS or any member of the De Beers Group are enforceable by GSS or any member of the De Beers Group.
- 1.4.6 Without prejudice to the provisions of paragraph 10.2 of this Supply Agreement, if a Key Individual or member of a Compliance Group or Commercial Group (as applicable) leaves or ceases to form part of (as the case may be) any relevant Compliance Group or Commercial Group (as applicable), GSS retains the right to apply any remedy or remedies which may be available to it under this Supply Agreement or any additional applicable 2015-2018 Supply Documentation in respect of any breach of any applicable 2015-2018 Supply Documentation which was committed by the relevant Key Individual, Compliance Group or Commercial Group (as applicable) company in the twelve (12) months immediately preceding the date such Key Individual, Compliance Group or Commercial Group (as applicable) company left or ceased to form part of (as the case may be) the Compliance Group or Commercial Group (as applicable).
- 1.4.7 Unless otherwise notified by GSS, the 2015-2018 Supply Documentation may not apply to any diamonds available to GSS or any member of the De Beers Group from mines (whether owned or operated by the De Beers Group or any third party) which are not supplying diamonds to GSS or any other member of the De Beers Group as at the date hereof.
- 1.4.8 The 2015-2018 Supply Documentation does not apply to the sale of Exceptional Stones which are subject to separate arrangements.
- 1.4.9 For the avoidance of doubt, the 2015-2018 Supply Documentation does not apply to any supply by GSS of diamonds from mines which are not, as at the date hereof, supplying Diamonds to GSS or any other member of the De Beers Group.

2 Supply

This section of the Supply Agreement sets out the supply arrangements as they apply to Sightholders and Accredited Buyers. GSS may offer one of two types of supply, being:

- (i) term supply goods for a Sightholder only by means of an ITO; and/or
- (ii) non-ITO goods for a Sightholder and/or Accredited Buyer which may comprise surplus, cut-offs, buy-backs, refusals and out of balance stocks which it shall make available in the form of individual assortments ("**Ex Plan Availability**").

2.1 Sightholders

2.1.1 In respect of a Sightholder (and members of its Commercial Group), GSS shall, based on the Sightholder's (and members of its Commercial Group's) satisfaction of the Demonstrated Demand Requirements and GSS's overall availability of Diamonds, determine:

- (i) whether the Sightholder continues to qualify to be a Sightholder; and
- (ii) the quantity and nature of Diamonds for which it has applied in each Sight Location that can be made available to it in accordance with this Supply Agreement, as amended from time to time.

2.1.2 The eligibility of the Sightholder to be a Sightholder and to apply for supply of Diamonds under paragraph 2.1.1 will not of itself oblige GSS to offer Diamonds to the Sightholder. Whether an offer of Boxes will, in fact, be made to the Sightholder at any time will be determined in accordance with this paragraph 2.1 and will be made without prejudice to any application for Strategic Supply as set out in paragraph 8 below.

2.1.3 Supply to the Sightholder will be made available during each Selling Period.

2.1.4 Commencing with the first Selling Period applicable to this Supply Agreement, the Sightholder will, if requested by GSS, inform GSS of the aggregate value and nature of Diamonds it believes it may wish (but shall not be obliged) to purchase during the subsequent Selling Period at each relevant Sight Location.

2.1.5 Before the beginning of each Selling Period, GSS will confirm whether the Sightholder will be offered an ITO for that Selling Period indicating the aggregate quantity and nature of Diamonds it intends (taking into account the factors listed at paragraph 2.1.11 below) to make available for inspection by (but shall not be obliged to supply to) such Sightholder at each relevant Sight Location for that Selling Period, and in respect of those Sightholders who have elected to receive a Planned ITO only, GSS will confirm the nature of Diamonds it will make available for inspection during the relevant Selling Period.

2.1.6 Following consultations with Sightholders (which will, where appropriate and where reasonably practicable, include giving Sightholders who purchase similar Boxes a reasonable opportunity to view any proposed new Box), GSS will provide a list of Boxes (each individually described) to the Sightholder from time to time.

2.1.7 GSS may from time to time and subject to paragraph 2.1.8 below make available any such Ex Plan Availability based on such policies and/or procedures (and any variations thereto) as GSS shall publish from time to time.

- 2.1.8 Notwithstanding those factors set out in paragraph 2.1.1 above, to the extent that demand for Ex Plan Availability exceeds supply (for whatever reason) GSS will make allocations of Ex Plan Availability on the basis of the Sightholder's demand for all Ex Plan Availability over the previous five (5) Sights.
- 2.1.9 For the first five (5) Sights only following the date of appointment of a new Sightholder, GSS may make allocations of Ex Plan Availability to such Sightholder by reference to the average demand for all Ex Plan Availability of Existing Sightholders.
- 2.1.10 The Conditions of Sale, as amended from time to time, apply to all sales of Boxes in relation to Sights at the relevant Sight Locations but this Supply Agreement prevails if there is any inconsistency with the Conditions of Sale.
- 2.1.11 Subject to current market conditions and GSS's availability of Diamonds, GSS will use reasonable endeavours to meet applications for those Boxes placed by the Sightholder at each Sight Location taking into account:
- (i) the stated preferences of GSS's other Sightholders (including, but not limited to, the overall demand for the Diamonds concerned and the availability of supply at the relevant Sight Location);
 - (ii) the aggregate value and nature of Diamonds requested by the Sightholder and indicated by GSS as those it intends to make available for inspection, pursuant to paragraph 2.1.5 above; and
 - (iii) the Sightholder's demand for the Diamonds concerned,
- as may be more specifically detailed in policies and/or procedures (and any variations thereto) published by GSS from time to time including, but not limited to, the ITO Swaps Policy and any other policies referred to in paragraph 2.3.3 below.

2.2 Accredited Buyers

- 2.2.1 Subject to paragraph 2.2.7, in respect of an Accredited Buyer (and members of its Commercial Group) GSS shall, based on the Accredited Buyer's demand for Ex Plan Availability, Demonstrated Demand from De Beers Auction Sales and GSS's overall availability of Diamonds, determine the quantity and nature of Ex Plan Availability for which it has applied in each Sight Location that can be made available to it in accordance with this Supply Agreement, as amended from time to time.
- 2.2.2 The eligibility of the Accredited Buyer to be an Accredited Buyer and to apply for Ex Plan Availability under paragraph 2.1.1 will not of itself oblige GSS to offer Ex Plan Availability to the Accredited Buyer. Whether an offer of Boxes will, in fact, be made to the Accredited Buyer at any time will be determined in accordance with this paragraph 2.2.
- 2.2.3 Subject to the demonstrated demand of the Accredited Buyer and GSS's availability of Diamonds, GSS may make available for supply to Accredited Buyers from time to time any Ex Plan Availability.
- 2.2.4 Supply of Ex Plan Availability to the Accredited Buyer will be made available during each Selling Period. The Accredited Buyer will inform GSS of the value and nature of Ex Plan Availability it believes it may wish (but shall not be obliged) to purchase.

- 2.2.5** Subject to current market conditions and GSS's availability of Diamonds, GSS will use reasonable endeavours to meet applications by Accredited Buyers for Ex Plan Availability taking into account:
- (i) the stated preferences of GSS's other Accredited Buyers and Sightholders (including, but not limited to, the overall demand for the Diamonds concerned and the availability of, supply at the relevant Sight Location); and
 - (ii) the aggregate value and nature of Diamonds requested by the Accredited Buyer,
- as may be more specifically detailed in policies and/or procedures (and any variations thereto) published by GSS from time to time.
- 2.2.6** Notwithstanding those factors set out in paragraph 2.2.1 above, to the extent that demand for Ex Plan Availability exceeds supply (for whatever reason) GSS will make allocations of Ex Plan Availability on the basis of the Accredited Buyer's demand for all Ex Plan Availability over the previous five (5) Sights.
- 2.2.7** For the first five (5) Sights only following the date of appointment of an Accredited Buyer, GSS may make allocations of Ex Plan Availability to Accredited Buyers by reference to the average demand for all Ex Plan Availability of Existing Sightholders.

2.3 General

- 2.3.1** Without prejudice to any rights it may have in relation to this Supply Agreement or the mechanisms, calculations, methodologies, processes, measurements and/or workings referred to in paragraph 2.3.2 below, GSS shall have the right to re-assess the relevant Sightholder or Accredited Buyer's status as a Sightholder or Accredited Buyer (as the case may be) and, as a result of such re-assessment, take such action as it reasonably considers appropriate, including, without limitation, re-assessing, altering and/or reducing (in part or in whole) or increasing the Boxes in respect of which a Sightholder is eligible and the levels of supply in respect of which a Sightholder or Accredited Buyer is eligible (as the case may be). Paragraphs 2.1.1 and 2.2.1 shall be relevant in this regard. Such reviews will ordinarily be conducted by GSS, but may need to be conducted by a Third Party Verifier (as referred to in paragraph 10.6 below) where GSS believes it is reasonably necessary to do so.
- 2.3.2** For the avoidance of doubt, in taking into account the factors listed at paragraphs 2.1.11 and 2.2.5 above, GSS will employ such mechanisms, calculations, methodologies, processes, measurements and/or workings which are reasonably required from time to time to give effect to the matters, circumstances and principles set out in the 2015-2018 GSS Supply Documentation, including but not limited to, the availability of Diamonds. GSS will employ such mechanisms, calculations, methodologies, processes, measurements and/or workings in a fair, objective and consistent manner to all Sightholders and Accredited Buyers.
- 2.3.3** GSS may publish from time to time Minimum Box Demand Levels and Producer Country Minimum Box Demand Levels (as applicable), Minimum Box Allocation Levels and Producer Country Minimum Box Allocation Levels (as applicable), as well as policies and procedures concerning, buy-backs, swaps, deferrals and such other matters as it may determine.
- 2.3.4** Without prejudice to the provisions of paragraph 10.2 of this Supply Agreement, if (i) two (2) or more Sightholders or two (2) or more Accredited Buyers (as the case may

be) who purchase Diamonds from Sights at the same Sight Location merge with one another during the Supply Period and (ii) such Sightholders or Accredited Buyers continue to satisfy the Compliance Criteria, the merged entity shall be deemed to be one Sightholder or Accredited Buyer (as the case may be) for the purposes of the 2015-2018 GSS Supply Documentation and their demonstrated demand will be combined for the purposes of assessing compliance with the Demonstrated Demand Requirements during the Supply Period. In respect of Sightholders only, any ITOs which were made available by GSS to the two (2) or more Sightholders at the time of the merger shall, subject to GSS' right to manage its commercial risks under the Compliance Criteria, be combined in respect of each relevant Sight Location such that the ITO for the merged Sightholder entity will be equal to the aggregate value of the ITOs made available by GSS to each of the relevant Sightholders at each Sight Location as at the time of the merger. The manner in which any applicable Supply Planning Fee is to be calculated and paid by any relevant Sightholders in such circumstances is set out in Condition 3.9 of the Sightholder Supply Planning Fee Terms and Conditions. For the purposes of this paragraph 2.3.4, "merge" or "merger" shall mean the combination of two or more Sightholders by the acquisition or disposal of shares in one or more Sightholder entities by whatever means.

2.3.5 Without prejudice to the provisions of paragraph 10.2 of this Supply Agreement, where a Sightholder or Accredited Buyer undergoes a demerger during the Supply Period, GSS shall determine in its absolute discretion and on a case-by-case basis, among other things, the relevant demerged entities' eligibility to be a Sightholder or Accredited Buyer and, where relevant, the demonstrated demand to be attributed to such entities.

3 Duration

3.1 Subject to paragraph 14, the Sightholder or Accredited Buyer (as applicable) will be appointed for a period of 36 calendar months and such period shall commence on 31 March 2015 (or such date as may be agreed between the Sightholder or Accredited Buyer) and end on 30 March 2018 or such other date as may be agreed between the Sightholder or Accredited Buyer and GSS.

4 Swaps

4.1 Prior to the commencement of each Selling Period applicable to this Supply Agreement, GSS may offer a Sightholder the ability to swap a component part of their ITO in accordance with the ITO Swaps Policy (in force from time to time).

4.2 For the purposes of the Demonstrated Demand Requirements, purchases made by a Sightholder under its existing ITO will transfer to the ITO for which the existing ITO has been swapped.

5 Boxes

5.1 GSS makes Diamonds available to Sightholders and Accredited Buyers by way of the sale from time to time of Boxes of Diamonds, which are sorted by Category and description.

5.2 Sightholders will be eligible to apply at every Sight during a Selling Period for ITO supply.

- 5.3** Sightholders and Accredited Buyers will also be eligible to apply at every Sight during a Selling Period for non-ITO supply, which is made available by GSS from its supply of Ex Plan Availability.
- 5.4** GSS may from time to time, if it considers it appropriate to do so, review the timing and frequency of Selling Periods and ITOs (and the duration of Selling Periods and ITOs may vary between Sight Locations). GSS may, in its absolute discretion, change Selling Periods and/or ITOs and/or Sight Locations in accordance with paragraph 2.1.1 above.
- 5.5** Whilst the size, type, quality and colour of Diamonds will vary from time to time, GSS undertakes to use its reasonable endeavours to ensure that, insofar as practicable, there is consistency as to the size, type, quality and colour of Diamonds contained in each given Box that it supplies during any given Selling Period.
- 5.6** GSS will be entitled, from time to time and on reasonable written notice, to vary the description and/or content and/or Categories and/or Boxes offered to the Sightholder or Accredited Buyer (as the case may be) (including removal from or addition to the list of Boxes offered). GSS will give as much notice as is reasonably practicable (but no more than three (3) months' notice) regarding any such changes.
- 5.7** Different Boxes may be made available in different Sight Locations but the availability of Categories of Boxes in one or more Sight Locations shall not oblige GSS to make or continue to make such Boxes available in any other Sight Location.
- 5.8** Notwithstanding paragraphs 2.1.11 and 2.3.2, and subject to the ability of GSS to balance its working inventory and the factors listed at paragraphs 2.1.11 and 2.3.2, GSS reserves the right to offer a Sightholder the ability to apply for, and offer to purchase (but GSS shall not be required to supply), a non-standard box consisting of a range of Diamonds from one or more Boxes (without applying for the complete Box or Boxes) on terms and conditions (including, but not limited to, any charges) as may be agreed from time to time. GSS shall notify the Sightholder from time to time of arrangements relating to the availability of non-standard boxes but, for the avoidance of any doubt, the existence of specific non-standard boxes requested by the Sightholder in confidence from time to time shall not be the subject of general publication to all Sightholders, since all Sightholders are entitled to request non-standard boxes and to include in their applications for Diamonds a request to receive one (or more) of such non-standard boxes. It is not GSS' practice or intention to publish details of supply (in whole or in part) to any one Sightholder in this regard.
- 5.9** For the purposes of this Supply Agreement and, where relevant, the additional 2015-2018 GSS Supply Documentation, "**Aggregated Diamonds**" means Boxes containing Diamonds sourced from any one country or combination of countries (but excluding Boxes containing Diamonds sourced solely from a mine or mines in Canada or Namibia (to the extent applicable)) and "**Un-Aggregated Diamonds**" means Boxes containing Diamonds sourced solely from a mine or mines in Canada, Namibia or South Africa (to the extent applicable). It is acknowledged that, during the course of the Supply Period, GSS is required to supply a proportion of Un-Aggregated Diamonds to Sightholders who are manufacturers located in Canada.

6 Supply Planning Fee - Standard ITOs and Planned ITOs

- 6.1** GSS will make the Standard ITOs and Planned ITOs available to Sightholders on the terms set out in the Sightholder Supply Planning Fee Terms and Conditions and related documentation.

- 6.2** GSS will make the Standard Supply Planning Services and the Planned Supply Planning Services available to Accredited Buyers on the terms set out in the Accredited Buyer Supply Planning Fee Terms and Conditions and related documentation.

7 Price and VAT

- 7.1** GSS will notify the price for each Box offered to a Sightholder at the Sight at which the Box is made available for inspection. For the avoidance of doubt, where a Sightholder offers to purchase a non-standard box pursuant to paragraph 5.8 above, GSS will notify the Sightholder of a single price for the non-standard box.
- 7.2** GSS will use its reasonable endeavours to ensure that Boxes of the same description are priced on the same basis.
- 7.3** GSS will review from time to time its approximate prices for each description of Box and notify the Sightholder of any changes at the Sight at which the Box is made available for inspection by the Sightholder.
- 7.4** This paragraph 7 of this Supply Agreement will not apply to the sale of Boxes containing either a collection of Large Stones or individual Large Stones. The price of such Boxes will be determined by negotiation between GSS and a Sightholder or Accredited Buyer (as the case may be) on a case-by-case basis.
- 7.5** In respect of any Sightholder or Accredited Buyer applying for supply of Diamonds from GSS (Botswana) only, where applicable, such Sightholder or Accredited Buyer (as the case may be) shall remain registered as a VAT manufacturing warehouse (or any such local equivalent), including being in possession of a valid VAT manufacturing warehouse certificate under the relevant laws of Botswana throughout the Supply Period. If the relevant Sightholder or Accredited Buyer is not, or ceases to be, registered as a VAT manufacturing warehouse (or any such local equivalent) under the relevant laws of Botswana at any time during the Supply Period, GSS (Botswana) reserves the right and at its sole discretion to either (i) suspend supply of Diamonds to the Sightholder or Accredited Buyer without notice and with immediate effect until such time, and without prejudice to any other provisions in this Supply Agreement, as GSS (Botswana) is notified in writing (which, for the avoidance of doubt, shall include any formal acknowledgment by the relevant body under the laws of Botswana) by the relevant Sightholder or Accredited Buyer that it is registered as a VAT manufacturing warehouse (or any such local equivalent) under the relevant laws of Botswana, or (ii) charge VAT on the supply of Diamonds in the absence of a valid VAT manufacturing warehouse certificate.
- 7.6** For the avoidance of doubt, all prices charged and/or payments made under this Supply Agreement are (i) exclusive of any VAT or any other sales tax or duties which, where applicable; (ii) shall be payable by the payer in addition to any sum in respect of which they are calculated, subject to the payee providing the payer with a valid VAT invoice; and (iii) shall be paid in full without any deductions or withholdings (including without limitation deductions or withholdings in respect of items such as income tax, corporation tax, or other taxes, charges or duties) except or insofar as the payer is otherwise required by law to deduct withholding tax from sums payable to the payee.

8 Strategic Supply

- 8.1** To support outstanding value driving activity and the sustainable growth of consumer demand for rough diamonds, GSS will make rough diamonds available, by way of Strategic

Supply, to certain Applicants. The primary objective of Strategic Supply is to make available some additional supply to those Applicants with existing activities or initiatives that clearly demonstrate, among other things:

- 8.1.1 an existing ability to grow overall consumer demand for rough diamonds on a significant scale;
 - 8.1.2 an existing ability to process efficiently greater volumes of GSS supply (for example, through world-class economies of scale, outstanding investment in new technology and outstanding financial strength); or
 - 8.1.3 support for other activities and initiatives that drive value or are in line with the De Beers Group's strategic objectives, including beneficiation.
- 8.2 As part of this process, Applicants may be invited by GSS, by way of a formal request for information (a "**Strategic Supply Request**") to apply to receive Strategic Supply before the start of each Selling Period.
- 8.3 On receipt of a completed Strategic Supply Request, GSS will determine, in its sole and absolute discretion, whether the relevant Applicant will be eligible to receive Strategic Supply.
- 8.4 Strategic Supply availability will be determined by GSS in its sole and absolute discretion and will take into account the demand of the relevant Applicant as expressed in its completed Strategic Supply Request.
- 8.5 An Existing Sightholder who becomes eligible to receive Strategic Supply will have its Strategic Supply allocation added to such Sightholder's ITO for each Selling Period during the Supply Period.
- 8.6 For those Applicants who are not Existing Sightholders, a successful application for Strategic Supply will entitle such Applicant to receive an ITO and such allocations will automatically qualify the Applicant for Sightholder status, subject to continued compliance with the Compliance Criteria.
- 8.7 Strategic Supply allocations will be supplied in the same way as ITO goods and references in this Supply Agreement to a Sightholder or Sightholders shall be deemed to include a recipient or recipients of Strategic Supply.

9 ITO Re-planning

- 9.1 In each Selling Period after the first Selling Period applicable to this Supply Agreement, ITOs will be re-planned by GSS on the basis of a Sightholder's demonstrated demand for ITO and non-ITO goods during the preceding Selling Period and GSS's forecast availability of Diamonds, save in respect of Producer Partnership DTCs which may also incorporate into ITO Re-planning such policies and processes as set out in Annexes 3 and 4 of the Supply Agreement or from time to time in force. Sightholders may confirm their supply requirements to GSS for the forthcoming Selling Period which will be taken into account by GSS when determining ITO allocations.

10 Verification: Information and Inspection

Information: Sightholders, Accredited Buyers, Compliance Group Companies and Substantial Contractors

10.1 A Sightholder or Accredited Buyer may be required to (a) promptly provide, and/or (b) procure the provision of, and/or (c) procure that members of their respective Compliance Groups shall provide, and/or (d) procure that their Substantial Contractors shall provide, as the case may be, in relation to any Sight Location, such information as is reasonably necessary to verify:

10.1.1 the Sightholder or Accredited Buyer's compliance with the 2015-2018 GSS Supply Documentation; and/or

10.1.2 the accuracy of the information contained in the Sightholder or Accredited Buyer's Compliance Statement and any other supporting documentation provided, including, for the avoidance of any doubt, the Sightholder and Accredited Buyer Compliance Declaration as may be updated and/or revised from time to time; and/or

10.1.3 in the case of an application for receipt of Strategic Supply, the accuracy of the information contained in such application and any supporting documentation, including, for the avoidance of doubt, the information contained in the relevant Strategic Supply Request; and/or

10.1.4 in the case of an Existing Sightholder which is required by GSS to produce a Compliance Roadmap, where GSS has reasonable grounds to believe that such Sightholder is failing to implement its Compliance Roadmap, such Sightholder's compliance status and/or the accuracy of the information contained in such Compliance Roadmap and any supporting documentation; and/or

10.1.5 their Substantial Contractors' compliance with the Best Practice Principles; and/or

10.1.6 their Substantial Contractors' participation in, and compliance with, the BPP Assurance Programme,

in each case in order to determine (as the case may be) whether the Sightholder or Accredited Buyer is eligible to:

(i) be appointed as a Sightholder or Accredited Buyer for the first time;

(ii) remain a Sightholder or Accredited Buyer during the Supply Period; or

(iii) be re-appointed as a Sightholder or Accredited Buyer on expiry of the Supply Period.

10.2 (i) A Sightholder or Accredited Buyer (as the case may be) must immediately notify GSS in writing by way of both the KAM and SMART System of all the information which (a) may be requested by GSS and (b) is strictly necessary, in order for GSS to be properly informed of any changes to the Sightholder or Accredited Buyer's (or their respective Compliance Groups' or their Substantial Contractors') organisation, control, management, personnel (including Key Individuals) or method of doing business, which might affect the Sightholder or Accredited Buyer's performance under or in connection with this Supply Agreement (and arrangements entered into under it), including its ability to satisfy, or continue to satisfy, the Compliance Criteria, the implementation of a Compliance Roadmap (where applicable) and/or the Best Practice Principles and BPP Assurance Programme, or which results in a material plus or minus variation to the turnover and/or assets and/or net asset value of the

relevant Sightholder or Accredited Buyer and/or the relevant Compliance Group. Until such notification is made by the relevant Sightholder or Accredited Buyer and received by GSS, any relevant information previously provided by such Sightholder or Accredited Buyer to GSS shall be deemed to be up-to-date and accurate.

(ii) The Sightholder or Accredited Buyer must immediately notify GSS in writing by way of both the KAM and the SMART System of the details of all of their Contractors.

Information: Non-Substantial Contractors

- 10.3** If requested to do so by GSS, the Sightholder or Accredited Buyer (as the case may be) shall use their best endeavours to procure that their Non-Substantial Contractors shall provide such information as is reasonably necessary to verify compliance by their Non-Substantial Contractors with the Best Practice Principles.

Inspection: Sightholders, Accredited Buyers, Compliance Group Companies and Substantial Contractors

- 10.4** In addition to providing the information referred to in paragraphs 10.1 and 10.2 above, the Sightholder or Accredited Buyer shall, if requested to do so by GSS, (a) promptly provide, and/or (b) procure the provision of, and/or (c) procure that members of their respective Compliance Groups shall provide, and/or (d) procure that their Substantial Contractors shall provide, as the case may be, such regular access to their premises as is reasonably necessary to verify the information and/or compliance with the documentation, in each case referred to in paragraph 10.1 above (as applicable).

Inspection: Non-Substantial Contractors

- 10.5** In addition to the obligations of the Sightholder or Accredited Buyer (as the case may be) set out in paragraph 10.3 above, a Sightholder or Accredited Buyer (as the case may be) shall, if requested to do so by GSS, use its best endeavours to procure that its Non-Substantial Contractors provide such regular access to its Non-Substantial Contractors' premises as is reasonably necessary to verify compliance by any relevant Non-Substantial Contractors with the Best Practice Principles.

Verification: Sightholders, Accredited Buyers, Compliance Group Companies and Substantial Contractors

- 10.6** Such access to information and/or premises as is required pursuant to paragraphs 10.1, 10.2 and 10.4 to verify (i) the accuracy of the relevant information provided pursuant to the Sightholder or Accredited Buyer's obligations in the 2015-2018 GSS Supply Documentation, and (ii) the Sightholder or Accredited Buyer's (or any member of their respective Compliance Groups' or any of their Substantial Contractors', as the case may be) compliance with the documentation referred to in paragraph 10.1 (as applicable) may be undertaken by a Third Party Verifier (or by such other means or by such other party as GSS may, in its sole and absolute discretion, determine). The Third Party Verifier (or such other verifying party) shall be selected by GSS and will have the right to conduct Third Party Verification of the Sightholder or Accredited Buyer's (or any member of their respective Compliance Groups' or any of their Substantial Contractors', as the case may be) relevant operations on an annual basis (or on such other basis as GSS may, in its sole and absolute discretion, determine from time to time). GSS may require the relevant Sightholder or Accredited Buyer to pay for on demand, or contribute to (in GSS's sole and absolute discretion), the costs of

any such Third Party Verification if such process indicates that the relevant Sightholder or Accredited Buyer (or member of their respective Compliance Groups or their Substantial Contractors) have failed to (i) confirm the accuracy of the relevant information provided pursuant to the Sightholder or Accredited Buyer's obligations in the 2015-2018 GSS Supply Documentation and/or (ii) comply with the documentation referred to in paragraphs 10.1 and 10.2 (as applicable) in any material respect.

Verification: Non-Substantial Contractors

- 10.7** Such access to information and/or premises as is required pursuant to paragraphs 10.3 and 10.5 to verify compliance by the Sightholder or Accredited Buyer's Non-Substantial Contractors with the Best Practice Principles will be undertaken by a Third Party Verifier (or by such other means or by such other party as GSS may, in its sole and absolute discretion, determine). The Third Party Verifier (or such other verifying party) shall be selected by GSS and will have the right to conduct Third Party Verification of the relevant operations of the Sightholder or Accredited Buyer's Non-Substantial Contractors on an annual basis (or on such other basis as GSS may, in its sole and absolute discretion, determine from time to time). GSS may require the Sightholder or Accredited Buyer to pay for on demand, or contribute to (in GSS's sole and absolute discretion), the costs of any such Third Party Verification if such process indicates that the Sightholder or Accredited Buyer's Non-Substantial Contractors have failed to comply with the Best Practice Principles in any material respect.

Verification: General

- 10.8** Subject to paragraph 10.9 below, the results of any Third Party Verification which is carried out pursuant to this paragraph 10 in respect of information contained in, or compliance by the Sightholder or Accredited Buyer (as the case may be) or any member of their respective Compliance Groups or their Substantial Contractors (as the case may be) with, (i) the Sightholder or Accredited Buyer's Compliance Statement submission and related information and/or (ii) the Compliance Criteria and related information, as the case may be, shall be submitted to the Ombudsman prior to submission to GSS.
- 10.9** The results of any Third Party Verification which is carried out pursuant to this paragraph 10 in respect of compliance by the Sightholder or Accredited Buyer or member of their respective Compliance Groups or their relevant Contractors (as the case may be) with the Best Practice Principles and BPP Assurance Programme (where applicable) shall be submitted directly to GSS and/or De Beers.

Confidentiality

- 10.10** As set out in paragraph 20.1 of this Supply Agreement, GSS will respect the confidentiality of the data submitted under this paragraph 10 (but subject always to GSS's rights under paragraph 10.11 below) and, for the avoidance of doubt, the Sightholder or Accredited Buyer (or member of their respective Compliance Groups or relevant Contractors, as the case may be) is not required to reveal information that may constitute Business Secrets, except as is reasonably necessary in order for GSS to verify (a) the accuracy of the relevant information provided pursuant to the Sightholder or Accredited Buyer's obligations in the 2015-2018 GSS Supply Documentation, and/or the Sightholder or Accredited Buyer's (or member of their respective Compliance Groups' or any of their Substantial Contractors', as the case may be) compliance with the documentation referred to in paragraphs 10.1 and 10.2 or (b) a Non-Substantial Contractor's compliance with the Best Practice Principles (as applicable).

10.11 GSS reserves the right to publish from time to time policies relating to Sightholder or Accredited Buyer obligations pursuant to this paragraph 10. GSS also reserves the right to share such information provided by the Sightholder or Accredited Buyer (as the case may be) pursuant to this paragraph 10 with other members of the De Beers Group and/or any Producer Partnership DTC for the purposes of the Best Practice Principles and BPP Assurance Programme operated by the De Beers Group and/or Producer Partnership DTC. Any member of the De Beers Group who receives such information will be subject to the same duties of confidentiality in respect thereof as GSS.


11 Intellectual Property


11.1 For the duration of a Sightholder's appointment pursuant to this Supply Agreement, GSS shall or shall procure for the benefit of the Sightholder and nominated members of its Commercial Group, the grant of a personal, non-exclusive, non-assignable licence to use the trade mark "SIGHTHOLDER", on the terms and subject to the conditions contained in the Sightholder Signature Licence.

11.2 The Sightholder shall not, and shall procure that each member of its Commercial Group shall not, use the trade mark "SIGHTHOLDER":

11.2.1 in such a way that might prejudice the goodwill, distinctiveness or validity of those trade marks, or in a way which is confusing or misleading or inconsistent with the good reputation of GSS;

11.2.2 as a logo or as part of a corporate name or identifier of any Commercial Group entity; or

11.2.3 in conjunction with any other trade mark or sign of GSS or the De Beers Group, save for the FOREVERMARK or the icon:  (which, if the Sightholder is also a Forevermark Diamontaire, may be used in accordance with the Sightholder Signature Guidelines) but including without limitation DE BEERS.

11.3 Except as granted pursuant to paragraph 11.1, the Sightholder and each member of its Commercial Group acknowledge that they have no right, title or interest in or to the trade mark "SIGHTHOLDER" and undertake not to register or apply for registration of any trade mark, domain name, business name or corporate identifier which includes the words "SIGHTHOLDER", "GSS", "DE BEERS", "FOREVERMARK", or the icon:  or any other intellectual property of the De Beers Group.

11.4 For the avoidance of doubt, paragraph 11.1 applies to Sightholders only and does not apply to Accredited Buyers.

11.5 All goodwill resulting from use of the trade mark "SIGHTHOLDER" pursuant to paragraph 11.1 shall accrue to the benefit of GSS.

12 Force Majeure

12.1 Without prejudice to GSS's right to reduce or to suspend supply of Diamonds (pursuant to paragraphs 13 or 16) or to terminate a Sightholder or Accredited Buyer's status (pursuant to paragraph 14 or 18), if a Force Majeure Event interrupts or prevents the performance of GSS' (or any member of the De Beers Groups') or the Sightholder or Accredited Buyer's obligations to the other in respect of any aspect of this Supply Agreement, the obligations of the parties under this Supply Agreement (other than an obligation to pay money) shall be suspended for the duration of the Force Majeure Event. The affected party will not be in

default of its obligations (except obligations to pay money) under this Supply Agreement if a failure or delay in the observance or performance of those obligations by the affected party is caused by a Force Majeure Event and the other party will not be in default of its obligations (except obligations to pay money) under this Supply Agreement if a failure or delay in the observance or performance of those obligations by that party occurs during a Force Majeure Event.

12.2 Should a Force Majeure Event or its effects last for a period in excess of ninety (90) continuous days, GSS (or the relevant member of the De Beers Group) or the Sightholder or Accredited Buyer (as the case may be) may, on giving five (5) business days' written notice to the other party, terminate this Supply Agreement without liability, save that such termination shall be without prejudice to any rights or obligations of the parties which have accrued prior to the occurrence of that Force Majeure Event, including without prejudice to any outstanding rights to payment GSS (or any member of the De Beers Group) may have hereunder in respect of the period prior to termination or GSS' rights in relation to paragraph 11.

12.3 Provided that neither GSS (or the relevant member of the De Beers Group) nor the Sightholder or Accredited Buyer (as the case may be) has given notice to terminate this Supply Agreement in accordance with paragraph 12.2, as soon as reasonably practicable after the occurrence of the Force Majeure Event, GSS, any relevant member of the De Beers Group and the Sightholder or Accredited Buyer will discuss how best to continue their operations so far as possible in accordance with this Supply Agreement.

"Force Majeure Event" means the occurrence or effect of any event or circumstance (or any combination of events and/or circumstance) that: (i) is beyond the reasonable control of GSS (or the relevant member of the De Beers Group) or the Sightholder or Accredited Buyer (as the case may be); and (ii) partly or wholly prevents, hinders or delays due performance by that party of its obligations under this Supply Agreement (other than the obligation to pay money) and, provided that the above conditions are satisfied, includes but is not limited to:

- (i) fire, flood, washout, storm, lightning, windstorm, hurricane or other acts of God;
- (ii) acts of public enemies, war (whether declared or undeclared), civil war, piracy, terrorist activities, embargo, blockage, revolution, political disturbance, sabotage, explosion, riot, insurrection, mobilisation, civil commotion;
- (iii) strikes, lockout, labour disputes or other form of industrial action or industrial disturbances, stoppages of workmen;
- (iv) acts, orders or restrictions of governmental or local authorities (including interruptions occurring as a result of such acts, orders or restrictions of governmental or local authorities) or of any court, or controls on exports; and
- (v) any circumstance or event which affects GSS' (or any member of the De Beers Group's) ability to produce, transport, deliver or sell Diamonds including mining events (including a roof collapse or slope failure as relevant), other production, facility or transport infrastructure damage failure or breakdown, or technical damage, failure or breakdown of GSS' (or the relevant member of the De Beers Group's) IT/software systems.

13 Suspension

13.1 Without prejudice to paragraph 14 of this Supply Agreement, GSS may immediately and without prior notification:

13.1.1 suspend a Sightholder or Accredited Buyer's status as such; and/or

13.1.2 suspend accepting applications for, and/or sales of, and/or deliveries of, Boxes,

if it has grounds to suspect that a Sightholder or Accredited Buyer is in breach of any of the 2015-2018 GSS Supply Documentation, including, for the avoidance of doubt and in respect of a Sightholder only, a Compliance Roadmap (if applicable). While GSS may suspend Sightholder or Accredited Buyer status and/or supply with immediate effect and without prior notification, GSS will, where possible, use reasonable endeavours to give such notice of suspension as is reasonably practicable in the circumstances, having regard to the nature of the Sightholder or Accredited Buyer's suspected breach. In the event that supply of Diamonds is suspended in accordance with this paragraph 13.1, GSS shall, in its absolute discretion, determine whether such supply shall be forfeited absolutely or retained by GSS pending the outcome of the suspension.

13.2 GSS reserves the right to reduce a Sightholder's ITO on a pro-rated basis during any period of suspension of the Sightholder which may be imposed by GSS pursuant to paragraph 13.1, however such suspension occurs, and the forfeited Boxes may be redistributed by GSS according to this Supply Agreement and any additional 2015-2018 GSS Supply Documentation in place from time to time.

13.3 If the Sightholder or Accredited Buyer fails to comply with its obligations in paragraph 10 in a timely manner or if any Third Party Verification which is carried out pursuant to paragraph 10 indicates that:

13.3.1 the Sightholder or Accredited Buyer (as the case may be) has submitted information that is false, incorrect or misleading; or

13.3.2 information which, when provided by the Sightholder or Accredited Buyer (as the case may be) was correct, but subsequently no longer appears to be so; or

13.3.3 the Sightholder or Accredited Buyer (as the case may be), any member of their respective Compliance Groups or any of their Contractors (as applicable) are failing to comply with (i) statements made in the Sightholder or Accredited Buyer's Compliance Statement, and/or (ii) the Compliance Criteria, and/or (iii) the Best Practice Principles, and/or (iv) the BPP Assurance Programme (as the case may be); or

13.3.4 any changes as referred to in paragraph 10.2 have occurred; or

13.3.5 the Sightholder or Accredited Buyer (as the case may be) is not co-operating with, or has not co-operated with, GSS or any Third Party Verifier in respect of its obligations in paragraph 10 and is taking or has taken steps to delay, impede, frustrate, obstruct or hinder the Third Party Verification process, then, in addition and without prejudice to its rights under paragraphs 14 and 18 below,

GSS has the right (in any Sight Location) to suspend accepting applications for, and/or the sale of, and/or the delivery of Boxes, and/or to suspend or, if the Sightholder or Accredited Buyer fails to comply with its obligations in paragraph 13.3.5 or engages in a deliberate or wilful breach of paragraph 13.3.1 only, terminate the Sightholder or Accredited Buyer's status as such, and/or to re-assess the Sightholder or Accredited Buyer's satisfaction of the Compliance Criteria and, as a result of such re-assessment, take such action as it reasonably considers appropriate and proportionate, including, without limitation, re-assessing the Boxes in respect of which the Sightholder or Accredited Buyer is eligible for supply and the level of such supply.

13.4 Notwithstanding the foregoing, GSS shall be entitled to suspend without any liability of any nature, a Sightholder's appointment immediately if, where such Sightholder is an Existing Sightholder who is required to produce a Compliance Roadmap, such Sightholder fails to:

13.4.1 comply with, or achieve the outcomes set out in, a Compliance Roadmap in any relevant fiscal year; or

13.4.2 comply in full with the Financial Compliance Criteria in respect of accounts prepared for 2016 calendar or 2016/2017 fiscal year,

such suspension to last for a period of up to three (3) months from the date of non-compliance, after which time, continuing non-compliance may result in termination of such Sightholder's appointment in accordance with paragraph 14.2 below.

13.5 Notwithstanding paragraph 13.1 above, where GSS is unable to deliver a Sightholder's ITO in full due to a lack of availability of Diamonds which results in such Sightholder failing to meet the relevant Demonstrated Demand Requirements (as applicable) for a particular Selling Period, such Sightholder's appointment shall not be suspended as a result of such failure.

13.6 GSS' rights of suspension and termination in this paragraph 13 and paragraph 14 below are in addition to those set out in other documentation entered into pursuant to this Supply Agreement, including, without limitation, Condition 5 of the Supply Planning Fee Terms and Conditions.

14 Termination

14.1 Notwithstanding the foregoing, GSS shall be entitled to terminate without any liability of any nature, the Sightholder or Accredited Buyer's appointment immediately if:

14.1.1 the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractors) breaches this Supply Agreement (including failing to comply with the obligations set out in paragraph 13.3.5), the Compliance Criteria taking into account but not limited to the integrity or probity of the Sightholder or Accredited Buyer and/or Key Individuals), the Conditions of Sale or the Supply Planning Fee Terms and Conditions and, in any such case, fails to remedy the default (if capable of remedy) within a reasonable period (being not less than twenty (20), nor more than thirty (30), business days) of being requested in writing by GSS to do so; or

14.1.2 (i) the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) acts in a manner materially inconsistent with the Compliance Criteria, the Best Practice Principles or the BPP Assurance Programme, or any Non-Substantial Contractor acts in a manner materially inconsistent with the Best Practice Principles, or (ii) the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) refuses to, or otherwise does not, participate in the BPP Assurance Programme, or (iii) the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) obstructs the verification process undertaken by a Third Party Verifier pursuant to paragraph 10 above, or (iv) the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) acts in a manner inconsistent (but not materially so) with the Compliance Criteria, the Best Practice Principles or the BPP Assurance Programme, or any Non-Substantial Contractor acts in a manner

inconsistent (but not materially so) with the Best Practice Principles, and fails to remedy the default (if capable of remedy) within a reasonable period (not being less than twenty (20), nor more than thirty (30), business days) of being requested in writing by GSS to do so, or (v) the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) acts in a manner inconsistent (whether or not materially so) with the Compliance Criteria, the Best Practice Principles or the BPP Assurance Programme, or any Non-Substantial Contractor acts in a manner inconsistent (whether or not materially so) with the Best Practice Principles (whether or not such default is remedied in accordance with (iv) above) more than three times during the term of the Sightholder or Accredited Buyer's appointment; or

- 14.1.3** (i) the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) provides false or misleading information in its Compliance Statement or supporting documentation, including (without limitation) the Compliance Declaration or, where applicable, a Strategic Supply Request, and fails to provide accurate information within a reasonable period (not being less than twenty (20), nor more than thirty (30), business days) of being requested in writing by GSS to do so or (ii) if, even having provided such accurate information, the Sightholder or Accredited Buyer would not have been eligible to be a Sightholder or Accredited Buyer had such (accurate) information been provided at the time such Sightholder or Accredited Buyer's eligibility or continued eligibility was determined or (iii) the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) fails to provide information reasonably required by GSS or which the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) has agreed to provide under this Supply Agreement within a reasonable period (not being less than twenty (20), nor more than thirty (30) business days) of being requested in writing by GSS to do so; or
- 14.1.4** (i) the Sightholder or Accredited Buyer or their respective controlling entities (or any member of their respective Compliance Groups or any Substantial Contractor) undergoes a material change in (a) management, or (b) ownership, control or financial backing, or (ii) the identity of the Key Individuals or their roles or involvement in the Sightholder or Accredited Buyer's business (or the business of the relevant controlling entity or member of the relevant Compliance Group or relevant Substantial Contractor) undergoes a material change and in the case of (i) and (ii), in GSS' opinion, acting in good faith, such material change is likely to affect the Sightholder or Accredited Buyer's (or, as relevant, member of their respective Compliance Groups' or any Substantial Contractors') ability to comply with any of the 2015-2018 GSS Supply Documentation (as applicable); or
- 14.1.5** the Sightholder or Accredited Buyer (or any member of their respective Compliance Groups or any Substantial Contractor) is declared bankrupt or insolvent, enters into a voluntary arrangement with creditors, liquidation, is wound-up or an order is made for its winding-up or administration, has an encumbrancer, receiver or administrative receiver appointed over all or any of its assets or a scheme of arrangement made or ceases (or threatens to cease) to carry on business or becomes unable to pay its debts as they fall due or if the Sightholder or Accredited Buyer's bank or other relevant financial institution or representative declares that any of the Sightholder or Accredited Buyer's assets (and/or members of their respective Compliance Groups)

constitutes a non-performing asset, or if anything similar occurs under foreign law;
or

- 14.1.6 the Sightholder or Accredited Buyer's appointment (if any) as an industrial Sightholder is terminated for any reason other than expiry of its full term; or
- 14.1.7 subject to paragraph 14.3 below, the value of Diamonds to be allocated to a Sightholder in a subsequent Selling Period is less than the Minimum Box Allocation Level or Producer Country Minimum Box Allocation Level (as applicable); or
- 14.1.8 the Sightholder has not met the minimum Demonstrated Demand Requirements for any given Selling Period and/or Reference Period; or
- 14.1.9 where applicable, the Sightholder or Accredited Buyer fails to satisfy local beneficiation requirements as set out in the Compliance Criteria and Annexes 3 and 4 to this Supply Agreement, each as in force from time to time; or
- 14.1.10 any Facility of the Sightholder or Accredited Buyer in Botswana or South Africa is deemed to be non-operational pursuant to the provisions of the Operational Facility Policy, as published from time to time by GSS, for a period of six (6) consecutive months during the Supply Period.

14.2 GSS shall also be entitled to terminate without any liability of any nature, a Sightholder's appointment immediately if, where such Sightholder is an Existing Sightholder who is required to produce a Compliance Roadmap, such Sightholder fails to:

- 14.2.1 comply with, or achieve the outcomes set out in, a Compliance Roadmap in any relevant fiscal year; or
- 14.2.2 comply in full with the Financial Compliance Criteria in respect of accounts prepared for 2016 calendar or 2016/2017 fiscal year,

and has failed to remedy non-compliance with such Compliance Roadmap within a period of up to three (3) months from the date of non-compliance.

14.3 Notwithstanding paragraphs 14.1 and 14.2 above, where GSS is unable to deliver a Sightholder's ITO in full due to a lack of availability of Diamonds which results in such Sightholder failing to meet the relevant Demonstrated Demand Requirements (as applicable) for a particular Selling Period, such Sightholder's appointment shall not be terminated as a result of such failure.

14.4 For the avoidance of doubt, GSS' rights hereunder apply in cases where the Sightholder or Accredited Buyer (or members of their respective Compliance Groups or Substantial Contractors) fails to comply with documentation entered into with GSS or any documentation entered into with any other member of the De Beers Group (including local GSS entities) and/or any Producer Partnership DTC entity.

14.5 Any notice of termination given pursuant to this paragraph 14 will specify the reason(s) therefor.

15 Consequences of Suspension and Termination

Suspension

15.1 Upon the occurrence of an event specified in paragraph 13, GSS reserves the right, in its absolute discretion, to suspend the status of a Sightholder or Accredited Buyer by:

- 15.1.1 suspending the Sightholder or Accredited Buyer's appointment pending resolution of any outstanding enquiries. In such circumstances, the Sightholder or Accredited Buyer's status shall remain active for the duration of the suspension and the Sightholder or Accredited Buyer's supply and/or Demonstrated Demand shall not be forfeited;
- 15.1.2 suspending the Sightholder or Accredited Buyer's appointment pending resolution of any outstanding enquiries, forfeiting such Sightholder or Accredited Buyer's supply and reducing the Sightholder's ITO accordingly. In such circumstances, the Sightholder or Accredited Buyer's status shall remain active for the duration of the suspension; or
- 15.1.3 suspending the Sightholder or Accredited Buyer's appointment pending resolution of any outstanding enquiries, forfeiting such Sightholder or Accredited Buyer's supply and reducing the Sightholder's ITO accordingly. In such circumstances and during this period of suspension, the Sightholder or Accredited Buyer's status shall not remain active.

Termination

- 15.2 Upon expiry or termination of the Sightholder or Accredited Buyer's appointment, all rights and obligations of GSS and the Sightholder or Accredited Buyer will immediately cease (without prejudice to any accrued rights or obligations).
- 15.3 GSS will not be liable to pay any compensation for loss of profits or loss of goodwill or for any other loss or damage howsoever arising as a result of the expiry or termination of the Sightholder or Accredited Buyer's (as the case may be) appointment in accordance with this Supply Agreement whether arising hereunder or at law (including the Commercial Agents (Council Directive) Regulations 1993) and all such obligations are excluded to the extent validly permitted under all relevant legislation. Nothing in this Supply Agreement (or arrangements entered into under it) shall be deemed to form a partnership or agency or franchise between GSS and any Sightholder or Accredited Buyer (or any members of their respective Compliance Groups).
- 15.4 This paragraph 15 and paragraphs 18, 20, 21 and 22 will survive expiry or termination of the Sightholder or Accredited Buyer's appointment.

16 Withdrawal of ITO

If, in any Selling Period, a Sightholder purchases in excess of the prevailing Minimum Demonstrated Demand Threshold or Producer Country Minimum Demonstrated Demand Threshold (as applicable) but less than the Minimum Box Demand Level or Producer Country Minimum Box Demand Level (as applicable) in a particular Box, GSS reserves the right to withdraw such Sightholder's ITO in respect of that Box for the remainder of the Supply Period (unless such Sightholder requalifies for the Box in accordance with procedures published from time to time).

17 New Sightholder Appointment during the Supply Period

GSS reserves the right to appoint new Sightholders or Accredited Buyers at any time during the Supply Period.

18 Remedies

Without prejudice to the other provisions of this Supply Agreement and to the additional 2015-2018 GSS Supply Documentation referred to in paragraph 1.4.1 of this Supply Agreement or any other remedies that GSS may have in law, GSS' remedies for breach by a Sightholder or Accredited Buyer of the terms thereof may include, without limitation but, subject to the provisions hereof, the right to immediately and without prior notification suspend accepting applications for, and/or the sale of, and/or the delivery of, Boxes; the right to immediately and without prior notification suspend Sightholder or Accredited Buyer status; the right, in certain circumstances, to request that a Third Party Verifier verifies compliance with the documentation referred to in paragraph 10 above (as applicable); the right to require that within a reasonable timeframe (which might be immediate), and taking into account the particular circumstances of each case, the breach is remedied; the right to terminate the Sightholder or Accredited Buyer's appointment with immediate effect; and/or the right to claim damages for breach of contract.

19 Compliance with Laws

- 19.1** A Sightholder or Accredited Buyer (and members of their respective Compliance Groups) shall at all times act in full compliance with all applicable laws and regulations and principles of best practice relating to money laundering, bribery and corruption of all jurisdictions to which the Sightholder or Accredited Buyer (and members of their respective Compliance Groups) is subject and any related rules and regulations and shall not do or fail to do any act or thing which shall cause either party to be in breach of any Sanction or Anti-Corruption Law.
- 19.2** A Sightholder or Accredited Buyer (and members of their respective Compliance Groups) shall not be obliged to do or perform any act or obligation under or in connection with this Supply Agreement which would cause it to be in breach of any Sanction or Anti-Corruption Law.
- 19.3** Without prejudice to the provisions of paragraph 18 above, GSS shall be entitled to terminate immediately the Sightholder or Accredited Buyer's (as the case may be) appointment as a result of a breach by such Sightholder or Accredited Buyer (or members of their respective Compliance Groups) of paragraph 19.1 above or paragraphs 19.4 or 19.6 below without any liability whatsoever.

Sanctions Undertakings

- 19.4** A Sightholder or Accredited Buyer (and members of their respective Compliance Groups) shall:
- 19.4.1** comply with any Sanction imposed by a Sanction Authority and ensure that such Sightholder or Accredited Buyer (and members of their respective Compliance Groups) does not become a Sanctioned Entity;
 - 19.4.2** promptly notify GSS upon becoming aware that any entity in a Sightholder or Accredited Buyer's respective Compliance Groups has become a Sanctioned Entity or is in violation of any Sanction imposed by a Sanction Authority;
 - 19.4.3** use reasonable endeavours to provide GSS with information that it may require from time to time in order to determine whether any Sightholder or Accredited Buyer (and members of their respective Compliance Groups) has become or is reasonably likely to become a Sanctioned Entity;

19.4.4 subject to applicable laws and confidentiality requirements, provide all information to GSS which is requested by a regulatory authority that oversees Sanctions imposed by a Sanction Authority; and

19.4.5 use reasonable endeavours to assist GSS in managing the risk of Sanctions imposed by a Sanction Authority being imposed on any party in connection with this Supply Agreement.

19.5 The obligations in relation to notification and the provision of information as set out above shall only apply to the extent the parties can lawfully comply with such obligations.

Anti-Corruption and Bribery Undertakings

19.6 GSS and a Sightholder or Accredited Buyer (as the case may be) shall, and shall procure that each member of their respective Compliance Groups shall, in the performance of their respective obligations under this Supply Agreement, comply at all times and act in a manner consistent with all applicable Anti-Corruption Laws.

19.6.1 Should GSS have a reasonable suspicion of any breach (actual or potential) and/or any conduct which may give rise to any breach of this paragraph 19.6, a Sightholder or Accredited Buyer (as the case may be) shall promptly provide any further information requested in connection with such suspicion.

19.6.2 A Sightholder or Accredited Buyer (as the case may be) shall notify GSS immediately in writing upon becoming aware of any potential or actual breach (including any potential or actual breach by any entity in a Sightholder or Accredited Buyer's respective Compliance Groups) of this paragraph 19.6 and/or any conduct which may give rise to a breach of this paragraph 19.6, providing full particulars.

19.6.3 GSS may, upon receipt of any notice under this paragraph 19.6 and/or should a Sightholder or Accredited Buyer (as the case may be) fail to comply with this paragraph 19.6 and/or should such Sightholder or Accredited Buyer (as the case may be) otherwise become aware of any breach and/or conduct which may give rise to any breach of this paragraph 19.6 (the "**Misconduct**"), at GSS' sole option:

(i) request such Sightholder or Accredited Buyer (as the case may be) to provide any further information which it is reasonable to request in relation to the Misconduct; and/or

(ii) require such Sightholder or Accredited Buyer (as the case may be) to forthwith implement such remedial measures as may be necessary to address and/or mitigate the risk and/or damage or potential damage arising from the Misconduct and to confirm to the requesting party in writing that such measures have been implemented.

19.6.4 A Sightholder or Accredited Buyer must notify GSS of any foreign public official it has as an officer, employee or direct or indirect owner of such Sightholder or Accredited Buyer and a Sightholder or Accredited Buyer (as the case may be) shall immediately notify GSS if a foreign public official becomes an officer or employee of such Sightholder or Accredited Buyer (as the case may be) and/or a member of such Sightholder or Accredited Buyer's respective Compliance Groups or acquires a direct or indirect interest in such Sightholder or Accredited Buyer.

20 Confidentiality

- 20.1** Except as otherwise agreed in writing, GSS and a Sightholder or Accredited Buyer will keep confidential all information disclosed to the other under this Supply Agreement (or arrangements entered into under it) (including, for the avoidance of doubt, information provided under paragraph 10). Neither GSS, nor any member of the De Beers Group, nor a Sightholder or Accredited Buyer (as the case may be) shall disclose any such information to any other person or use it for any purpose (including in any downstream activities) other than as permitted by this Supply Agreement or with the written consent of a Sightholder or Accredited Buyer (as the case may be).
- 20.2** Confidential information may be disclosed only if required by mandatory provision of law, governmental or other authority or regulatory body or to consultants, professional advisers and brokers and the Ombudsman (as referred to in paragraph 22) provided that (i) where a request for disclosure is received from a governmental or other authority or regulatory body, the recipient of the request will use all reasonable endeavours to consult with the other party in a timely manner in relation to such request, and consider such other party's reasonable requests relating thereto, and (ii) a confidentiality undertaking is obtained from such consultants, professional advisers or brokers on terms no less restrictive than this paragraph 20.
- 20.3** The Sightholder or Accredited Buyer agrees to use its best endeavours to procure that their respective purchasers, dealers, manufacturers and brokers (as applicable) comply with this paragraph 20.

21 Other Provisions

- 21.1** Except with the consent of GSS and unless otherwise expressly provided in this Supply Agreement (or arrangements entered into under it), no rights or obligations conferred on the Sightholder or Accredited Buyer (as the case may be) under this Supply Agreement (or arrangements entered into under it) may be assigned, transferred, sub-contracted or delegated.
- 21.2** Save for GSS, members of the De Beers Group and the Sightholder or Accredited Buyer, no third party (including, for the avoidance of doubt, members of any Compliance Group) has rights (including under the Contracts (Rights of Third Parties) Act 1999) to enforce this Supply Agreement (or arrangements entered into under it). For the avoidance of doubt, paragraphs 1.2.2, 10 and 20 are for the benefit of GSS (and, in the case of paragraph 20, the Sightholder or Accredited Buyer) and may be relied on, and enforced directly by, GSS (and, in the case of paragraph 20, the Sightholder or Accredited Buyer) against any and all third parties.
- 21.3** If any part of this Supply Agreement (or arrangements entered into under it) is found to be invalid or unenforceable in whole or in part then any such invalidity or unenforceability will not render invalid or unenforceable any other provision of the Supply Agreement and GSS and the Sightholder or Accredited Buyer (as the case may be) will negotiate in good faith to agree and implement an alternative provision which is valid and enforceable and, to the extent possible, reflects their economic, legal and commercial objectives.
- 21.4** This Supply Agreement (and arrangements entered into under it) supersedes all prior agreements, arrangements and undertakings (whether express or implied and whether legally binding or not) between GSS and the Sightholder or Accredited Buyer (as the case may be) and (together with the additional 2015-2018 GSS Supply Documentation and any other documentation referred to therein) constitutes the entire agreement between GSS and

the Sightholder or Accredited Buyer relevant to the subject matter hereof to the exclusion of all other terms and representations whether express or implied, written or oral.

- 21.5** GSS reserves the right to assign any of its rights or novate any of its rights and obligations under this Supply Agreement and/or any associated or ancillary documentation to another member of the De Beers Group, from time to time, without consulting with, or notifying in advance, or obtaining the consent of, the Sightholder or Accredited Buyer (as the case may be).
- 21.6** As the terms of this Supply Agreement and the additional 2015-2018 GSS Supply Documentation are for the benefit of both GSS and the Sightholder or Accredited Buyer (as the case may be), the rule of construction that the documentation shall be interpreted against the party responsible for its drafting or preparation, shall not apply.

22 Governing Law and Disputes

- 22.1** This Supply Agreement (and any arrangements entered into under it) will be governed exclusively by and construed exclusively in accordance with English law. For the avoidance of doubt, the choice of English law shall not exclude the application of those rules of foreign law which, as a matter of English law, have mandatory application to the dispute.
- 22.2** The following provisions relate to the resolution of any dispute arising out of or connected with this Supply Agreement (and arrangements entered into under it) and all references to 'dispute' shall mean a dispute of that kind.
- 22.3** Any dispute shall be resolved in accordance with one of the procedures set out in paragraphs 22.4 to 22.6 (inclusive). Neither the Sightholder nor Accredited Buyer (as the case may be) nor GSS may bring any substantive proceedings in relation to a dispute in any other forum. This is without prejudice to either party's right to bring ancillary applications in any court in support of substantive English proceedings or arbitration.
- 22.4** If the dispute falls within the scope of the Ombudsman Terms of Reference, it may be resolved by reference to the Ombudsman. In that case, each party will comply with the procedures and obligations imposed upon it under the Ombudsman's Terms of Reference. For the avoidance of doubt, the Ombudsman Terms of Reference include provisions concerning the resolution of disputes in the event that the parties are not satisfied with the Ombudsman's decision.
- 22.5** The dispute may be resolved by arbitration subject to English law and pursuant to the rules of the LCIA. The arbitration shall be conducted in London in the English language by a single arbitrator. The arbitrator shall be familiar with, and have experience of, the diamond industry.
- 22.6** The dispute may be resolved by litigation in the English courts.
- 22.7** No party will initiate any of the procedures set forth above unless GSS and the Sightholder or Accredited Buyer (as the case may be) have first discussed the subject matter of the dispute in good faith with a view to finding an amicable resolution to the dispute. Such discussions may include a reference by either GSS or the Sightholder or Accredited Buyer (as the case may be) to a senior representative of each of GSS and the Sightholder or Accredited Buyer (as the case may be) for resolution in accordance with such procedures as the senior representatives may agree.
- 22.8** Neither party will initiate any of the procedures set forth above unless:

- 22.8.1** in the case of a reference to the Ombudsman, no resolution has been reached within fourteen (14) days of GSS being duly notified of the Complaint in accordance with paragraph 20 of the Ombudsman Terms of Reference;
- 22.8.2** in the case of arbitration or litigation, no resolution has been reached within twenty-five (25) business days of the commencement of the good faith discussions referred to in paragraph 22.7.
- 22.9** In the absence of a resolution to the dispute as provided in paragraph 22.7, the claimant shall be entitled to elect any of the dispute resolution procedures set forth above that is applicable to the dispute. This election shall be binding on the other party subject to paragraphs 22.10 to 22.14 (inclusive).
- 22.10** If GSS is the claimant and elects to proceed by way of arbitration, it shall serve an Arbitration Notice. Arbitration shall become the dispute resolution procedure unless the Sightholder or Accredited Buyer (as the case may be) informs GSS in writing within thirty (30) days of the date of the Arbitration Notice that it requires the dispute to be resolved by litigation.
- 22.11** If the dispute is to be resolved by litigation, the parties shall, jointly or individually, apply to the court for an order that no Business Secrets be referred to in open court or in any resulting judgment or order.
- 22.12** If arbitration proceedings are already pending between GSS and the Sightholder or Accredited Buyer (as the case may be), the arbitrator may determine, where in his opinion it is expedient so to do, that any further disputes shall be resolved in the same arbitral proceedings. If he so determines, the parties shall be treated as having consented to such disputes being resolved accordingly and neither party shall commence or continue any other proceeding (whether by way of arbitration or litigation) with respect to that dispute.
- 22.13** If court proceedings are already pending between GSS and the Sightholder or Accredited Buyer (as the case may be) which arise under or in connection with the arrangements constituted by the 2015-2018 GSS Supply Documentation, any further such disputes must be resolved by way of litigation.
- 22.14** The Sightholder or Accredited Buyer (as the case may be) will irrevocably appoint a person in England as its agent for the service of process, and it will promptly provide to GSS such details of the person so appointed as GSS may request. In the event that no such details are provided, the Sightholder or Accredited Buyer (as the case may be) shall be deemed to have irrevocably appointed its representative (where such a representative has been appointed) as its agent for service of process.

23 Consent

The 2015-2018 GSS Supply Documentation shall take effect from 31 March 2015 and, by applying at any time for Boxes to be supplied on or after 31 March 2015 (whether or not the Sightholder or Accredited Buyer (as the case may be) has returned the Acknowledgement Form enclosed with this Supply Agreement), the Sightholder or Accredited Buyer (as the case may be) shall be deemed to expressly consent to, and be bound from such date by, the 2015-2018 GSS Supply Documentation.

31 March 2015

Annex 1

Mandatory Compliance Criteria

As detailed in paragraph 2 of this Supply Agreement, GSS will determine whether an Applicant is eligible to apply for Boxes for supply during the course of the Supply Period, having regard to the Applicant's satisfaction of the Compliance Criteria. Note that satisfaction of the Compliance Criteria alone does not determine eligibility to apply for Boxes in accordance with this Supply Agreement.

Information made available under the Compliance Criteria will be subject to the confidentiality provisions in paragraph 20 of this Supply Agreement and, for the avoidance of doubt, will not be disclosed by GSS, or any member of the De Beers Group, to any other person or used for any purpose (including in any downstream activities) other than as permitted by this Supply Agreement or with the prior written consent of the Applicant.

The relevant compliance criteria set out in the Confidentiality Declaration signed by the Applicant at the time of registration as part of the application process for the Supply Period continue to apply and are in addition to those set out below. Continued adherence to the relevant compliance criteria set out in the Confidentiality Declaration signed by the Applicant as part of the application process for the Supply Period and the Compliance Criteria set out below is a contractual requirement of this Supply Agreement.

References in these Compliance Criteria to "Compliance Criteria" include these Compliance Criteria, the Best Practice Principles and BPP Assurance Programme. Other defined terms used in these Compliance Criteria have the meaning(s) given in the Glossary of Terms and other documents (as relevant).

De Beers Global Sightholder Sales (International) Sightholder/Accredited Buyer Compliance Criteria

Criterion	Criterion Description	Applicable GSS Group Definition
BPPs/Probity	(i) Full, unqualified compliance with the De Beers Best Practice Principles and participation in the associated Assurance Programme; and (ii) Applicant declaration of probity; and (iii) Key Individual declarations of probity.	Compliance Group
Rough Purchases ³	Minimum rough diamond purchases (any source) at an annual average of US \$20m across 2011, 2012 and 2013.	Commercial Group
Turnover ⁴	Minimum turnover at an annual average of US \$30m across 2011, 2012 and 2013.	Commercial Group
IFRS Compliance ⁵	Declaration of a group structure in accordance with IFRS or US GAAP. Provision of group financial data (using the De Beers pro forma template) ⁶ consolidated according to IFRS or US GAAP.	Consolidation (IFRS) Group
Unqualified Audit ⁷	Unqualified audit sign-off on the financial data by a GSS Approved Auditor.	Consolidation (IFRS) Group
Maximum Leverage ⁸	Excluding any company that is listed on a DIE, a maximum debt to equity ratio of 70 to 30 (i.e. gearing of 233%).	Consolidation (IFRS) Group

Please refer to the Glossary of Terms for the relevant 'GSS Group' definitions.

³ The relevant calendar years to be revised per Selling Period.

⁴ The relevant calendar years to be revised per Selling Period.

⁵ Compliance with this Criterion may be subject to transition plans (i.e. the provision of a Compliance Roadmap) for Existing Sightholders to demonstrate how they will become compliant for the purposes of accounting periods starting on or after 1 January 2016.

⁶ Subject to the Designated Investment Exchanges (DIE) exemption as adopted by the Financial Conduct Authority (FCA).

⁷ See Footnote 5.

⁸ See Footnote 5.

De Beers Global Sightholder Sales (Botswana), Sightholder Sales South Africa and Canadian Sightholder/Accredited Buyer Compliance Criteria

Criterion	Criterion Description	Applicable GSS Group Definition
BPPs/Probity	<p>(i) Full, unqualified compliance with the De Beers Best Practice Principles and participation in the associated Assurance Programme; and</p> <p>(ii) Applicant declaration of probity; and</p> <p>(iii) Key Individual declarations of probity.</p>	Compliance Group
Rough Purchases ⁹	<p><i>GSS (Botswana):</i></p> <p>Minimum rough diamond purchases (any source) at an annual average of US \$20m across 2011, 2012 and 2013 (for Sightholder and Accredited Buyer Applicants).</p> <p><i>SSSA (South Africa) and Canada:</i></p> <p>Minimum rough diamond purchases (any source) of US \$5m for 2013 (no minimum for Accredited Buyer Applicants).</p>	Commercial Group
Turnover ¹⁰	<p><i>GSS (Botswana):</i></p> <p>Minimum turnover at an annual average of US \$30m across 2011, 2012 and 2013 (for Sightholder and Accredited Buyer Applicants).</p> <p><i>SSSA (South Africa) and Canada:</i></p> <p>Minimum turnover of US \$10m for 2013 (no minimum for Accredited Buyer Applicants).</p>	Commercial Group
IFRS Compliance ¹¹	Declaration of a group structure in accordance with IFRS or US GAAP. Provision of group financial data (using the De Beers pro forma template) ¹² consolidated according to IFRS or US GAAP.	Consolidation (IFRS) Group
Unqualified Audit ¹³	Unqualified audit sign-off on the financial data by a GSS Approved Auditor.	Consolidation (IFRS) Group

⁹ The relevant calendar years to be revised per Selling Period.

¹⁰ The relevant calendar years to be revised per Selling Period.

¹¹ Compliance with this Criterion may be subject to transition plans (i.e. the provision of a Compliance Roadmap) for Existing Sightholders to demonstrate how they will become compliant for the purposes of accounting periods starting on or after 1 January 2016.

¹² Subject to the Designated Investment Exchanges (DIE) exemption as adopted by the Financial Conduct Authority (FCA).

¹³ See Footnote 11.

Maximum Leverage ¹⁴	Excluding any company that is listed on a DIE, a maximum debt to equity ratio of 70 to 30 (i.e. gearing of 233%).	Consolidation (IFRS) Group
Beneficiation Licence ¹⁵	<p><i>Botswana</i> - Precious Stone Cutters Licence and Precious Stone Dealers Licence issued by the Ministry of Minerals, Energy and Water Resources.</p> <p><i>South Africa</i> - Beneficiation Licence in accordance with the terms of the Diamonds Act 1986.</p> <p>See further detail in Annex 3 to this Supply Agreement in relation to beneficiation requirements in Botswana and Annex 4 to this Supply Agreement in relation to beneficiation requirements in South Africa.</p>	Commercial Group
Operational Facility	Applicable for supply from GSS (Botswana) and SSSA.	Commercial Group
BBBEE Scorecard	Applicable for supply from SSSA only.	Commercial Group

Please refer to the Glossary of Terms for the relevant 'GSS Group' definitions.

¹⁴ See Footnote 11.

¹⁵ Please refer to www.debeerssightholder.com/apply for additional information in respect of applications for Canadian supply.

Annex 2

Demonstrated Demand Requirements

As detailed in paragraph 2.1 of this Supply Agreement, GSS will determine whether a Sightholder Applicant is eligible to apply for Boxes for supply during the course of the Supply Period, having regard to such Sightholder Applicant's satisfaction of the Demonstrated Demand Requirements. Note that satisfaction of the Demonstrated Demand Requirements alone does not determine eligibility to apply for Boxes in accordance with this Supply Agreement.

In determining whether to meet applications for Boxes, GSS will take into account whether, during any Selling Period (i) a Sightholder has met the Minimum Demonstrated Demand Threshold or the Producer Country Minimum Demonstrated Demand Threshold (as applicable); (ii) the value of Diamonds purchased by a Sightholder is less than the Minimum Box Demand Level or the Producer Country Minimum Box Demand Level (as applicable); and (iii) the value of Diamonds allocated to a Sightholder is less than the Minimum Box Allocation Level or the Producer Country Minimum Box Allocation Level (as applicable).

Information made available under the Demonstrated Demand Requirements will be subject to the confidentiality provisions in paragraph 20 of this Supply Agreement and, for the avoidance of doubt, will not be disclosed by GSS, or any member of the De Beers Group, to any other person or used for any purpose (including in any downstream activities) other than as permitted by this Supply Agreement or with the prior written consent of the Sightholder Applicant.

GSS (International):

2014-15 ITO (US \$m)	Minimum Demonstrated Demand Threshold - 2014-15	Minimum Demonstrated Demand Threshold - 2015-16, 2016-17 & 2017-18
\$15m or more	\$15m	\$15m
Less than \$15m	\$10m	\$15m

GSS (Botswana), Sightholder Sales South Africa (SSSA), Canada:

	Producer Country Minimum Demonstrated Demand Threshold - 2014-15, 2015-16, 2016-17 & 2017-18 (as applicable to the supply location)
GSS (Botswana)	\$15m
South Africa	\$5m
Canada (Ontario)	\$5m
Canada (Northwest Territories)	\$5m

Purchases Counting Towards Minimum Demonstrated Demand Threshold or Producer Country Minimum Demonstrated Demand Threshold:

	Minimum Demonstrated Demand Threshold or Producer Country Minimum Demonstrated Demand Threshold - 2014-15, 2015-16, 2016-17 & 2017-18	Purchases Counting Towards Minimum Demonstrated Demand Threshold or Producer Country Minimum Demonstrated Demand Threshold
GSS (International)	\$15m	- In plan (ITO) - Ex plan (any DB source) - DBAS
GSS (Botswana)	\$15m	- In plan (ITO) - Ex plan (GSS (Botswana) only)
South Africa	\$5m	- In plan (ITO) - Ex plan (SSSA only)
Canada (Ontario)	\$5m	- In plan (ITO) - Ex plan (Ontario only)
Canada (Northwest Territories)	\$5m	- In plan (ITO) - Ex plan (NWT only)

Minimum Box Demand Level and Minimum Box Allocation Level:

	Minimum Box Demand Level and Minimum Box Allocation Level¹⁶
GSS (International)	3x minimum Box, unless the existing ITO in the 2014/2015 Selling Period was less than 3x minimum Box and GSS (International)'s Global Minimum Box Demand Level was greater than or equal to 3x minimum Box

Producer Country Minimum Box Demand Level and Producer Country Minimum Box Allocation Level:

	Producer Country Minimum Box Demand Level and Producer Country Minimum Box Allocation Level¹⁷ (as applicable to the supply location)
GSS (Botswana)	<ul style="list-style-type: none"> • 1x minimum Box for the 2015/2016 ITO Re-planning Process • 3x minimum Box for the 2016/2017 ITO Re-planning Process
South Africa	<ul style="list-style-type: none"> • 2x minimum Box for the 2015/2016 ITO Re-planning Process • 2x minimum Box for the 2016/2017 ITO Re-planning Process

¹⁶ As communicated by GSS from time to time.

¹⁷ As communicated by GSS from time to time.

Annex 3

Beneficiation (Botswana)

GSS (Botswana) Beneficiation Supply, Compliance Criteria and ITO Re-planning Requirements

1 Introduction

This Annex 3 sets out certain information and processes to be applied by GSS (Botswana) in the supply of rough diamonds to its Sightholders and Accredited Buyers pursuant to the 2015-2018 GSS Supply Agreement Documentation. Defined terms used in this Annex 3 shall have the meaning(s) given in the 2015-2018 Supply Agreement Glossary of Terms and other documents (as relevant).

As detailed in Paragraphs 2.1 and 2.2 of the Supply Agreement, GSS (Botswana) will determine whether an Applicant is eligible to apply for Boxes for supply during the course of the Supply Agreement, having regard to the Applicant's satisfaction of the Compliance Criteria. In consideration of paragraphs 2.1.7 and 2.1.8 of the Supply Agreement, one such factor GSS may take into account in determining whether or not to meet applications for Ex-Plan Availability/Boxes, is the Sightholder's level of satisfaction of the Relative Performance Criteria, as compared with that achieved by other Sightholders. Note that satisfaction of the Relative Performance Criteria alone does not determine eligibility to apply for Ex-Plan Availability/Boxes in accordance with the Supply Agreement.

It is a principal objective of GSS (Botswana) to identify and attract world class diamond businesses that demonstrate, through their on-going performance against the Compliance Criteria (in particular the Beneficiation Compliance Criteria), a commitment to developing sustainable manufacturing capability in Botswana and an ability to maximise the value of diamonds through technical capability, global distribution reach and effective marketing. In that context, GSS (Botswana) reserves the right to employ such mechanisms, calculations, methodologies, processes, measurements and/or workings as it deems necessary (in its sole and absolute discretion) to respond to prevailing trading conditions, whilst supporting the Government of Botswana's requirements and policies in respect of the supply of diamonds for the purpose of beneficiation in Botswana.

2 Sightholder Supply

GSS (Botswana) Sightholder Applicants are required to meet (i) the GSS (International) Compliance Criteria and (ii) the GSS (Botswana) Beneficiation Compliance Criteria. If an Existing Sightholder is not fully compliant with the Financial Compliance Criteria (part of the GSS (International) Compliance Criteria) as at 17 October 2014, it will be required to put in place a Compliance Roadmap to evidence the process by which it will comply with the Financial Compliance Criteria by 2017 in respect of its accounting period starting on or after 1 January 2016.

3 Accredited Buyer Supply

GSS (Botswana) Accredited Buyer Applicants are required to meet (i) the GSS (International) Compliance Criteria (or have an approved Compliance Roadmap in place if they are an Existing Sightholder in an alternative De Beers supply location) and (ii) GSS (Botswana) Beneficiation Compliance Criteria. In the event an Accredited Buyer Applicant is not an Existing Sightholder, it is not possible for such an Applicant to enter into a

Compliance Roadmap and therefore satisfaction of the Financial Compliance Criteria is required as of 17 October 2014 (or any other date of application from 31 March 2015 for Accredited Buyer status).

4 Compliance Criteria

The following GSS (International) Compliance Criteria and GSS (Botswana) Beneficiation Compliance Criteria and Relative Performance Criteria will apply to both a Sightholder and an Accredited Buyer in respect of supply from GSS (Botswana).

4.1 GSS (International) Compliance Criteria

The GSS (International) Compliance Criteria are as follows:

Compliance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	GSS (International) Criterion Description
BPPs/Probity	(i) Full, unqualified compliance with the De Beers Best Practice Principles and participation in the associated Assurance Programme; and (ii) Applicant declaration of probity; and (iii) Key Individual declarations of probity.
Rough Purchases¹⁸	Minimum rough diamond purchases (any source) at an annual average of US \$20m across 2011, 2012 and 2013.
Turnover¹⁹	Minimum turnover at an annual average of US \$30m across 2011, 2012 and 2013.

Financial Compliance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	GSS (International) Criterion Description
IFRS Compliance²⁰	Declaration of a group structure in accordance with IFRS or US GAAP. Provision of group financial data (using the De Beers pro forma template) ²¹ consolidated according to IFRS or US GAAP.
Unqualified Audit²²	Unqualified audit sign-off on the financial data by a GSS approved auditor.
Maximum Leverage²³	A maximum debt to equity ratio of 70 to 30 (i.e. gearing of 233%).

¹⁸ The relevant calendar years to be revised per Selling Period.

¹⁹ The relevant calendar years to be revised per Selling Period.

²⁰ Compliance with this Criterion may be subject to transition plans (i.e. the provision of a Compliance Roadmap) for Existing Sightholders to demonstrate how they will become compliant for the purposes of accounting periods starting on or after 1 January 2016.

²¹ Subject to the Designated Investment Exchanges (DIE) exemption as adopted by the Financial Conduct Authority (FCA).

²² See Footnote 20.

²³ See Footnote 20.

4.2 GSS (Botswana) Mandatory Beneficiation Compliance Criteria and Relative Performance Criteria

The GSS (Botswana) Beneficiation Compliance Criteria are as follows:

Mandatory Beneficiation Compliance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	GSS (Botswana) Criterion Description
Precious Stone Dealers Licence	A valid Precious Stone Dealers Licence issued by the Ministry of Minerals, Energy and Water Resources must be held by the Sightholder or Accredited Buyer at all times throughout the duration of the 2015-2018 Supply Agreement.
Precious Stone Cutters Licence	A valid Precious Stone Cutters Licence issued by the Ministry of Minerals, Energy and Water Resources must be held by the Sightholder or Accredited Buyer at all times throughout the duration of the 2015-2018 Supply Agreement.
Operational Facility	A Sightholder or Accredited Buyer must maintain an Operational Facility as published by GSS (Botswana) from time to time, throughout the duration of the 2015-2018 Supply Agreement.

Beneficiation Relative Performance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	GSS (Botswana) Criterion Description
Skills Transfer	A Sightholder or Accredited Buyer must throughout the duration of the 2015-2018 Supply Agreement be committed to and implement a process of skills transfer to local Citizens in Botswana.
Rough Utilisation	A Sightholder or Accredited Buyer must throughout the duration of the 2015-2018 Supply Agreement be committed to and implement the processing, preparation and planning of rough diamonds sourced from GSS (Botswana) in Botswana.

5 ITO Re-planning

GSS (Botswana) will apply the Beneficiation Relative Performance Criteria solely for the purposes of (i) assessment of Beneficiation performance during the annual ITO Re-planning Process and (ii) the allocation of Ex-plan during the Subsequent ITO Selling Period. GSS (Botswana) Sightholders should have specific consideration to the following principles as part of the GSS (Botswana) ITO Re-planning Process:

- (i) A Sightholder not meeting the Producer Country Minimum Aggregate Demonstrated Demand Threshold of US \$15m in Botswana may have its Sightholder status withdrawn and be awarded Accredited Buyer status (subject to the satisfaction of the Compliance Criteria).
- (ii) A Sightholder may export up to 20% by caratage of their actual GSS (Botswana) Demonstrated Demand (purchases) per box over the ITO Selling Period without any adverse impact on their Producer Country Minimum Aggregate Demonstrated Demand Threshold, subject to availability. Any export value in excess of 20% will incur a proportional reduction of the Demonstrated Demand in the subsequent ITO Re-planning Process. If the resultant ITO offering is less than US \$15m, a Sightholder will be allocated a sub US \$15m ITO (subject to minimum box allocation rules) but must demonstrate a minimum of US \$15m demonstrated demand in the next ITO period to remain a Sightholder.

Annex 4

Beneficiation (South Africa)

SSSA Beneficiation Supply, Compliance Criteria and ITO Re-planning Requirements

1 Introduction

This Annex 4 sets out certain information and processes to be applied by SSSA in the supply of rough diamonds to its Sightholders and Accredited Buyers pursuant to the 2015-2018 Supply Agreement Documentation. Defined terms used in this Annex 4 shall have the meaning(s) given in the 2015-2018 Supply Agreement Glossary of Terms and other documents (as relevant).

As detailed in Paragraphs 2.1 and 2.2 of the Supply Agreement, SSSA will determine whether an Applicant is eligible to apply for Boxes for supply during the course of the Supply Agreement, having regard to the Applicant's satisfaction of the Compliance Criteria. In consideration of paragraphs 2.1.7 and 2.1.8 of the Supply Agreement, one such factor SSSA may take into account in determining whether or not to meet applications for Ex-Plan Availability/Boxes, is the Sightholder's level of satisfaction of the Relative Performance Criteria, as compared with that achieved by other Sightholders. Note that satisfaction of the Relative Performance Criteria alone does not determine eligibility to apply for Ex-Plan Availability/Boxes in accordance with the Supply Agreement.

It is a principal objective of SSSA to identify and attract world class diamond businesses that demonstrate, through their on-going performance against the Compliance Criteria (in particular the Beneficiation Compliance Criteria), a commitment to developing sustainable manufacturing capability in South Africa and an ability to maximise the value of diamonds through technical capability, global distribution reach and effective marketing. In that context, SSSA reserves the right to employ such mechanisms, calculations, methodologies, processes, measurements and/or workings as it deems necessary (in its sole and absolute discretion) to respond to prevailing trading conditions, whilst supporting the Government of South Africa's requirements and policies in respect of the supply of diamonds for the purpose of beneficiation in South Africa.

2 Sightholder Supply

SSSA Sightholder Applicants are required to meet (i) the GSS (International) Compliance Criteria and (ii) the SSSA Beneficiation Compliance Criteria. If an Existing Sightholder is not fully compliant with the Financial Compliance Criteria (part of the GSS (International) Compliance Criteria) as at 17 October 2014, it will be required to put in place a Compliance Roadmap to evidence the process by which it will comply with the Financial Compliance Criteria by 2017 in respect of its accounting period starting on or after 1 January 2016.

3 Accredited Buyer Supply

SSSA Accredited Buyer Applicants are required to meet (i) the GSS (International) Compliance Criteria (or have an approved Compliance Roadmap in place if they are an Existing Sightholder in an alternative De Beers supply location) and (ii) SSSA Beneficiation Compliance Criteria. In the event an Accredited Buyer Applicant is not an Existing Sightholder, it is not possible for such an Applicant to enter into a Compliance Roadmap and therefore satisfaction of the Financial Compliance Criteria is required as of 17 October 2014 (or any other date of application from 31 March 2015 for Accredited Buyer status).

4 Compliance Criteria

The following GSS (International) Compliance Criteria and SSSA Beneficiation Compliance Criteria and Relative Performance Criteria will apply to both a Sightholder and an Accredited Buyer in respect of supply from SSSA.

4.1 GSS (International) Compliance Criteria

The GSS (International) Compliance Criteria are as follows:

Compliance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	GSS (International) Criterion Description
BPPs/Probity	(i) Full, unqualified compliance with the De Beers Best Practice Principles and participation in the associated Assurance Programme; and (ii) Applicant declaration of probity; and (iii) Key Individual declarations of probity.
Rough Purchases²⁴	Minimum rough diamond purchases (any source) at an annual average of US \$20m across 2011, 2012 and 2013.
Turnover²⁵	Minimum turnover at an annual average of US \$30m across 2011, 2012 and 2013.

Financial Compliance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	GSS (International) Criterion Description
IFRS Compliance²⁶	Declaration of a group structure in accordance with IFRS or US GAAP. Provision of group financial data (using the De Beers pro forma template) ²⁷ consolidated according to IFRS or US GAAP.
Unqualified Audit²⁸	Unqualified audit sign-off on the financial data by a GSS approved auditor.
Maximum Leverage²⁹	A maximum debt to equity ratio of 70 to 30 (i.e. gearing of 233%).

²⁴ The relevant calendar years to be revised per Selling Period.

²⁵ The relevant calendar years to be revised per Selling Period.

²⁶ Compliance with this Criterion may be subject to transition plans (i.e. the provision of a Compliance Roadmap) for Existing Sightholders to demonstrate how they will become compliant for the purposes of accounting periods starting on or after 1 January 2016.

²⁷ Subject to the Designated Investment Exchanges (DIE) exemption as adopted by the Financial Conduct Authority (FCA).

²⁸ See Footnote 26.

²⁹ See Footnote 26.

4.2 SSSA Mandatory Beneficiation Compliance Criteria and Relative Performance Criteria

The SSSA Beneficiation Compliance Criteria are as follows:

Mandatory Beneficiation Compliance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	SSSA Criterion Description
BBBEE Scorecard	A Sightholder or Accredited Buyer must demonstrate that they hold (and continue to hold throughout the duration of the Supply Agreement) a BBBEE Scorecard verified by an agency that is a member of the ABVA (Association of BEE Verification Agency) and accompanied by the SANA stamp (South Africa National Accreditation System).
Beneficiation Licence	Beneficiation Licence in accordance with the terms of the Diamonds Act 1986.
Operational Facility	A Sightholder or Accredited Buyer must maintain an Operational Facility as published by SSSA from time to time, throughout the duration of the 2015-2018 Supply Agreement.

Beneficiation Relative Performance Criteria - Sightholder and/or Accredited Buyer Applicants:	
Criterion	SSSA Criterion Description
BBBEE Scorecard Score	A Sightholder or Accredited Buyer will be assessed by reference to their performance in the elements of the BBBEE Scorecard.
Diamond Workers	A Sightholder or Accredited Buyer will be assessed by their commitment to maintaining sustainable employment creation in South Africa by reference to the Diamond Workers employed in their South African operations.

Annex 5

Group Definitions

Consolidation (IFRS) Group Definition

Consolidation (IFRS) Group³⁰ means a Parent and all its Subsidiaries from time to time that are Diamond Related Businesses (unless such Diamond Related Businesses are genuinely independent in accordance with guidance published by GSS from time to time and applied for the purposes of the 2015-2018 GSS Supply Agreement Documentation³¹).

Parent means an entity that controls, or has significant influence over, one or more entities and includes an Associate Entity or an entity that has a Minority Interest in another entity.

Subsidiary means an entity that is controlled by another entity and includes (i) an entity over which that other entity has significant influence; and (ii) an entity in which that other entity has a Minority Interest.

Control of an entity means an entity that is controlled by another entity by nature of the fact that the controlling entity (i) is exposed, or has rights, to variable returns from its involvement with the controlled entity; (ii) has the ability to affect those returns through its power over the controlled entity; and (iii) has existing rights that give it the current ability to direct the activities that significantly affect the controlled entity's returns. This includes where the controlling entity (i) holds a majority of the voting rights in the controlled entity; (ii) is a member of the controlled entity and has the right to appoint or remove a majority of its board of directors; or (iii) holds a majority of the issued share capital (equity) of the controlled entity.

Diamond Related Business includes (i) a corporate entity deriving any revenue from the sale of rough diamonds, polished diamonds or diamond-containing products; (ii) a holding company whose holdings are in businesses of this nature; (iii) a corporate entity whose principal business is in direct association with the diamond pipeline or (iv) a corporate entity holding the collateral that secures the funding of a diamond business. All references relate to natural diamonds only and exclude entities solely involved in diamond mining.

Associate Entity means a holding of equal to or more than 20% but less than 50% of the voting power (directly or indirectly) of an entity.

Minority Interest means a holding of less than 20% of the voting power (directly or indirectly) of an entity.

Significant influence means the power to participate in the financial and operating policy decisions of an investee in circumstances in which an investor does not control those decisions. For the avoidance of doubt, where an investor holds 20%³² or more of the voting power (directly or indirectly) of an investee, it will be presumed that the investor has significant influence over the investee unless no such influence can be clearly demonstrated.

³⁰ The GSS Consolidation (IFRS) Group definition is based on the principles of IFRS accounting standards (as implemented by the International Accounting Standards Board) and adapted in certain respects to reflect the requirements of GSS to incorporate, as a minimum, consolidation of entities that are Diamond Related Businesses in the Consolidation IFRS Group.

³¹ Note a Diamond Related Business that is "independent" but under common ownership for the purposes of the Consolidation (IFRS) will nonetheless be required to be included in the Compliance Group (and therefore is subject to the Best Practice Principles Assurance Programme).

³² For the purpose of the Best Practice Principles Assurance Programme, an investor holding 20% or more but less than 50% of the voting power (directly or indirectly) of an entity is classified as an 'Associate Entity' and should be declared as such on the BPP SMART System.

Compliance Group Definition

Compliance Group means an ultimate Parent and its direct or indirect Subsidiaries from time to time which (in respect of such Parent and Subsidiaries) are Diamond Related Businesses. Compliance Group also includes Contractors of the relevant entity.

Parent means either the Sightholder or the Accredited Buyer's ultimate parent of the Sightholder or Accredited Buyer's corporate structure, as the context so requires.

Subsidiary means an entity that is controlled by another entity.

Control of an entity means an entity that is controlled by another entity by nature of the fact that the controlling entity (i) is exposed, or has rights, to variable returns from its involvement with the controlled entity; (ii) has the ability to affect those returns through its power over the controlled entity; and (iii) has existing rights that give it the current ability to direct the activities that significantly affect the controlled entity's returns. This includes where the controlling entity (i) holds a majority of the voting rights in the controlled entity; (ii) is a member of the controlled entity and has the right to appoint or remove a majority of its board of directors; or (iii) holds a majority of the issued share capital (equity) of the controlled entity. For the avoidance of doubt, control includes joint control.

Diamond Related Business includes (i) a corporate entity deriving any revenue from the sale of rough diamonds, polished diamonds or diamond-containing products; (ii) a holding company whose holdings are in businesses of this nature; or (iii) a corporate entity whose principal business is in direct association with the diamond pipeline. All references relate to natural diamonds only and exclude entities solely involved in diamond mining.

Contractor means any natural person, legal entity or business (or any part thereof) who carries out any work on behalf of the De Beers Group or (as the case may be) any Compliance Group, or any part thereof, in connection with the prospecting, mining, buying and/or selling, or manufacturing of diamonds or diamond jewellery, where the mining concession and/or diamonds is/are owned or controlled by the De Beers Group (or any part thereof) or (**Substantial Contractor** means a Contractor whose arrangements with a Sightholder/Accredited Buyer represent more than 75% of the Contractor's diamond related turnover in value or volume.

Commercial Group Definition

Commercial Group means a Parent and its direct or indirect Subsidiaries from time to time.

Parent means either the Sightholder or the Accredited Buyer's ultimate parent or the top entity of the Sightholder or Accredited Buyer's corporate structure, as the context so requires.

Subsidiary means an entity that is controlled by another entity.

Control of an entity means an entity that is controlled by another entity by nature of the fact that the controlling entity (i) is exposed, or has rights, to variable returns from its involvement with the controlled entity; (ii) has the ability to affect those returns through its power over the controlled entity; and (iii) has existing rights that give it the current ability to direct the activities that significantly affect the controlled entity's returns. This includes where the controlling entity (i) holds a majority of the voting rights in the controlled entity; (ii) is a member of the controlled entity and has the right to appoint or remove a majority of its board of directors; or (iii) holds a majority of the issued share capital (equity) of the controlled entity. For the avoidance of doubt, control includes joint control.³³

³³ In this context, joint control refers to a joint venture arrangement in which each party has equal voting rights (at board and shareholder level) or holds an equal amount of the issued share capital in the joint venture entity.

Eligible Entity – Contractual Terms Definition

Eligible Entity – Contractual Terms means an entity that forms part of the Consolidation (IFRS) Group and is either (i) a Sightholder or an Accredited Buyer; or (ii) a Diamond Related Business which is controlled by, or which controls, a Sightholder or an Accredited Buyer³⁴. An Eligible Entity will qualify for and be entitled to: (i) IP Licencing; (ii) Invoicing; and (iii) Receipt of Shipments.

Control means direct or indirect ownership or control in which an entity (i) holds a majority of the voting rights or issued share capital (equity) in the controlled entity; (ii) the controlling entity is a member of the controlled entity and has the right to appoint or remove a majority of its board of directors; or (iii) the controlling entity controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the controlled entity (however, a joint venture arrangement in which each party has equal voting rights (at board and shareholder level) or holds an equal amount of the issued share capital in the joint venture entity is included in this definition for the purposes of Invoicing and Receipt of Shipments, only).³⁵

Diamond Related Business includes (i) a corporate entity deriving any revenue from the sale of rough diamonds, polished diamonds or diamond-containing products; (ii) a holding company whose holdings are in businesses of this nature; or (iii) a corporate entity whose principal business is in direct association with the diamond pipeline. All references relate to natural diamonds only and exclude entities solely involved in diamond mining.

Invoicing means the ability for an entity to receive an invoice for the supply of diamonds or related services from a member of the De Beers Group.

IP Licencing means the provision of a licence pursuant to which a Sightholder is entitled to use, subject to the terms of such licence, the Sightholder Signature.

Receipt of Shipments means the ability for an entity to receive shipments of diamonds from a member of the De Beers Group.

Sightholder Signature means the logo depicted in the Sightholder Signature Licence and Guidelines, as may be revised or updated from time to time.

³⁴ For the avoidance of doubt, unless otherwise specified, an Eligible Entity must: (i) be a corporate entity only and must not be an individual person; and (ii) not be a traditional family-based holding structure such as the Hindu Undivided Family structure (HUFs) (or similar holding structures).

³⁵ Therefore, a joint venture entity in which each party has equal voting rights (at board and shareholder level) or holds an equal amount of the issued share capital in the joint venture entity is excluded from the definition of Control for the purposes of IP Licencing.

CONDITIONS OF SALE FOR BOTSWANA SIGHTS

1 Application

- 1.1** These Conditions shall govern and be incorporated in every Contract between De Beers Global Sightholder Sales (Proprietary) Limited (“**GSS**”) and/or any other member of the De Beers Group and the Sightholder or Accredited Buyer (as the case may be) in Botswana. They shall apply in place of, and prevail over, any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by a Sightholder (or any member of its Compliance Group) or an Accredited Buyer (or any member of its Compliance Group) (as the case may be) or in correspondence or elsewhere or implied by trade, custom, practice or a course of dealings. The signing by GSS of any of the Sightholder or Accredited Buyer’s (as the case may be) documentation shall not imply any modification of these Conditions.
- 1.2** In relation to Diamond supply, the Supply Agreement (as published from time to time) shall be deemed to be incorporated into these Conditions and to prevail over these Conditions if there is any inconsistency.
- 1.3** If any Condition (or part of any Condition) is held to be void, invalid, ineffective or unenforceable, in whole or in part, these Conditions will continue to be valid as to all other provisions (and the remainder of the affected provision).

2 Purchase Procedures

- 2.1** GSS shall from time to time notify the Sightholder or Accredited Buyer (as the case may be) of the dates and venues of Sights and any changes thereto. The dates and frequency of Sights in one Sight Location may vary from time to time from the dates of Sights in other Sight Locations.
- 2.2** A Sightholder or Accredited Buyer (as the case may be) shall submit a request for the Boxes which it wishes to purchase at a Sight not less than fourteen (14) days before the first day of such Sight or such other date as is notified by GSS from time to time.
- 2.3** No less than two (2) business days prior to the commencement of the relevant Sight, GSS shall notify the Sightholder or Accredited Buyer (as the case may be) as to whether or not any or all of the Boxes specified in the Sightholder or Accredited Buyer’s (as the case may be) Box request are available. For the avoidance of doubt, such notification shall only include those Boxes applied for by the Sightholder or Accredited Buyer (as the case may be) under Condition 2.2 and shall not require the Sightholder or Accredited Buyer (as the case may be) to offer to purchase any Boxes not applied for.
- 2.4** GSS will determine, and notify the Sightholder or Accredited Buyer (as the case may be) of, the venue of the Sight at which the Boxes notified to the Sightholder or Accredited Buyer (as the case may be) as available under Condition 2.3 will be available for inspection by the Sightholder or Accredited Buyer (as the case may be). At that Sight, the Sightholder or Accredited Buyer (as the case may be) shall be entitled to offer to purchase (at the price notified by GSS) all or any of the Boxes made available for inspection at that Sight. Acceptance by GSS of the Sightholder or Accredited Buyer’s (as the case may be) offer shall create a binding Contract.
- 2.5** The Sightholder or Accredited Buyer (as the case may be) may decide not to offer to purchase any or all of the Boxes made available for inspection. For Boxes containing Diamonds of above a size notified in writing by GSS from time to time (as well as for other Boxes as notified to the Sightholder or Accredited Buyer (as the case may be) from time to time), the Sightholder or Accredited Buyer (as the case may be) may reject up to a certain percentage of Diamonds by carat weight of the Box as determined in writing from time to time by GSS. The rejections will take place on the terms, and subject to conditions, as separately notified in writing from time to time by GSS.

- 2.6** A Sightholder or Accredited Buyer (as the case may be) shall be responsible for:
- 2.6.1** complying with all labelling, marking, packaging, Box description and other applicable legal requirements in the territory to which the Boxes are to be delivered; and
 - 2.6.2** obtaining any necessary licences and paying all applicable duties, taxes, levies, penalties and other charges or fees of any kind in respect of the delivery of the Boxes and their resale by the Sightholder or Accredited Buyer (as the case may be); and
 - 2.6.3** obtaining all necessary authorisations in terms of the Precious and Semi-Precious Stones (Protection) Act Cap 66:03 (as amended and/or replaced from time to time) for the purchase of rough or uncut diamonds,

and shall co-operate with, and provide all necessary assistance to, GSS in relation to such matters.

3 Price

- 3.1** All prices will be expressed in US dollars (or such other freely convertible currency as is specified by GSS from time to time) and are exclusive of any and all (a) applicable value added, or other sales or similar, tax, (b) (in the case of (i) Diamonds offered by GSS to the Sightholder under a Standard ITO, or (ii) Ex Plan Availability offered by GSS to an Accredited Buyer under a Standard Supply Planning Service) transport, delivery and insurance charges, (c) duties or levies, and (d) (in the case of (i) goods offered by GSS to a Sightholder under a Planned ITO, or (ii) Ex Plan Availability offered by GSS to an Accredited Buyer under a Planned Supply Planning Service) insurance charges and the Supply Planning Fee (pursuant to the Supply Planning Fee Terms and Conditions), for each of which the Sightholder or Accredited Buyer (as the case may be) shall be additionally and solely liable.
- 3.2** Prices will be communicated to the Sightholder or Accredited Buyer (as the case may be) by way of invoice. Invoices shall only be delivered by post to the nominated address of Compliance Group companies, emailed to the nominated email address of Compliance Group companies, made available by GSS online or may be collected by the Sightholder or Accredited Buyer (as the case may be) from the relevant Sight Location. The Sightholder or Accredited Buyer (as the case may be) shall be responsible for notifying GSS in writing of the address to which invoices shall be delivered.
- 3.3** All payments shall be made by the Sightholder or Accredited Buyer (as the case may be) in full in US dollars (or such other freely convertible currency as is specified by GSS from time to time) by telegraphic or electronic transfer to such bank account details as are notified by GSS to the Sightholder or Accredited Buyer (as the case may be) from time to time.
- 3.4** If the Sightholder or Accredited Buyer (as the case may be) fails to pay the price for any Boxes in full within five (5) business days after the date of GSS's acceptance of the Sightholder or Accredited Buyer's (as the case may be) offer therefor, GSS shall be entitled by written notice to cancel or suspend delivery of the Boxes to the Sightholder or Accredited Buyer (as the case may be). No credit facilities shall be made available. If a Sightholder that elects to receive a Planned ITO or an Accredited Buyer that elects to receive a Planned Supply Planning Service fails to pay the Supply Planning Fee when due, GSS may (i) withhold or terminate the provision of any Planned ITO Service or Planned Supply Planning Service (as the case may be), (ii) suspend receiving applications for, and/or sales of, and/or deliveries of, Boxes from or to, as the case may be, the Sightholder or Accredited Buyer, and (iii) terminate the Sightholder or Accredited Buyer's (as the case may be) appointment as such if the Sightholder or Accredited Buyer (as the case may be) fails to remedy the default within a reasonable period (being not less than twenty (20) nor more than thirty (30) business days) of being requested in writing by GSS to do so, as more fully set out in condition 5 of the Supply Planning Fee Terms and Conditions.

4 Title, Risk and Delivery

- 4.1** The Sightholder or Accredited Buyer (as the case may be) shall be entitled to take delivery of each Box after GSS has received cleared payment in full for it. Delivery of each Box (and the Diamonds in it) shall be deemed to take place when GSS hands the Boxes to a GSS approved carrier at the Sight Location for onward despatch to the Sightholder or Accredited Buyer (as the case may be). All risk of loss of, or damage to, each Box (and the Diamonds contained in it) shall pass to the Sightholder or Accredited Buyer (as the case may be) on delivery to such carrier.
- 4.2** Without prejudice to the other provisions of these Conditions or the terms of the Supply Planning Fee Terms and Conditions, when previously agreed in writing, GSS will appoint a carrier and arrange insurance (at the Sightholder or Accredited Buyer's (as the case may be) cost) and transportation (at either the Sightholder or Accredited Buyer's (as the case may be) cost or GSS's cost, as the case may be, depending on whether (i) the Sightholder has elected to receive a Standard ITO or a Planned ITO, or (ii) the Accredited Buyer has elected to receive a Standard Supply Planning Service or a Planned Supply Planning Service) of Boxes on the Sightholder or Accredited Buyer's (as the case may be) behalf, but will accept no liability for such Boxes (or the Diamonds contained in them) following delivery in accordance with Condition 4.1. Any delivery of Boxes which is made pursuant to this Condition 4.2 shall only be delivered to the nominated address of Compliance Group companies. The Sightholder or Accredited Buyer (as the case may be) shall be responsible for notifying GSS in writing of the address to which Boxes should be delivered. All risk of loss of, or damage to, each Box (and the Diamonds contained in it) shall pass to the Sightholder or Accredited Buyer (as the case may be) on delivery to the relevant carrier.
- 4.3** Title to, and property in, each Box (and the Diamonds contained in it) shall pass to the Sightholder or Accredited Buyer (as the case may be) on delivery in accordance with Condition 4.1 or Condition 4.2 (as applicable).
- 4.4** GSS shall deliver the Boxes in accordance with Condition 4.1 or Condition 4.2 (as applicable) within a reasonable period, or at such other time as may be agreed between GSS and the Sightholder or Accredited Buyer (as the case may be), after receipt of payment.

5 Liability

- 5.1** Any shortage, defect or other claim by the Sightholder or Accredited Buyer (as the case may be) (including any request for GSS to assist in tracing any Box (or any Diamonds contained in it)) must be notified in writing to GSS within sixteen (16) business days of delivery in accordance with Condition 4.1 above. If the Sightholder or Accredited Buyer (as the case may be) fails to do so, the Boxes, and the Diamonds contained in them, shall be conclusively presumed to be in accordance with the Contract.
- 5.2** GSS's entire liability to the Sightholder or Accredited Buyer (as the case may be) hereunder, whether for breach of contract, negligence, misrepresentation or otherwise, is limited at GSS's discretion to refunding the Sightholder or Accredited Buyer (as the case may be) the price paid for the relevant Diamond or Box or replacing the relevant Diamond or Box or making good any shortage or non-delivery and will not in any event exceed the price paid, or to be paid, for the relevant Diamond or Box.
- 5.3** Except as expressly stated herein, all conditions, warranties, representations and other terms, express or implied by (i) statute, (ii) common-law or (iii) otherwise, in relation to the Boxes (or the Diamonds contained in them) are excluded, in each case to the extent permitted by law.

6 Governing Law and Disputes

- 6.1** These Conditions shall be governed exclusively by and construed exclusively in accordance with the law of Botswana.

- 6.2** The following provisions relate to the resolution of any dispute arising out of or connected with these Conditions and all references to 'dispute' shall mean a dispute of that kind.
- 6.3** Any dispute shall be resolved in accordance with one of the procedures set out in Conditions 6.4 to 6.6. Neither the Sightholder or Accredited Buyer (as the case may) nor GSS may bring any substantive proceedings in relation to a dispute in any other forum. This is without prejudice to either party's right to bring ancillary applications in any court in support of substantive proceedings or arbitration.
- 6.4** If the dispute falls within the scope of the Ombudsman Terms of Reference, it may be resolved by reference to the Ombudsman. In that case, each party will comply with the procedures and obligations imposed upon it under the Ombudsman's Terms of Reference. For the avoidance of doubt, the Ombudsman Terms of Reference include provisions concerning the resolution of disputes in the event that the parties are not satisfied with the Ombudsman's decision.
- 6.5** The dispute may be resolved by arbitration in accordance with the provisions of the Arbitration Act Cap 06:01 (as amended and/or replaced from time to time) and pursuant to the Rules for the Conduct of Arbitrations as published by the Botswana Institute of Arbitrators. The arbitration shall be conducted in Gaborone, Botswana in the English language by a single arbitrator. The arbitrator shall be familiar with, and have experience of, the diamond industry and shall be appointed by GSS.
- 6.6** The dispute may be resolved by litigation in the courts of Botswana.
- 6.7** Neither party will initiate any of the procedures set forth above unless GSS and the Sightholder or Accredited Buyer (as the case may be) have first discussed the subject matter of the dispute in good faith with a view to finding an amicable resolution of the dispute. Such discussions may include a reference by either GSS or the Sightholder or Accredited Buyer (as the case may be) to a senior representative of each of GSS and the Sightholder or Accredited Buyer (as the case may be) for resolution in accordance with such procedures as the senior representatives may agree.
- 6.8** Neither party will initiate any of the procedures set forth above unless:
- 6.8.1** in the case of a reference to the Ombudsman, no resolution has been reached within fourteen (14) days of GSS being duly notified of the Complaint in accordance with paragraph 20 of the Ombudsman Terms of Reference;
- 6.8.2** in the case of arbitration or litigation, no resolution has been reached within twenty-five (25) business days of the commencement of the good faith discussions referred to in Condition 6.7.
- 6.9** In the absence of a resolution to the dispute as provided in Condition 6.7, the claimant shall be entitled to elect any of the dispute resolution procedures set forth above that is applicable to the dispute. This election shall be binding on the other party subject to Conditions 6.10 to 6.13.
- 6.10** If GSS is the claimant and elects to proceed by way of arbitration, it shall serve an Arbitration Notice on the Sightholder or Accredited Buyer (as the case may be). Arbitration shall become the dispute resolution procedure unless the Sightholder or Accredited Buyer (as the case may be) informs GSS in writing within thirty (30) days of the date of the Arbitration Notice that it requires the dispute to be resolved by litigation.
- 6.11** If the dispute is to be resolved by litigation, the parties shall, jointly or individually, apply to the court for an order that no Business Secrets be referred to in open court or in any resulting judgment or order.
- 6.12** If arbitration proceedings are already pending between GSS and the Sightholder or Accredited Buyer (as the case may be), the arbitrator may determine, where in his opinion it is expedient so to do, that any further disputes shall be resolved in the same arbitral proceedings. If he so determines,

the parties shall be treated as having consented to such disputes being resolved accordingly and neither party shall commence or continue any other proceeding (whether by way of arbitration or litigation) with respect to that dispute.

- 6.13** If court proceedings are already pending between GSS and the Sightholder or Accredited Buyer (as the case may be) which arise under or in connection with the arrangements constituted by the 2015-2018 Supply Documentation referred to in paragraph 1.4.1 of the Supply Agreement, any such further disputes must be resolved by way of litigation.
- 6.14** The Sightholder or Accredited Buyer (as the case may be) will irrevocably appoint a person in Botswana as its agent for the service of process, and it will promptly provide to GSS such details of the person so appointed as GSS may request.

31 March 2015

CONDITIONS OF SALE FOR SOUTH AFRICAN SIGHTS

1 Application

- 1.1** These Conditions shall govern and be incorporated in every Contract between De Beers Sightholder Sales South Africa (Proprietary) Limited (“**SSSA**”) and/or any other member of the De Beers Group and the Sightholder or Accredited Buyer (as the case may be) in Kimberley, South Africa. They shall apply in place of, and prevail over, any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by a Sightholder (or any member of its Compliance Group) or an Accredited Buyer (or any member of its Compliance Group) (as the case may be) or in correspondence or elsewhere or implied by trade, custom, practice or a course of dealings. The signing by SSSA of any of the Sightholder or Accredited Buyer’s (as the case may be) documentation shall not imply any modification of these Conditions.
- 1.2** In relation to Diamond supply, the Supply Agreement (as published from time to time) shall be deemed to be incorporated into these Conditions and to prevail over these Conditions if there is any inconsistency.
- 1.3** If any Condition (or part of any Condition) is held to be void, invalid, ineffective or unenforceable, in whole or in part, these Conditions will continue to be valid as to all other provisions (and the remainder of the affected provision).

2 Purchase Procedures

- 2.1** SSSA shall from time to time notify the Sightholder or Accredited Buyer (as the case may be) of the dates and venues of Sights and any changes thereto. The dates and frequency of Sights in one Sight Location may vary from time to time from the dates of Sights in other Sight Locations.
- 2.2** A Sightholder or Accredited Buyer (as the case may be) shall submit a request for the Boxes which it wishes to purchase at a Sight not less than fourteen (14) days before the first day of such Sight or such other date as is notified by SSSA from time to time.
- 2.3** No less than two (2) business days prior to the commencement of the relevant Sight, SSSA shall notify the Sightholder or Accredited Buyer (as the case may be) as to whether or not any or all of the Boxes specified in the Sightholder or Accredited Buyer’s (as the case may be) Box request are available. For the avoidance of doubt, such notification shall only include those Boxes applied for by the Sightholder or Accredited Buyer (as the case may be) under Condition 2.2 and shall not require the Sightholder or Accredited Buyer (as the case may be) to offer to purchase any Boxes not applied for.
- 2.4** SSSA will determine, and notify the Sightholder or Accredited Buyer (as the case may be) of, the venue of the Sight at which the Boxes notified to the Sightholder or Accredited Buyer (as the case may be) as available under Condition 2.3 will be available for inspection by the Sightholder or Accredited Buyer (as the case may be). At that Sight, the Sightholder or Accredited Buyer (as the case may be) shall be entitled to offer to purchase (at the price notified by SSSA) all or any of the Boxes made available for inspection at that Sight. Acceptance by SSSA of the Sightholder or Accredited Buyer’s (as the case may be) offer shall create a binding Contract.
- 2.5** The Sightholder or Accredited Buyer (as the case may be) may decide not to offer to purchase any or all of the Boxes made available for inspection. For Boxes containing Diamonds of above a size notified in writing by SSSA from time to time (as well as for other

Boxes as notified to the Sightholder or Accredited Buyer (as the case may be) from time to time), the Sightholder or Accredited Buyer (as the case may be) may reject up to a certain percentage of Diamonds by carat weight of the Box as determined in writing from time to time by SSSA. The rejections will take place on the terms, and subject to conditions, as separately notified in writing from time to time by SSSA.

2.6 A Sightholder or Accredited Buyer (as the case may be) shall be responsible for:

2.6.1 complying with all labelling, marking, packaging, Box description and other applicable legal requirements in the territory to which the Boxes are to be delivered; and

2.6.2 obtaining any necessary import licences and paying all applicable customs duties, taxes, levies, penalties and other charges or fees of any kind in respect of the delivery of the Boxes and their resale by the Sightholder or Accredited Buyer (as the case may be),

and shall co-operate with, and provide all necessary assistance to, SSSA in relation to such matters.

3 Price

3.1 All prices will be expressed in US dollars (or such other freely convertible currency as is specified by SSSA from time to time) and are exclusive of any and all (a) applicable value added, or other sales or similar, tax, (b) (in the case of (i) Diamonds offered by SSSA to a Sightholder under a Standard ITO, or (ii) Ex Plan Availability offered by SSSA to an Accredited Buyer under a Standard Supply Planning Service) transport, delivery and insurance charges, (c) customs, export or import duties or levies, and (d) (in the case of (i) Diamonds offered by SSSA to a Sightholder under a Planned ITO, or (ii) Ex Plan Availability offered by SSSA to an Accredited Buyer under a Planned Supply Planning Service) insurance charges and the Supply Planning Fee (pursuant to the Supply Planning Fee Terms and Conditions) for each of which the Sightholder or Accredited Buyer (as the case may be) shall be additionally and solely liable.

3.2 Prices will be communicated to the Sightholder or Accredited Buyer (as the case may be) by way of invoice. Invoices shall only be delivered by post to the nominated address of Compliance Group companies, emailed to the nominated email address of Compliance Group companies, made available by SSSA online or may be collected by the Sightholder or Accredited Buyer (as the case may be) from the relevant Sight Location. The Sightholder or Accredited Buyer (as the case may be) shall be responsible for notifying SSSA in writing of the address to which invoices shall be delivered.

3.3 All payments shall be made by the Sightholder or Accredited Buyer (as the case may be) in full in US dollars (or such other freely convertible currency as is specified by SSSA from time to time) by telegraphic or electronic transfer to such bank account details as are notified by SSSA to the Sightholder or Accredited Buyer (as the case may be) from time to time.

3.4 If the Sightholder or Accredited Buyer (as the case may be) fails to pay the price for any Boxes in full within five (5) business days after the date of SSSA's acceptance of the Sightholder or Accredited Buyer's (as the case may be) offer therefor, SSSA shall be entitled by written notice to cancel or suspend delivery of the Boxes to the Sightholder or Accredited Buyer (as the case may be). No credit facilities shall be made available. If a Sightholder that elects to receive a Planned ITO or an Accredited Buyer that elects to receive a Planned Supply Planning Service fails to pay the Supply Planning Fee when due, SSSA may (i)

withhold or terminate the provision of any Planned ITO Service or Planned Supply Planning Service (as the case may be), (ii) suspend receiving applications for, and/or sales of, and/or deliveries of, Boxes from or to, as the case may be, the Sightholder or Accredited Buyer, and (iii) terminate the Sightholder or Accredited Buyer's (as the case may be) appointment as such if the Sightholder or Accredited Buyer (as the case may be) fails to remedy the default within a reasonable period (being not less than twenty (20) nor more than thirty (30) business days) of being requested in writing by SSSA to do so, as more fully set out in condition 5 of the Supply Planning Fee Terms and Conditions.

4 Title, Risk and Delivery

- 4.1** The Sightholder or Accredited Buyer (as the case may be) shall be entitled to take delivery of each Box after SSSA has received cleared payment in full for it. Delivery of each Box (and the Diamonds contained in it) shall be deemed to take place when SSSA hands the Boxes to Guard Force International in Johannesburg ("**GFI**") (or such other carrier as SSSA shall agree in writing) for onward despatch to the Sightholder or Accredited Buyer (as the case may be). All risk of loss of, or damage to, each Box (and the Diamonds contained in it) shall pass to the Sightholder or Accredited Buyer (as the case may be) on delivery to GFI (or such other carrier as SSSA shall determine in writing). SSSA will be responsible for the costs of storage of the Boxes by GFI at GFI's secure transfer facility in Johannesburg for up to twenty-four (24) hours after delivery to such secure transfer facility but thereafter all such costs will be for the account of the Sightholder or Accredited Buyer (as the case may be).
- 4.2** Without prejudice to the other provisions of these Conditions or the terms of the Supply Planning Fee Terms and Conditions, when previously agreed in writing, SSSA will appoint a carrier and arrange insurance (at the Sightholder or Accredited Buyer's (as the case may be) cost) and transportation (at either the Sightholder or Accredited Buyer's (as the case may be) cost or SSSA's cost, as the case may be, depending on whether (i) the Sightholder has elected to receive a Standard ITO or a Planned ITO, or (ii) the Accredited Buyer has elected to receive a Standard Supply Planning Service or a Planned Supply Planning Service) of Boxes on the Sightholder or Accredited Buyer's (as the case may be) behalf, but will accept no liability for such Boxes (or the Diamonds contained in them) following delivery to GFI (or such other carrier as SSSA shall agree in writing) in accordance with Condition 4.1. Any delivery of Boxes which is made pursuant to this Condition 4.2 shall only be delivered to the nominated address of Compliance Group companies. The Sightholder or Accredited Buyer (as the case may be) shall be responsible for notifying SSSA in writing of the address to which Boxes shall be delivered. All risk of loss of, or damage to, each Box (and the Diamonds contained in it) shall pass to the Sightholder or Accredited Buyer (as the case may be) on delivery to the relevant carrier.
- 4.3** Title to, and property in, each Box (and the Diamonds contained in it) shall pass to the Sightholder or Accredited Buyer (as the case may be) on delivery to GFI (or such other carrier as SSSA shall agree in writing) in accordance with Condition 4.1 or Condition 4.2 (as applicable).
- 4.4** SSSA shall deliver the Boxes in accordance with Condition 4.1 or Condition 4.2 (as applicable) within a reasonable period, or at such other time as may be agreed between SSSA and the Sightholder or Accredited Buyer (as the case may be), after receipt of payment.

5 Liability

- 5.1** Any shortage, defect or other claim by the Sightholder or Accredited Buyer (as the case may be) (including any request for SSSA to assist in tracing any Box (or any Diamonds contained in it)) must be notified in writing to SSSA within sixteen (16) business days of delivery in accordance with Condition 4.1 above. If the Sightholder or Accredited Buyer (as the case may be) fails to do so, the Boxes, and the Diamonds contained in them, shall be conclusively presumed to be in accordance with the Contract.
- 5.2** SSSA's entire liability to the Sightholder or Accredited Buyer (as the case may be) hereunder, whether for breach of contract, negligence, misrepresentation or otherwise, is limited at SSSA's discretion to refunding the Sightholder or Accredited Buyer (as the case may be) the price paid for the relevant Diamond or Box or replacing the relevant Diamond or Box or making good any shortage or non-delivery and will not in any event exceed the price paid, or to be paid, for the relevant Diamond or Box.
- 5.3** Except as expressly stated herein, all conditions, warranties, representations and other terms, express or implied by (i) statute, (ii) common-law or (iii) otherwise, in relation to the Boxes (or the Diamonds contained in them) are excluded, in each case to the extent permitted by law.

6 Governing Law and Disputes

- 6.1** These Conditions shall be governed exclusively by and construed exclusively in accordance with South African law. For the avoidance of doubt, the choice of South African law shall not exclude the application of those rules of foreign law (if any) which, as a matter of South African law, have mandatory application to the dispute.
- 6.2** The following provisions relate to the resolution of any dispute arising out of or connected with these Conditions and all references to 'dispute' shall mean a dispute of that kind.
- 6.3** Any dispute shall be resolved in accordance with one of the procedures set out in Conditions 6.4 to 6.6. Neither the Sightholder or Accredited Buyer (as the case may) nor SSSA may bring any substantive proceedings in relation to a dispute in any other forum. This is without prejudice to either party's right to bring ancillary applications in any court in support of substantive South African proceedings or an arbitration.
- 6.4** If the dispute falls within the scope of the Ombudsman Terms of Reference, it may be resolved by reference to the Ombudsman. In that case, each party will comply with the procedures and obligations imposed upon it under the Ombudsman's Terms of Reference. For the avoidance of doubt, the Ombudsman Terms of Reference include provisions concerning the resolution of disputes in the event that the parties are not satisfied with the Ombudsman's decision.
- 6.5** The dispute may be resolved by arbitration subject to South African law and pursuant to the rules of the Arbitration Foundation of South Africa ("**AFSA**"). The arbitration shall be conducted in Johannesburg in the English language by a single arbitrator. The arbitrator shall be familiar with, and have experience of, the diamond industry.
- 6.6** The dispute may be resolved by litigation in the South African courts. The parties hereby irrevocably submit to the exclusive jurisdiction of the High Court of the Republic of South Africa (Witwatersrand Local Division).
- 6.7** Neither party will initiate any of the procedures set forth above unless SSSA and the Sightholder or Accredited Buyer (as the case may be) have first discussed the subject matter

of the dispute in good faith with a view to finding an amicable resolution of the dispute. Such discussions may include a reference by either SSSA or the Sightholder or Accredited Buyer (as the case may be) to a senior representative of each of SSSA and the Sightholder or Accredited Buyer (as the case may be) for resolution in accordance with such procedures as the senior representatives may agree.

- 6.8** Neither party will initiate any of the procedures set forth above unless:
- 6.8.1** in the case of a reference to the Ombudsman, no resolution has been reached within fourteen (14) days of SSSA being duly notified of the Complaint in accordance with paragraph 20 of the Ombudsman Terms of Reference;
 - 6.8.2** in the case of arbitration or litigation, no resolution has been reached within twenty-five (25) business days of the commencement of the good faith discussions referred to in Condition 6.7.
- 6.9** In the absence of a resolution to the dispute as provided in Condition 6.7, the claimant shall be entitled to elect any of the dispute resolution procedures set forth above that is applicable to the dispute. This election shall be binding on the other party subject to Conditions 6.10 to 6.13.
- 6.10** If SSSA is the claimant and elects to proceed by way of arbitration, it shall serve an Arbitration Notice on the Sightholder or Accredited Buyer (as the case may be). Arbitration shall become the dispute resolution procedure unless the Sightholder or Accredited Buyer (as the case may be) informs SSSA in writing within thirty (30) days of the date of the Arbitration Notice that it requires the dispute to be resolved by litigation.
- 6.11** If the dispute is to be resolved by litigation, the parties shall, jointly or individually, apply to the court for an order that no Business Secrets be referred to in open court or in any resulting judgment or order.
- 6.12** If arbitration proceedings are already pending between SSSA and the Sightholder or Accredited Buyer (as the case may be), the arbitrator may determine, where in his opinion it is expedient so to do, that any further disputes shall be resolved in the same arbitral proceedings. If he so determines, the parties shall be treated as having consented to such disputes being resolved accordingly and neither party shall commence or continue any other proceeding (whether by way of arbitration or litigation) with respect to that dispute.
- 6.13** If court proceedings are already pending between SSSA and the Sightholder or Accredited Buyer (as the case may be) which arise under or in connection with the arrangements constituted by the 2015-2018 Supply Documentation referred to in paragraph 1.4.1 of the Supply Agreement, any such further disputes must be resolved by way of litigation.
- 6.14** The Sightholder or Accredited Buyer (as the case may be) will irrevocably appoint a person in South Africa as its agent for the service of process, and it will promptly provide to SSSA such details of the person so appointed as SSSA may request. In the event that no such details are provided, the Sightholder or Accredited Buyer (as the case may be) shall be deemed to have irrevocably appointed the Johannesburg office of its broker (where a broker has been appointed) as its agent for service of process.

31 March 2015

SIGHTHOLDER SUPPLY PLANNING FEE TERMS AND CONDITIONS

1 Application

- 1.1** Pursuant to paragraph 6 of the Supply Agreement, De Beers Global Sightholder Sales (Proprietary) Limited (“**GSS**”)¹ will provide a Sightholder with the Services (as defined below). These Conditions set out the terms on which GSS will provide the Services. These Conditions alone (save as agreed otherwise in writing by GSS) shall govern and be incorporated in every contract for the supply of Services made by or on behalf of GSS with a Sightholder (or member of its Compliance Group). They shall apply in place of, and prevail over, any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Sightholder (or any member of its Compliance Group), in correspondence or elsewhere or implied by trade, custom, practice or a course of dealing. The signing by GSS of any of the Sightholder’s documentation shall not imply any modification of these Conditions.
- 1.2** If any Condition (or part of any Condition) is held to be void, invalid, ineffective or unenforceable, in whole or in part, these Conditions will continue to be valid as to all other Conditions (and the remainder of the affected Condition).
- 1.3** In these Conditions:
- (a) “**ITO**” means the aggregate quantity and nature of Diamonds GSS intends to make available for inspection by (but shall not be obliged to supply to) a Sightholder at each relevant Sight Location during the subsequent Selling Period (or such other Selling Period as is agreed between GSS and the Sightholder from time to time in accordance with the 2015-2018 Supply Documentation);
 - (b) “**Planned ITO**” means an ITO under which a Sightholder will (i) receive the Planned ITO Services and (ii) pay the Supply Planning Fee to GSS;
 - (c) “**Planned ITO Services**” means the relevant Services set out in Appendix A to these Conditions which are provided by GSS to Sightholders that voluntarily elect to receive a Planned ITO;
 - (d) “**Supply Planning Fee**” means in respect of those Sightholders that voluntarily elect to receive a Planned ITO, the fee that is equal to 1.5 per cent. of the total value in US dollars (or part thereof) of the Boxes purchased by the relevant Sightholder at each Sight Location during the Selling Period (or such other amount or period as is notified by GSS from time to time in accordance with these Conditions and the 2015 – 2018 Supply Documentation), which is payable by such Sightholder to GSS for the Planned ITO Services (as set out more fully in Condition 3.3 and Appendix B);
 - (e) “**Services**” means any of the services set out in Appendix A to these Conditions, and includes both the Standard ITO Services and the Planned ITO Services (as identified in Appendix A), or either one of them, as applicable;
 - (f) “**Standard ITO**” means an ITO under which a Sightholder will receive the Standard ITO Services;

¹ GSS for the purpose of the Sightholder Supply Planning Fee Terms and Conditions includes supply to Sightholders of De Beers Sightholder Sales South Africa and the supply of Canadian Un-aggregated goods.

- (g) “**Standard ITO Services**” means the relevant Services set out in Appendix A to these Conditions which are provided by GSS to Sightholders that voluntarily elect to receive a Standard ITO; and
- (h) unless otherwise defined, capitalised terms have the meanings given to them in the Glossary of Terms and related documentation (as published from time to time).

1.4 References in these Conditions to GSS means GSS acting on its own account or on behalf of any other member of the De Beers Group and any joint venture sales company with which the De Beers Group is in partnership with the Government of Botswana or the Governments of any other country, in each case, as the context so requires.

1.5 Nothing in these Conditions (or arrangements entered into under it) shall constitute a partnership, agency or franchise arrangement between GSS and the Sightholder (or any member of its Compliance Group).

2 The ITO

2.1 De Beers undertakes on-going geological sampling at all source mines in order to develop a detailed profile of anticipated future production, and constructs detailed extraction plans at each relevant mine which, when consolidated and converted by GSS into GSS’ Box format, gives a unique picture of the forecast future availability of Diamonds for sale. Further confidence in the quality of GSS’ forecasting comes with the effect of aggregation: variations in the production of individual mines tend to compensate for each other, providing a high level of confidence in GSS’ consolidated production forecasts. The accuracy and detail of GSS’ production forecasting is unique in the diamond industry and provides the basis for the GSS’ ITO service to Sightholders.

2.2 Supply of Diamonds to a Sightholder will be made available to the Sightholder during each Selling Period. Shortly before the beginning of each Selling Period, GSS will provide the Sightholder with an ITO taking into account the factors listed at paragraph 2.1 of the Supply Agreement. GSS may from time to time, if it considers it appropriate to do so, review the timing and frequency of Selling Periods and ITOs (and the duration of Selling Periods and ITOs may vary between Sight Locations) and, if it considers it appropriate to change such Selling Periods and/or ITOs and/or Sight Locations, it may do so in accordance with paragraph 5.4 of the Supply Agreement.

2.3 For the Supply Period, Sightholders may voluntarily elect to receive a Standard ITO or a Planned ITO. The Services to be provided by GSS to Sightholders under each of the Standard ITO and the Planned ITO are set out in Appendix A.

2.4 There is no fee payable by Sightholders that voluntarily elect to receive the Standard ITO Services that, as at the date hereof, are set out in Appendix A to these Conditions.

3 Services and the Supply Planning Fee

3.1 GSS will provide the Services to a Sightholder on the terms set out herein. For the avoidance of doubt, the Services are subject to all applicable provisions of the Supply Agreement.

3.2 The Services offered by GSS and as set out in Appendix A may be varied by GSS from time to time in its sole and absolute discretion. GSS will give the Sightholder reasonable (but no more than three (3) months’) written notice of, and will consult with the Sightholder and its brokers, and consider their reasonable representations in respect of any such changes.

- 3.3** Sightholders that voluntarily elect to receive a Planned ITO shall pay the Supply Planning Fee to GSS for the Planned ITO Services set out in Appendix A. The Supply Planning Fee comprises a flat rate charge, to be calculated separately for each Sight at each such Sight Location, by reference to the aggregate value of the price paid for Boxes by the relevant Sightholder (or member of its Compliance Group) at each such Sight Location during the relevant Selling Period (or such other period as is notified by GSS from time to time in accordance with the 2015–2018 Supply Documentation). Details of how the Supply Planning Fee is charged are set out in Appendix B together with illustrative examples of how the Supply Planning Fee is applied. For the avoidance of doubt, the Supply Planning Fee will be calculated by taking into account all Diamond purchases by the Sightholder and its Compliance Group companies made pursuant to a Planned ITO and including, for the avoidance of doubt purchases of Ex Plan Availability and purchases of cut-offs and out of balance stocks and one-off assortments.
- 3.4** GSS may in its sole discretion review and/or vary the level of the Supply Planning Fee from time to time for any reason, including, but not limited to, in order to reflect any changes to the Services under Condition 3.2 above. GSS will give the Sightholder reasonable (but no more than three (3) months') written notice of such changes, and will consult with the Sightholder and its brokers, and consider its reasonable representations in respect of any such changes.
- 3.5** Without prejudice to the rights of GSS set out in Condition 3.9 below, in respect of sales made at Sights in Gaborone, GSS shall, at or as soon as reasonably practicable at or after each Sight, submit one or more invoices to each Sightholder that has voluntarily elected to receive a Planned ITO for the amount of the Supply Planning Fee calculated by reference to the aggregate purchases of Diamonds made by each relevant Sightholder at each Sight for the preceding Selling Period (determined in accordance with Condition 3.3 above). The Sightholder shall pay the Supply Planning Fee by no later than thirty (30) days of the date of invoice after each Sight.
- 3.6** The Supply Planning Fee will be expressed in US dollars (or such other freely convertible currency as is specified by GSS from time to time) and, unless otherwise stated, will be exclusive of any value added tax or other duties or taxes. Any value added tax or other applicable duties or taxes payable in respect of the Supply Planning Fee shall be included on invoices and will be paid in addition to such Supply Planning Fee.
- 3.7** All payments of the Supply Planning Fee shall be made by the Sightholder in full in US dollars (or such other freely convertible currency as is specified by GSS from time to time) by telegraphic or electronic transfer to such bank account details as are notified by GSS to the Sightholder from time to time.
- 3.8** All invoices which are not paid on the due date shall be subject to an interest charge accruing on a daily basis at the rate of 3 per cent per annum above the US dollar overnight London Interbank Offer Rate from time to time, from the due date until payment in full.
- 3.9** If the ITOs made available by GSS to two or more Sightholders are combined in accordance with paragraph 2.3.4 of the Supply Agreement, each relevant Sightholder shall be jointly and severally liable for the payment of any relevant Supply Planning Fee which is payable by either, any or all of the relevant Sightholders in respect of any Planned ITO Services provided to, or made available to, either, any or all of the relevant Sightholders. GSS may, in its absolute discretion, (i) provide any applicable Planned ITO Services and (ii) issue any applicable invoice, in each case to either, any or all of the relevant Sightholders in accordance with this Condition 3 for the combined value of any Supply Planning Fee payable

in respect of any Planned ITO Services provided to, or to be provided to, either, any or all of the relevant Sightholders.

4 Warranty and Liability

- 4.1** GSS will perform the Services with reasonable skill and care but accepts no responsibility for, and makes no warranty as to, the appropriateness of any Service for any Sightholder.
- 4.2** Any failure by GSS to provide the Services, either at all or in accordance with these Conditions, must be notified in writing to GSS by the Sightholder as soon as reasonably practicable and in any event within fifteen (15) business days from the date on which the Sightholder became (or ought reasonably to have become) aware of the same. GSS shall not be liable for any failure unless so notified.
- 4.3** If GSS is satisfied after due enquiry that the Services were not provided (either at all or in accordance with these Conditions), GSS shall, in its sole and absolute discretion, either (i) in respect of the non-provision of the Planned ITO Services only, refund or credit the Sightholder such amount of the Supply Planning Fee as it determines to be fair and reasonable having regard to the default (and regardless of whether such Supply Planning Fee was paid in respect of the Planned ITO Service which was not provided) or (ii) make good any defect in the provision of the Service or non-performance of the Service (including, in GSS' sole and absolute discretion, by re-performing the relevant Service), as the case may be. GSS's liability shall not in any event exceed (i) in respect of the Standard ITO Services, US\$250,000.00 (two hundred and fifty thousand United States dollars) and (ii) in respect of the Planned ITO Services, the Supply Planning Fee (whether or not attributable to the Planned ITO Service which was not provided) to the extent paid, or to be paid, in respect of the invoicing period during which the default occurred.
- 4.4** Subject to Condition 4.6, the provisions of Condition 4.3 shall constitute the Sightholder's sole remedy in respect of the performance (or non-performance) of the Services and whether for breach of contract, negligence, misrepresentation or otherwise and neither GSS nor any member of the De Beers Group shall be liable in any circumstances for loss of profit, business or revenue (whether sustained by the Sightholder or any other person), special, indirect or consequential loss or damage (whether sustained by the Sightholder or any other person) or any loss arising from any claim made against the Sightholder by any other person, in each case whether foreseeable or in the contemplation of GSS.
- 4.5** Except as expressly stated herein, all conditions, warranties, representations and other terms, express or implied by (i) statute, (ii) common law or (iii) otherwise in relation to the Services (or any of them) are excluded.
- 4.6** Nothing in this Condition 4 shall purport to exclude or restrict any liability the exclusion or restriction of which is prohibited by law.

5 Non-payment

- 5.1** In the event of non-payment when due by the Sightholder of any Supply Planning Fee (whether payable under these Conditions or local versions thereof, as referred to in the Supply Agreement), GSS or any other member of the De Beers Group is entitled to (i) withhold or terminate the provision of, as applicable, any Planned ITO Service (or part thereof) (and, for the avoidance of doubt, whether or not the non-payment is in respect of the Planned ITO Service so withheld or terminated) (ii) suspend receiving applications for, and/or sales of, and/or deliveries of, Boxes from or to, as the case may be, the Sightholder

(or any member of its Compliance Group) in any location (and, for the avoidance of doubt whether or not the non-payment is in respect of Planned ITO Services in that location or in respect of a Supply Planning Fee payable to GSS or any other member of the De Beers Group), and (iii) terminate the Sightholder's appointment as such if the Sightholder fails to remedy the default within a reasonable period (being not less than twenty (20) nor more than thirty (30) business days) of being requested in writing by GSS (or any member of De Beers Group) to do so.

6 Governing Law and Disputes

- 6.1** These Conditions shall be governed exclusively by and construed exclusively in accordance with the law of Botswana.
- 6.2** The following provisions relate to the resolution of any dispute arising out of or connected with these Conditions and all references to 'dispute' shall mean a dispute of that kind.
- 6.3** Any dispute shall be resolved in accordance with one of the procedures set out in Conditions 6.4 to 6.6. Neither the Sightholder nor GSS may bring any substantive proceedings in relation to a dispute in any other forum. This is without prejudice to either party's right to bring ancillary applications in any court in support of substantive proceedings or arbitration.
- 6.4** If the dispute falls within the scope of the Ombudsman Terms of Reference, it may be resolved by reference to the Ombudsman. In that case, each party will comply with the procedures and obligations imposed upon it under the Ombudsman's Terms of Reference. For the avoidance of doubt, the Ombudsman Terms of Reference include provisions concerning the resolution of disputes in the event that the parties are not satisfied with the Ombudsman's decision.
- 6.5** The dispute may be resolved by arbitration in accordance with the provisions of the Arbitration Act Cap 06:01 (as amended and/or replaced from time to time) and pursuant to the Rules for the Conduct of Arbitrations as published by the Botswana Institute of Arbitrators. The arbitration shall be conducted in Gaborone, Botswana in the English language by a single arbitrator. The arbitrator shall be familiar with, and have experience of, the diamond industry and shall be appointed by GSS.
- 6.6** The dispute may be resolved by litigation in the courts of Botswana.
- 6.7** Neither party will initiate any of the procedures set forth above unless GSS and the Sightholder have first discussed the subject matter of the dispute in good faith with a view to finding an amicable resolution of the dispute. Such discussions may include a reference by either GSS or the Sightholder to a senior representative of each of GSS and the Sightholder for resolution in accordance with such procedures as the senior representatives may agree.
- 6.8** Neither party will initiate any of the procedures set forth above unless:
- 6.8.1** in the case of a reference to the Ombudsman, no resolution has been reached within fourteen (14) days of GSS being duly notified of the Complaint in accordance with paragraph 20 of the Ombudsman Terms of Reference;
 - 6.8.2** in the case of arbitration or litigation, no resolution has been reached within twenty-five (25) business days of the commencement of the good faith discussions referred to in Condition 6.7.
- 6.9** In the absence of a resolution to the dispute as provided in Condition 6.7, the claimant shall be entitled to elect any of the dispute resolution procedures set forth above that is applicable

to the dispute. This election shall be binding on the other party subject to Conditions 6.10 to 6.13.

- 6.10** If GSS is the claimant and elects to proceed by way of arbitration, it shall serve an Arbitration Notice on the Sightholder. Arbitration shall become the dispute resolution procedure unless the Sightholder informs GSS in writing within thirty (30) days of the date of the Arbitration Notice that it requires the dispute to be resolved by litigation.
- 6.11** If the dispute is to be resolved by litigation, the parties shall, jointly or individually, apply to the court for an order that no Business Secrets be referred to in open court or in any resulting judgment or order.
- 6.12** If arbitration proceedings are already pending between GSS and the Sightholder, the arbitrator may determine, where in his opinion it is expedient so to do, that any further disputes shall be resolved in the same arbitral proceedings. If he so determines, the parties shall be treated as having consented to such disputes being resolved accordingly and neither party shall commence or continue any other proceeding (whether by way of arbitration or litigation) with respect to that dispute.
- 6.13** If court proceedings are already pending between GSS and the Sightholder which arise under or in connection with the arrangements constituted by the 2015-2018 Supply Documentation referred to in paragraph 1.4.1 of the Supply Agreement, any such further disputes must be resolved by way of litigation.
- 6.14** The Sightholder will irrevocably appoint a person in Botswana as its agent for the service of process, and it will promptly provide to GSS such details of the person so appointed as GSS may request.

31 March 2015

Appendix A List of Services

Table of Standard ITO Services and Planned ITO Services

Service	Standard	Planned
Three year contract	✓	✓
One year Intention to Offer (ITO)	✓	✓
Priority announcement of supply (provisional announcement at least one week prior to Sight ²)		✓
10 Sight Preferred Delivery Schedule (PDS)		✓
Preferred delivery schedule for additional supply		✓
Demonstrated Demand Tracker (Extranet tool for tracking Demonstrated Demand)		✓
Sight plan for 10 Sight ITO period		✓
Box consistency	✓	✓
Dedicated Key Account Manager		✓
Access to a Sight Administrator	✓	✓
Use of Sightholder IP	✓	✓
ITO Swap mechanism		✓
ITO value by Box		✓
ITO value by Category	✓	✓
Ability to defer goods		✓
Ability to bring forward goods		✓
Invitations to Sightholder events (Business Excellence Seminars etc.)		✓
At-Sight meetings with Global Sightholder Sales Management team	✓	✓
In-market meetings with Global Sightholder Sales management team		✓
Access to Sightholder website	✓	✓
Access to premium content on Sightholder website		✓
Shipping costs paid		✓

² Subject to availability and delivery constraints

Service	Standard	Planned
Priority room booking		✓
Invitations to De Beers events (in-market & receptions) ³	✓	✓
BPP monitoring	✓	✓
Fee	No fee	1.5% of Value of Boxes purchased

³ Does not include Business Excellence Seminars

Appendix B

1 Supply Planning Fee

1.1 Standard ITO

There is no fee payable by Sightholders that elect to receive the Standard ITO Services that, as at the date hereof, are set out in Appendix A to these Conditions.

1.2 Planned ITO

Subject to Condition 3.4 above, GSS shall charge a fee of 1.5 per cent of the total value in US dollars (or part thereof) of the Boxes purchased by the relevant Sightholder at each Sight Location during the relevant Selling Period (or such other period as is notified by GSS from time to time in accordance with the 2015-2018 Supply Documentation).

- Worked example (for illustrative purposes only):

Wundergem Limited has elected to receive a Planned ITO and purchases in total US\$45,000,000 of Diamonds in a Selling Period from two Sights, Gaborone and Kimberley respectively. The total purchase comprises US\$30,000,000 for the Gaborone Sight and US\$15,000,000 for the Kimberley Sight.

The applicable Supply Planning Fee calculation is as follows:

- (i) Gaborone Sight: US\$30,000,000 - Wundergem Limited will be invoiced for its Gaborone Sight Planned ITO with a Supply Planning Fee charge of US\$450,000 (1.5 per cent of US\$30,000,000=US\$450,000)
- (ii) Kimberley Sight: US\$15,000,000 - Wundergem Limited will be invoiced for its Kimberley Sight Planned ITO with a Supply Planning Fee charge of US\$225,000 (1.5 per cent of US\$15,000,000=US\$225,000) plus VAT if applicable

Total Supply Planning Fee invoiced: US \$675,000 (US\$450,000 + US\$225,000) plus VAT, if applicable.

ACCREDITED BUYER SUPPLY PLANNING FEE TERMS AND CONDITIONS

1 Application

- 1.1 Pursuant to paragraph 6 of the Supply Agreement, De Beers Global Sightholder Sales (Proprietary) Limited (“GSS”)¹ will provide an Accredited Buyer with the Services (as defined below). These Conditions set out the terms on which GSS will provide the Services. These Conditions alone (save as agreed otherwise in writing by GSS) shall govern and be incorporated in every contract for the supply of Services made by or on behalf of GSS with an Accredited Buyer (or member of its Compliance Group). They shall apply in place of, and prevail over, any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Accredited Buyer (or any member of its Compliance Group) in correspondence or elsewhere or implied by trade, custom, practice or a course of dealing. The signing by GSS of any of the Accredited Buyer’s documentation shall not imply any modification of these Conditions.
- 1.2 If any Condition (or part of any Condition) is held to be void, invalid, ineffective or unenforceable, in whole or in part, these Conditions will continue to be valid as to all other Conditions (and the remainder of the affected Condition).
- 1.3 In these Conditions:
- (a) “**Planned Supply Planning Services**” means the relevant Services set out in Appendix A to these Conditions which are provided by GSS to Accredited Buyers that voluntarily elect to receive such Services;
 - (b) “**Supply Planning Fee**” means in respect of those Accredited Buyers that voluntarily elect to receive a Planned Supply Planning Service, the fee that is equal to 1.5 per cent. of the total value in US dollars (or part thereof) of the Ex Plan Availability purchased by the relevant Accredited Buyer at each Sight Location during the Selling Period (or such other amount or period as is notified by GSS from time to time in accordance with these Conditions and the 2015-2018 Supply Documentation), which is payable by such Accredited Buyer to GSS for the Planned Supply Planning Services (as set out more fully in Condition 3.3 and Appendix B);
 - (c) “**Services**” means any of the services set out in Appendix A to these Conditions, and includes the Standard Supply Planning Services and the Planned Supply Planning Services, or either one of them, as applicable;
 - (d) “**Standard Supply Planning Services**” means the relevant Services set out in Appendix A to these Conditions which are provided by GSS to Accredited Buyers that voluntarily elect to receive such Services; and
 - (e) unless otherwise defined, capitalised terms have the meanings given to them in the Glossary of Terms and related documentation (as published from time to time).
- 1.4 References in these Conditions to GSS means GSS acting on its own account or on behalf of any other member of the De Beers Group and any joint venture sales company with which the De Beers Group is in partnership with the Government of Botswana or the Governments of any other country, in each case, as the context so requires.

¹ GSS for the purpose of the Accredited Buyer Supply Planning Fee Terms and Conditions includes supply to Accredited Buyers of De Beers Sightholder Sales South Africa.

- 1.5** Nothing in these Conditions (or arrangements entered into under it) shall constitute a partnership, agency or franchise arrangement between GSS and the Accredited Buyer (or any member of its Compliance Group).

2 Ex Plan Availability

- 2.1** De Beers undertakes on-going geological sampling at all source mines in order to develop a detailed profile of anticipated future production, and constructs detailed extraction plans at each relevant mine which, when consolidated and converted by GSS into GSS' Box format, gives a unique picture of the forecast future availability of Diamonds for sale. Further confidence in the quality of GSS' forecasting comes with the effect of aggregation: variations in the production of individual mines tend to compensate for each other, providing a high level of confidence in GSS' consolidated production forecasts. The accuracy and detail of GSS' production forecasting is unique in the diamond industry and provides the basis for the GSS' Ex Plan Availability service to Accredited Buyers.
- 2.2** Supply of Ex Plan Availability to an Accredited Buyer will be made available during each Selling Period. GSS may make allocations of Ex Plan Availability to Accredited Buyers by taking into account the factors listed at paragraph 2.2 of the Supply Agreement.
- 2.3** For the Supply Period, Accredited Buyers may voluntarily elect to receive Standard Supply Planning Services or Planned Supply Planning Services. The Services to be provided by GSS to Accredited Buyers under each of the Standard Supply Planning Services and the Planned Supply Planning Services are set out in Appendix A.
- 2.4** There is no fee payable by Accredited Buyers that voluntarily elect to receive the Standard Supply Planning Services that, as at the date hereof, are set out in Appendix A to these Conditions.

3 Services and the Supply Planning Fee

- 3.1** GSS will provide the Services to an Accredited Buyer on the terms set out herein. For the avoidance of doubt, the Services are subject to all applicable provisions of the Supply Agreement.
- 3.2** The Services offered by GSS and as set out in Appendix A may be varied by GSS from time to time in its sole and absolute discretion. GSS will give the Accredited Buyer reasonable (but no more than three (3) months') written notice of, and will consult with the Accredited Buyer and its brokers and consider their reasonable representations in respect of any such changes.
- 3.3** Accredited Buyers that voluntarily elect to receive a Planned Supply Planning Service shall pay the Supply Planning Fee to GSS for the Planned Supply Planning Services set out in Appendix A. The Supply Planning Fee comprises a flat rate charge, to be calculated separately for each Sight at each such Sight Location, by reference to the aggregate value of the price paid for Ex Plan Availability by the relevant Accredited Buyer (or member of its Compliance Group) at each such Sight Location during the relevant Selling Period (or such other period as is notified by GSS from time to time in accordance with the 2015-2018 Supply Documentation). Details of how the Supply Planning Fee is charged are set out in Appendix B together with illustrative examples of how the Supply Planning Fee is applied. For the avoidance of doubt, the Supply Planning Fee will be calculated by taking into account all Ex Plan Availability purchases by an Accredited Buyer and its Compliance Group companies made pursuant to a Planned Supply Planning Service.

- 3.4** GSS may in its sole discretion review and/or vary the level of the Supply Planning Fee from time to time for any reason, including, but not limited to, in order to reflect any changes to the Services under Condition 3.2 above. GSS will give the Accredited Buyer reasonable (but no more than three (3) months') written notice of such changes, and will consult with the Accredited Buyer and its brokers, and consider their reasonable representations in respect of any such changes.
- 3.5** In respect of sales made at Sights in Gaborone, GSS shall, at or as soon as reasonably practicable at or after each Sight, submit one or more invoices to each Accredited Buyer that has voluntarily elected to receive a Planned Supply Planning Service for the amount of the Supply Planning Fee calculated by reference to the aggregate purchases of Diamonds made by each relevant Accredited Buyer at each Sight for the preceding Selling Period (determined in accordance with Condition 3.3 above). The Accredited Buyer shall pay the Supply Planning Fee by no later than thirty (30) days of the date of invoice after each Sight.
- 3.6** The Supply Planning Fee will be expressed in US dollars (or such other freely convertible currency as is specified by GSS from time to time) and, unless otherwise stated, will be exclusive of any value added tax or other duties or taxes. Any value added tax or other applicable duties or taxes payable in respect of the Supply Planning Fee shall be included on invoices and will be paid in addition to such Supply Planning Fee.
- 3.7** All payments of the Supply Planning Fee shall be made by the Accredited Buyer in full in US dollars (or such other freely convertible currency as is specified by GSS from time to time) by telegraphic or electronic transfer to such bank account details as are notified by GSS to the Accredited Buyer from time to time.
- 3.8** All invoices which are not paid on the due date shall be subject to an interest charge accruing on a daily basis at the rate of 3 per cent per annum above the US dollar overnight London Interbank Offer Rate from time to time, from the due date until payment in full.

4 Warranty and Liability

- 4.1** GSS will perform the Services with reasonable skill and care but accepts no responsibility for, and makes no warranty as to, the appropriateness of any Service for any Accredited Buyer.
- 4.2** Any failure by GSS to provide the Services, either at all or in accordance with these Conditions, must be notified in writing to GSS by the Accredited Buyer as soon as reasonably practicable and in any event within fifteen (15) business days from the date on which the Accredited Buyer became (or ought reasonably to have become) aware of the same. GSS shall not be liable for any failure unless so notified.
- 4.3** If GSS is satisfied after due enquiry that the Services were not provided (either at all or in accordance with these Conditions), GSS shall, in its sole and absolute discretion, either (i) in respect of the non-provision of the Planned Supply Planning Services only, refund or credit the Accredited Buyer such amount of the Supply Planning Fee as it determines to be fair and reasonable having regard to the default (and regardless of whether such Supply Planning Fee was paid in respect of the Planned Supply Planning Service which was not provided) or (ii) make good any defect in the provision of the Service or non-performance of the Service (including, in GSS' sole and absolute discretion, by re-performing the relevant Service), as the case may be. GSS' liability shall not in any event exceed (i) in respect of the Standard Supply Planning Services US\$250,000.00 (two hundred and fifty thousand United States dollars) and (ii) in respect of the Planned Supply Planning Services, the Supply Planning Fee (whether or not attributable to the Planned Supply Planning Service which was

not provided) to the extent paid, or to be paid, in respect of the invoicing period during which the default occurred.

- 4.4** Subject to Condition 4.6, the provisions of Condition 4.3 shall constitute the Accredited Buyer's sole remedy in respect of the performance (or non-performance) of the Services and whether for breach of contract, negligence, misrepresentation or otherwise and neither GSS nor any member of the De Beers Group shall be liable in any circumstances for loss of profit, business or revenue (whether sustained by the Accredited Buyer or any other person), special, indirect or consequential loss or damage (whether sustained by the Accredited Buyer or any other person) or any loss arising from any claim made against the Accredited Buyer by any other person, in each case whether foreseeable or in the contemplation of GSS.
- 4.5** Except as expressly stated herein, all conditions, warranties, representations and other terms, express or implied by (i) statute, (ii) common law or (iii) otherwise in relation to the Services (or any of them) are excluded.
- 4.6** Nothing in this Condition 4 shall purport to exclude or restrict any liability the exclusion or restriction of which is prohibited by law.

5 Non-payment

- 5.1** In the event of non-payment when due by the Accredited Buyer of any Supply Planning Fee (whether payable under these Conditions or local versions thereof, as referred to in the Supply Agreement), GSS or any other member of the De Beers Group is entitled to (i) withhold or terminate the provision of, any Planned Supply Planning Service (or part thereof) (and, for the avoidance of doubt, whether or not the non-payment is in respect of the Planned Supply Planning Service so withheld or terminated) (ii) suspend receiving applications for, and/or sales of, and/or deliveries of, Boxes from or to the Accredited Buyer (or any member of its Compliance Group) in any location (and, for the avoidance of doubt whether or not the non-payment is in respect of Planned Supply Planning Services in that location or in respect of a Supply Planning Fee payable to GSS or any other member of the De Beers Group), and (iii) terminate the Accredited Buyer's appointment as such if the Accredited Buyer fails to remedy the default within a reasonable period (being not less than twenty (20) nor more than thirty (30) business days) of being requested in writing by GSS (or any member of De Beers Group) to do so.

6 Governing Law and Disputes

- 6.1** These Conditions shall be governed exclusively by and construed exclusively in accordance with the law of Botswana.
- 6.2** The following provisions relate to the resolution of any dispute arising out of or connected with these Conditions and all references to 'dispute' shall mean a dispute of that kind.
- 6.3** Any dispute shall be resolved in accordance with one of the procedures set out in Conditions 6.4 to 6.5. Neither the Accredited Buyer nor GSS may bring any substantive proceedings in relation to a dispute in any other forum. This is without prejudice to either party's right to bring ancillary applications in any court in support of substantive proceedings or arbitration.
- 6.4** The dispute may be resolved by arbitration in accordance with the provisions of the Arbitration Act Cap 06:01 (as amended and/or replaced from time to time) and pursuant to the Rules for the Conduct of Arbitrations as published by the Botswana Institute of Arbitrators. The arbitration shall be conducted in Gaborone, Botswana in the English

language by a single arbitrator. The arbitrator shall be familiar with, and have experience of, the diamond industry and shall be appointed by GSS.

- 6.5** The dispute may be resolved by litigation in the courts of Botswana.
- 6.6** Neither party will initiate any of the procedures set forth above unless GSS and the Accredited Buyer have first discussed the subject matter of the dispute in good faith with a view to finding an amicable resolution of the dispute. Such discussions may include a reference by either GSS or the Accredited Buyer to a senior representative of each of GSS and the Accredited Buyer for resolution in accordance with such procedures as the senior representatives may agree.
- 6.7** Neither party will initiate any of the procedures set forth above unless in the case of arbitration or litigation, no resolution has been reached within twenty-five (25) business days of the commencement of the good faith discussions referred to in Condition 6.6.
- 6.8** In the absence of a resolution to the dispute as provided in Condition 6.6, the claimant shall be entitled to elect any of the dispute resolution procedures set forth above that is applicable to the dispute. This election shall be binding on the other party subject to Conditions 6.9 to 6.12.
- 6.9** If GSS is the claimant and elects to proceed by way of arbitration, it shall serve an Arbitration Notice on the Accredited Buyer. Arbitration shall become the dispute resolution procedure unless the Accredited Buyer informs GSS in writing within thirty (30) days of the date of the Arbitration Notice that it requires the dispute to be resolved by litigation.
- 6.10** If the dispute is to be resolved by litigation, the parties shall, jointly or individually, apply to the court for an order that no Business Secrets be referred to in open court or in any resulting judgment or order.
- 6.11** If arbitration proceedings are already pending between GSS and the Accredited Buyer, the arbitrator may determine, where in his opinion it is expedient so to do, that any further disputes shall be resolved in the same arbitral proceedings. If he so determines, the parties shall be treated as having consented to such disputes being resolved accordingly and neither party shall commence or continue any other proceeding (whether by way of arbitration or litigation) with respect to that dispute.
- 6.12** If court proceedings are already pending between GSS and the Accredited Buyer which arise under or in connection with the arrangements constituted by the 2015-2018 Supply Documentation referred to in paragraph 1.4.1 of the Supply Agreement, any such further disputes must be resolved by way of litigation.
- 6.13** The Accredited Buyer will irrevocably appoint a person in Botswana as its agent for the service of process, and it will promptly provide to GSS such details of the person so appointed as GSS may request.

31 March 2015

Appendix A List of Services

Table of Standard Supply Planning Services and Planned Supply Planning Services

Service	Standard	Planned
Three year contract	✓	✓
Priority announcement of supply (announcement at least one week prior to Sight)		✓
Preferred delivery schedule for additional supply		✓
Demonstrated Demand Tracker (Extranet tool for tracking Demonstrated Demand)		✓
Box consistency	✓	✓
Access to a Sight Administrator	✓	✓
Dedicated Point of Contact		✓
In-market meetings with Global Sightholder Sales management team		✓
At-Sight meetings with Global Sightholder Sales Management team	✓	✓
Access to Sightholder website	✓	✓
Access to premium content on Sightholder website		✓
Shipping costs paid		✓
Priority room booking		✓
Invitations to De Beers events (in-market & receptions) ²	✓	✓
BPP monitoring	✓	✓
Fee	No fee	1.5% of Value of Boxes purchased

² Does not include Business Excellence Seminars

Appendix B

1 Supply Planning Fee

1.1 Standard Supply Planning Services

There is no fee payable by Accredited Buyers that elect to receive the Standard Supply Planning Services that, as at the date hereof, are set out in Appendix A to these Conditions.

1.2 Planned Supply Planning Services

Subject to Condition 3.4 above, GSS shall charge a fee of 1.5 per cent of the total value in US dollars (or part thereof) of the Ex Plan Availability purchased by the relevant Accredited Buyer at each Sight Location during the relevant Selling Period (or such other period as is notified by GSS from time to time in accordance with the 2015-2018 Supply Documentation).

- Worked example (for illustrative purposes only):

Wundergem 2 Limited (an Accredited Buyer) has elected to receive Planned Supply Planning Services and purchases in total US\$4,500,000 of Ex Plan Availability in a Selling Period from two Sights, Gaborone and Kimberley respectively. The total purchase comprises US\$3,000,000 for the Gaborone Sight and US\$1,500,000 for the Kimberley Sight.

The applicable Supply Planning Fee calculation is as follows:

- (i) Gaborone Sight: US\$3,000,000 – Wundergem 2 Limited will be invoiced for its Gaborone Sight Planned Supply Planning Services with a Supply Planning Fee charge of US\$45,000 (1.5 per cent of US\$3,000,000=US\$45,000)
- (ii) Kimberley Sight: US\$1,500,000 – Wundergem 2 Limited will be invoiced for its Kimberley Sight Planned Supply Planning Services with a Supply Planning Fee charge of US\$22,500 (1.5 per cent of US\$1,500,000=US\$22,500) plus VAT if applicable

Total Supply Planning Fee invoiced: US\$67,500 (US\$45,000 + US\$22,500) plus VAT, if applicable.

DE BEERS BEST PRACTICE PRINCIPLES

These principles are designed to ensure that best practice is observed in the gem diamond industry

1 Consumer Confidence

We are committed to operating our businesses with a view to ensuring that consumers buying diamond jewellery are able to rely with confidence on the professional and ethical standards and technical skills of the gem diamond industry, taking account of the following:

- (i) natural diamonds are object of prestige, a luxury good, generally acquired for sentimental reasons and are regarded as items of value by the consumer
- (ii) diamonds are a unique item about which the consumer has limited expertise and consequently, in order to make an informed choice, the consumer is reliant on (i) the standards and integrity of the diamond industry, and (ii) information from the diamond industry as to cut, colour, clarity and carat weight and other attributes, including the application of any treatment
- (iii) the highest professional and ethical standards and technical skills are necessary to ensure that consumer trust is not misplaced and that the reputation of the gem diamond industry is maintained and enhanced
- (iv) consumers expect to purchase diamonds in their natural state, without any treatment, beyond the accepted skills of craftsmanship associated with their cutting and polishing and therefore the danger of non-disclosure of treatment of natural diamonds, and the passing off of partly or wholly synthetic diamonds and simulants as natural diamonds, is contrary to the interests of consumers.
- (v) the injury and hardship suffered by local populations (and the potential for it) when conflicts arise in diamond producing areas are unacceptable, as is seeking to profit from such conflicts.

2 Business Practices

We are committed to operating our businesses in such a way that we neither engage in, nor encourage in any manner, the following practices which are regarded as unacceptable and against the public interest and that of the diamond industry.

- (i) buying and trading rough diamonds from areas where this would encourage or support conflict and human suffering
- (ii) the use of child labour
- (iii) practices which intentionally or recklessly endanger or harm the health or welfare of individuals
- (iv) conduct which conflicts with the principles set out in (1) above, thereby bringing the diamond industry into serious disrepute.

3 Commitment

We are committed to the highest industry ethics including the following:

- (i) action to address concerns arising out of the misuse of rough diamonds in support of conflict and regular discussions on other issues relevant to the gem diamond industry to enable appropriate and timely industry responses
- (ii) the provision of proper working conditions (including the health, safety and well-being of workers)
- (iii) the dignity of individuals and best practices to ensure the fair treatment of individuals
- (iv) full compliance with international best practice and the related regulatory framework with respect to the environment
- (v) full disclosure at all levels of the diamond distribution chain and, most importantly, to consumers, of all treatments to natural diamonds and with respect to wholly or partly synthetic stones and compliance with the rules, regulations and guidelines published from time to time by the diamond industry's governing bodies.

The De Beers Group is taking the lead in introducing best practice principles to ensure the diamond industry is run in an ethical and professional way.

De Beers is committed to abiding by these principles and is making it a condition of supplying all clients that they too agree to comply with them. Moreover the principles are formulated to ensure that De Beers and its customers encourage adherence to them at all levels of the supply chain down to the consumer. De Beers will also encourage industry organisations in the major diamond cutting centres to adopt these principles.

The implementation and monitoring of these Best Practice Principles will ensure consumers buying diamond jewellery will be able to rely with confidence on the ethical standards of the industry.

31 March 2015

SIGHTHOLDER SIGNATURE LICENCE 2015-2018

Background and Interpretation

Under the terms of the 2015-2018 Supply Agreement, we agreed to grant Sightholders a Sightholder Signature Licence to use the Sightholder Signature. The terms and conditions of this Sightholder Signature Licence are set out below.

For clarification, when we refer to “DBGSS”, “us”, “we” or “our” it means De Beers Global Sightholder Sales (Proprietary) Limited or any other member of the De Beers Group that we may nominate from time to time.

When we refer to “you” or “your” we mean a Sightholder qualifying for supply under the terms of the 2015-2018 Supply Agreement and that has signed an Acknowledgement and Agreement Form.

In this Sightholder Signature Licence, words with initial capitals have the meaning set out in the Glossary of Terms to the 2015-2018 Supply Agreement or Schedule 1 of this Sightholder Signature Licence. If there is a conflict in the defined terms, the definition in Schedule 1 of this Sightholder Signature Licence prevails.

TERMS AND CONDITIONS

The Parties agree to be bound by the following terms and conditions:

1 Grant of Sightholder Signature Licence

- 1.1 Subject to clause 2, we grant you a non-exclusive, non-assignable, revocable, royalty-free, world-wide licence to use the Sightholder Signature on the Licensed Materials in the Trade Channels, and at all times in accordance with and subject to the terms and conditions of this Sightholder Signature Licence and the Guidelines.
- 1.2 For the avoidance of doubt, the licence set out in clause 1.1 does not extend to the use of the Sightholder Signature in any consumer-facing or retail activity or on any materials or communications which are directed at consumers. You shall not use the Sightholder Signature in any consumer-facing or retail activity or on any materials or communications which are directed at consumers.
- 1.3 You may only sub-license your rights under this clause 1 in accordance with clause 4.

2 Conditions of Usage

- 2.1 You may only use the Sightholder Signature on Licensed Materials that:
 - 2.1.1 comply with the style, font, colour, format and standards of use set out in the Guidelines; and
 - 2.1.2 have been approved by us pursuant to clauses 2.4 to 2.6.
- 2.2 You agree never to use the Sightholder Signature on Licensed Materials which also contain, or in conjunction with, the following trademarks or signs of the De Beers Group: DE BEERS, DTC, DTC Sightholder, A DIAMOND IS FOREVER, DTC BOTSWANA SIGHTHOLDER, SIGHTHOLDER SIGNATURE or any other trade mark or sign of the De Beers Group that we notify you of from time to time. This will not prevent you from referring to yourself as being a Sightholder of The De Beers Group of Companies in accordance with the requirements of the Guidelines.
- 2.3 You will notify us of your Corporate Identifier and shall ensure that it is used consistently by you and each Sub-Licensee on all Licensed Materials.
- 2.4 Prior to their use, you will send us for approval, proofs of all Licensed Materials on which you propose to use the Sightholder Signature. Proofs are to be sent to sightholdersignature@debeersgroup.com together with information about the manner in which the Licensed Materials are to be used, as specified in the Guidelines.
- 2.5 If you want to change the way your approved Licensed Materials are used, including their form or content, you will need to submit these to us again for approval.
- 2.6 Within 5 business days of their receipt, we will let you know if your Licensed Materials (or any changes to these) have been approved by us for use or not.

3 Intellectual Property and Goodwill

- 3.1 You confirm that you do not have any rights in the Sightholder Signature, Trade Marks and/or the Intellectual Property other than what has been granted to you under this Sightholder Signature Licence.
- 3.2 All goodwill resulting from your use of the Sightholder Signature and/or Trade Marks whether before or during the term of this Sightholder Signature Licence will accrue to the benefit of the De Beers Group. We may, at any time, call for a confirmatory assignment of that goodwill and you shall (and/or shall procure that a Sub-Licensee shall) as soon as possible execute such assignment. Prior to such assignment you shall hold such goodwill on trust for us.
- 3.3 You will comply at all times with our instructions about use of the Sightholder Signature, Trade Marks and/or the Intellectual Property and you will use your best endeavours to maintain and

enhance the reputation and prestige of the Sightholder Signature, Trade Marks and the good name and reputation of the De Beers Group.

- 3.4** In accordance with the Guidelines, wherever space permits, you will always use the following trade mark line when you use the Sightholder Signature on all trade advertisements, websites and promotional brochures:

(S) TM is a trade mark used under licence from The De Beers Group of Companies.
SIGHTHOLDER

- 3.5** You will let us know as soon as possible if you become aware of: (a) any improper, wrongful or unauthorised use of the Sightholder Signature, Trade Marks and/or Intellectual Property; (b) any use of the Sightholder Signature, Trade Marks and/or Intellectual Property that is inconsistent with the terms of this Sightholder Signature Licence; (c) any activity that is potentially detrimental to the Trade Marks and/or Intellectual Property; and/or (d) any allegation that the Trade Marks are likely to cause deception or confusion to the public. You will assist us (at our cost) should we need to bring action to correct such matters. You shall make no comment or admission to any third party in respect of such matters.

- 3.6** You will not:

- 3.6.1** use the Trade Marks, Sightholder Signature or any of the Intellectual Property in a way that might prejudice their respective distinctiveness or validity, or which might impair, damage or be detrimental to the reputation, or goodwill associated with us, the De Beers Group and/or the Trade Marks, the Sightholder Signature and/or any of the Intellectual Property, or which might invalidate or jeopardise any registration of the Trade Marks or any of the Intellectual Property; or
- 3.6.2** use in your business any other trade mark confusingly similar to the Trade Marks, Sightholder Signature or any of the Intellectual Property; or
- 3.6.3** use the Trade Marks, Sightholder Signature or any of the Intellectual Property as part of your corporate logo, name or identity or as part of any internet address or domain name; or
- 3.6.4** register or apply for registration of any mark consisting of or incorporating any of the Trade Marks, Sightholder Signature or any of the Intellectual Property or their component parts or any confusingly similar mark as a trade mark or domain name; or
- 3.6.5** use or permit to be used, the Trade Marks, Sightholder Signature or any of the Intellectual Property other than as permitted under this Sightholder Signature Licence; or
- 3.6.6** represent that any particular diamond or diamonds are sourced, or originate, from us or any member of the De Beers Group except with our prior written consent.

- 3.7** You shall not register this Agreement at any trade mark registry without our prior written consent.

- 3.8** We shall have conduct of all proceedings relating to the Sightholder Signature, the Trade Marks and/or the Intellectual Property and shall in our sole discretion decide what action, if any, to take in respect of any infringement or alleged infringement or misuse or alleged misuse of any of the Trade Marks and/or Intellectual Property or any passing off or any other claim or counterclaim brought or threatened in respect of the use of any of the Trade Marks and/or Intellectual Property. We shall not be obliged to bring or defend any proceedings whether for infringement or otherwise in relation to any of the Trade Marks and/or Intellectual Property. You shall not be entitled to bring any action for infringement or misuse of, or otherwise related to, the Trade Marks and/or Intellectual Property, regardless of any such decision by us.

- 3.9** In any infringement proceedings brought by us, we shall be entitled to retain all proceeds of any pecuniary remedy and we shall not be required to account to or pay over to you any such proceeds.

3.10 As and when directed by us, you shall maintain and update your use of the Sightholder Signature and/or the Trade Marks so as to comply with any changes that we decide to make to all or any of the Sightholder Signature and/or Trade Marks.

3.11 We shall pay all fees for renewing the Trade Marks as we consider necessary to protect, at our sole discretion, the Sightholder Signature.

4 Sub-Licensees

4.1 Subject to clause 4.2, you may grant Sightholder Group Members a personal, non-exclusive, non-assignable, non-sublicensable, revocable, royalty-free, world-wide Sub-Licence to use the Trade Marks and to use the Sightholder Signature on their respective Licensed Materials in the Trade Channels, and in accordance with and subject to the provisions of this clause 4 and the Guidelines.

4.2 You may only grant Sub-Licences pursuant to clause 4.1 to Sightholder Group Members who:

4.2.1 have supplied their details pursuant to clause 2.3;

4.2.2 are acknowledged as Sub-Licensees by us in writing in advance; and

4.2.3 agree with us in writing in advance to use the Trade Marks and Sightholder Signature in accordance with the Guidelines and on the same conditions as apply to you under the Sightholder Signature Licence, *mutatis mutandis*.

4.3 You will ensure that each of your Sub-Licensees complies with the terms and conditions of its Sub-Licence and with our instructions relating to use of the Sightholder Signature and Trade Marks as may be communicated to you from time to time including those included in the Guidelines.

4.4 You acknowledge and agree that we may treat a breach by a Sub-Licensee of its Sub-Licence as a breach of this Sightholder Signature Licence by you.

4.5 To the fullest extent permitted by law, neither us nor any other member of the De Beers Group shall be liable to you or any Sightholder Group Member for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from your or your Sub-Licensees' exercise of the rights granted to you under this Sightholder Signature Licence, however arising and whether in contract, tort (including negligence) or otherwise.

4.6 You will indemnify us against any and all costs, expenses, losses, liabilities or damages (including without limitation legal expenses) suffered or payable by us or any member of the De Beers Group, arising out of or in connection with your or any Sub-Licensee's: (a) exercise of the rights granted under this Sightholder Signature Licence; (b) breach or negligent performance or non-performance of this Sightholder Signature Licence or any Sub-Licence; and/or (c) use of the Trade Marks or Sightholder Signature in breach of this Sightholder Signature Licence or a Sub-Licence.

4.7 Nothing in this Sightholder Signature Licence shall have the effect of excluding or limiting any party's liability for death or personal injury caused by its negligence or for fraud.

5 Duration and Termination

5.1 Subject to paragraph 23 of the 2015-2018 Supply Agreement, this Sightholder Signature Licence shall begin from the time you supply the requested information and acknowledge these terms where requested and will run until 30 March 2018, unless terminated earlier pursuant to either clause 5.2 or 5.3. Subject to clauses 5.4 and 5.5, all Sub-Licences shall run, terminate and expire concurrently with this.

5.2 This Sightholder Signature Licence together with all Sub-Licences shall immediately terminate if:

5.2.1 you or a Sub-Licensee breaches this Sightholder Signature Licence or a Sub-Licence; and

5.2.2 we notify you of the breach and ask you to remedy it or, if the breach is not capable of remedy, to compensate us for the breach; and

- 5.2.3** you fail to remedy the breach or compensate us (as applicable) within 30 days of the date of the notice.
- 5.3** This Sightholder Signature Licence together with all Sub-Licences shall immediately terminate if:
- 5.3.1** you or your Sub-Licensee challenges the ownership, validity or enforceability of any Intellectual Property; or
- 5.3.2** your appointment as a Sightholder is terminated or expires; or
- 5.3.3** you or any Sub-Licensee ceases to carry on business or is declared bankrupt or insolvent, enters into a voluntary arrangement with creditors, enters into liquidation or is wound-up or an order is passed for winding up, or any event occurs, or proceeding is taken, with respect to you or any Sub-Licensee in any jurisdiction to which you/it is subject that has an effect equivalent or similar to any of the events described in this clause 5.3.3.
- 5.4** You acknowledge that instead of terminating in full pursuant to clauses 5.2 and 5.3, we may, at our discretion, elect to terminate Sub-Licences only or suspend the operation of this Sightholder Signature Licence or any Sub-Licence for a period of up to six months.
- 5.5** A Sub-Licence shall immediately terminate upon the relevant Sub-Licensee ceasing to be a Sightholder Group Member.
- 6 Consequences of Termination or Expiry**
- 6.1** Subject to clauses 6.2 and 6.3, upon expiry or termination of this Sightholder Signature Licence or any Sub-Licence:
- 6.1.1** all rights and obligations of both you, your Sub-Licensees and us arising from or in connection with this Sightholder Signature Licence will immediately cease (without prejudice to any accrued rights or obligations); and
- 6.1.2** each Sub-Licence will terminate with immediate effect; and
- 6.1.3** you will, and will procure that each of your Sub-Licensees will, immediately cease to use the Sightholder Signature and the Trade Marks, and will not thereafter use the Intellectual Property or anything confusingly similar; and
- 6.1.4** you will, and will procure that your Sub-Licensees will, promptly remove and destroy or otherwise discontinue to our satisfaction the use of all Licensed Materials.
- 6.2** If this Sightholder Signature Licence terminates under clause 5.3.2 because your appointment as a Sightholder expires only, then you and your Sub-Licensees may continue to use any approved Licensed Materials on the same terms as set out in this Sightholder Signature Licence for a period of 3 months after expiry. After this period, clause 6.1 shall apply in full.
- 6.3** Clauses 3.1, 3.2, 4.5 to 4.7 (inclusive), 6, 7, 8.4 to 8.8 (inclusive) and 9 shall survive termination or expiry of this Sightholder Signature Licence.

7 Confidentiality

- 7.1** Subject to clause 7.2 and except as otherwise agreed in writing, each party will each keep confidential all information disclosed to it by or on behalf of the other party under this Sightholder Signature Licence (“**Confidential Information**”). Neither party, nor any members of the De Beers Group or your Sightholder Group Members shall disclose any Confidential Information disclosed by or on behalf of the other party to any other person or use it for any purpose (including in any downstream activities) other than as permitted by this Sightholder Signature Licence.
- 7.2** Each party shall be entitled to use Confidential Information received from the other party to the extent necessary for the purpose of performing its obligations and exercising its rights under this Sightholder Signature Licence and the 2015-2018 Supply Agreement Documentation¹. Provided that you procure that Sightholder Group Members, and we procure that members of the De Beers Group, comply with the terms of this clause 7, Sightholder Group Members and members of the De Beers Group shall be entitled to use such Confidential Information for such purposes.
- 7.3** Confidential Information disclosed by or on behalf of the other party may be disclosed by a party only if required by mandatory provision of law, governmental or other authority or regulatory body or to consultants, professional advisers and brokers provided that:
- 7.3.1** where a request for disclosure is received from a governmental or other authority or regulatory body, the recipient of the request will use all reasonable endeavours to consult with the other party in a timely manner in relation to such request, and consider such other party’s reasonable requests relating thereto; and
- 7.3.2** a written undertaking is obtained in advance from such consultant, professional adviser or broker on terms no less restrictive than this clause 7.
- 7.4** The provisions of this clause 7 shall survive after the termination of this Sightholder Signature Licence.

8 General

- 8.1** This Sightholder Signature Licence is personal to you. No rights or obligations conferred on you under this Sightholder Signature Licence may be assigned, charged, transferred, sub-licensed, sub-contracted or delegated except as expressly provided herein.
- 8.2** We reserve the right to assign any or all of our rights or novate any of our rights and/or obligations under this Sightholder Signature Licence to another member of the De Beers Group, from time to time, without consulting with you, or notifying you in advance, or obtaining your consent.
- 8.3** We may on reasonable (but no less than 3 months’) written notice to you change:
- 8.3.1** the conditions set out at clause 4 relating to permission for Sub-Licences;
- 8.3.2** the Best Practice Principles; and/or
- 8.3.3** the Guidelines,
- and any other changes to this Sightholder Signature Licence may be made in accordance with paragraph 1.4.2 of the 2015-2018 Supply Agreement.
- 8.4** Save for members of the De Beers Group (including relevant trade mark owning entities), no third party has rights (including under the Contracts (Rights of Third Parties) Act 1999) to enforce this Sightholder Signature Licence.

¹ As defined in the Glossary of Terms to the 2015-2018 Supply Agreement.

- 8.5** If any part of this Sightholder Signature Licence is found to be invalid or unenforceable in whole or in part then any such invalidity or unenforceability will not render invalid or unenforceable any other provision and we shall both negotiate in good faith to agree and implement an alternative provision which is valid and enforceable and, to the extent possible, reflects their economic, legal and commercial objectives.
- 8.6** This Sightholder Signature Licence and the other documents and agreements referred to herein supersede all prior agreements, arrangements and undertakings (whether express or implied and whether legally binding or not) between us and you, and (together with the other documentation referred to herein) constitutes the entire agreement between ourselves relevant to the subject matter hereof to the exclusion of all other terms and representations whether express or implied, written or oral.
- 8.7** Nothing in this Sightholder Signature Licence (or arrangements entered into under it) shall constitute an agency arrangement between you and us (or any members of the De Beers Group or Sightholder Group Members).
- 8.8** Any notice given to a party under or in connection with this Sightholder Signature Licence shall be in writing and shall be: (a) delivered by hand or by pre-paid first-class post (or other next working day delivery service) at its principal place of business; or (b) sent by fax to its main fax number. Any notice shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt; (b) if sent by pre-paid first-class post (or other next working day delivery service), at 9.00am on the business day after posting; or (c) if sent by fax, at 9.00 am on the next business day after transmission. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9 Governing Law and Disputes

- 9.1** Notwithstanding paragraph 22.1 of the 2015-2018 Supply Agreement, this Sightholder Signature Licence, and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims), will be governed exclusively by and construed exclusively in accordance with English law. Notwithstanding paragraphs 22.2 to 22.13 (inclusive) of the 2015-2018 Supply Agreement, each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Sightholder Signature Licence (including non-contractual disputes or claims). For the avoidance of doubt, the choice of English law shall not exclude the application of those rules of foreign law (if any) which, as a matter of English law, have mandatory application to the dispute.
- 9.2** Notwithstanding paragraph 22.14 of the 2015-2018 Supply Agreement, you hereby irrevocably appoint your broker as your agent for service of process with respect to disputes or claims arising out of or in connection with this Sightholder Signature Licence or, in the absence of any such office or broker, you shall appoint a person in England as your agent for the service of process, and you shall provide to us such details of the broker or other person so appointed as we may request within 10 days of such request.

SCHEDULE 1

Defined Terms

In this Sightholder Signature Licence (which includes the Schedules to it), unless the context otherwise requires:

Best Practice Principles means the “De Beers Best Practice Principles” available to be viewed at www.debeerssightholder.com , as published from time to time;

Consolidation (IFRS) Group shall have the meaning as set out in Annex 5 to the 2015-2018 Supply Agreement;

Corporate Identifier means the single common trading name or corporate logo, used by you and your Sub-Licensees on the Licensed Materials to show they are a Sightholder Group Member;

De Beers Group means any company directly or indirectly controlled by De Beers Société Anonyme (48 Rue de Bragance, Luxembourg, LU-1255);

Forevermark Icon means ;

Guidelines means the document entitled “Sightholder Signature Guidelines” available to be viewed at www.debeerssightholder.com that sets out the rules governing the form, manner and style of usage of the Sightholder Signature in various Licensed Materials. The Guidelines may be amended by the De Beers Group from time to time;

Intellectual Property means any intellectual property right of ours or any member of the De Beers Group in any part of the world, whether registered or unregistered, and which may now or at some future time subsist and includes the Trade Marks and the marks “DTC”, “Diamond Trading Company”, “DTC Logo”, “Forevermark”, the “Forevermark Icon” “SIGHTHOLDER”, “DTC SIGHTHOLDER” and “De Beers”;

Licensed Materials means the various materials set out in the Guidelines on which the Sightholder Signature and Trade Marks may be used in a business-to-business context, including, stationery, business cards, trade advertisements, business-to-business advertising materials, web pages and merchandise;

Sightholder Group Member means an entity that forms part of the Consolidation (IFRS) Group and is (i) a Sightholder; or (ii) a Diamond Related Business which is controlled by, or which controls, a Sightholder. In this context the following shall apply:

- (i) **Control** means direct or indirect ownership or control in which an entity (i) holds a majority of the voting rights or issued share capital (equity) in the controlled entity; (ii) the controlling entity is a member of the controlled entity and has the right to appoint or remove a majority of its board of directors; or (iii) the controlling entity controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the controlled entity (however, for the avoidance of doubt, control does not include joint venture control which in this context precludes a joint venture arrangement from utilising the Sightholder Signature Licence);
- (ii) **Diamond Related Business** includes (i) a corporate entity deriving any revenue from the sale of rough diamonds, polished diamonds or diamond-containing products; (ii) a holding company whose holdings are in businesses of this nature; or (iii) a corporate entity whose principal business is in direct association with the diamond pipeline. All references relate to natural diamonds only and exclude entities solely involved in diamond mining.

Sightholder Signature means the logo depicted at Schedule 2 and also set out in the Guidelines, which may be amended by the De Beers Group from time to time;

Sub-Licence means the permission given pursuant to clause 4.1, allowing Sightholder Group Members to use the Trade Marks and Sightholder Signature on the terms and conditions of this Sightholder Signature Licence;

Sub-Licensee means a Sightholder Group Member licensed to use the Sightholder Signature pursuant to clause 4.1 of this Sightholder Signature Licence;

2015-2018 Supply Agreement means the agreement entered into between you and us, which took effect on 31 March 2015, and, together with the related 2015-2018 Supply Agreement Documentation sets out the terms and conditions upon which we would (a) sell you boxes of rough diamonds intended for use as gemstones, and (b) provide certain associated services to you;

Trade Channels means business-to-business activities in relation to the sale, distribution and promotion of rough gem diamonds approved by us in writing from time to time; and

Trade Marks means the trade mark applications and registrations for the Sightholder Signature owned by any member of the De Beers Group.

SCHEDULE 2

Sightholder Signature



SIGHTHOLDER

SIGHTHOLDER SIGNATURE LICENCE 2015-2018 DECLARATION

By completing this Sightholder Signature Licence declaration you agree that you have read, understood and agree to its terms and conditions.

Parties

1. DBGSS as licensor

Name: _____

Signature: _____

For and on behalf of DBGSS

Date: _____

2. [SIGHTHOLDER NAME] as licensee

Name: [Sightholder Authorised Representative's Name] as authorised representative

Signature: _____

For and on behalf of [SIGHTHOLDER NAME]

Date: _____

Acknowledgments regarding Sightholder Group Member Sub-Licensees

You hereby acknowledge and confirm that:

1. Each of the Sub-Licensees noted below are Sightholder Group Members;
2. You shall procure that each Sub-Licensee complies in full with the terms of this Sightholder Signature Licence and any accompanying documentation; and
3. You shall be fully liable for any breach of this Sightholder Signature Licence by any of your Sub-Licensees as if it was a breach of the Sightholder Signature Licence by you.

Sightholder Group Member Sub-Licensees

In accordance with the above statements, if you want Sightholder Group Members to use and have access to the Sightholder Signature and Trade Marks as Sub-Licensees on the terms of this Sightholder Signature Licence, insert their full (incorporated) names below:

TERMS OF REFERENCE FOR THE OMBUDSMAN

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Part 1 Definitions

1 Terms used in these terms of reference (“Terms of Reference”) shall have the following meanings:

“**Admission Decision**” means a decision of GSS concerning admission of the Applicant to, or removal of the Applicant from, GSS’s list of Sightholders pursuant to the Rough Diamond Supply Agreement, save in the circumstances set out in clauses 14.1 to 14.2 (inclusive) of the Rough Diamond Supply Agreement (as from time to time in force);

“**Applicant**” means an applicant (including, for the avoidance of doubt, any existing Sightholder) for admission to GSS’s list of Sightholders and/or an applicant making a Strategic Supply Request;

“**Assigned Persons**” means an employee or agent of the Ombudsman who is directly assigned to the Ombudsman;

“**Commission**” means the European Commission;

“**Complaint**” means a complaint made by an Applicant in accordance with these Terms of Reference to the effect that GSS adopted Improper Procedures in (a) making a Decision or (b) failing to implement a Supply Decision or a Strategic Supply Decision;

“**Confidential Information**” means information of the kind covered by the obligation of professional secrecy within the meaning of Article 339 of the Treaty on the Functioning of the European Union;

“**Conflict of Interest**” means a conflict of interest that impairs the Ombudsman’s objectivity and independence in discharging his duties under these Terms of Reference;

“**Conflict Party**” means any individual, company or other organisation (whether incorporated or unincorporated) that has an interest (direct or indirect) in the production, supply or purchase of rough diamonds at any level of supply or any association established to protect the interests of such entities. For the avoidance of doubt, Conflict Party will also include De Beers. A non-exhaustive list of Conflict Parties has been compiled for the Ombudsman’s benefit in order to facilitate the process of identifying and disclosing relevant relationships with Conflict Parties. The non-exhaustive list of Conflict Parties is attached hereto as Annex 1;

“**Contractual Documentation**” means the Rough Diamond Supply Agreement (and any other documentation referred to therein) or an equivalent Rough Diamond Supply Agreement (and any other documentation referred to therein) entered into by any of De Beers Sightholder Sales South Africa Proprietary Limited or Namibia Diamond Trading Company (Proprietary) Limited, in each case from time to time in force;

“**Decision**” means an Admission Decision, a Supply Decision or a Strategic Supply Decision;

“**GSS**” means De Beers Global Sightholder Sales (Proprietary) Limited or any other member of the De Beers group fulfilling that role for purposes of the Rough Diamond Supply Agreement;

“**Improper Procedures**” means (in respect of any Decision or any failure to implement a Supply Decision or any failure to implement a Strategic Supply Decision) GSS (a) failing to act in accordance with the Contractual Documentation; or (b) acting in a manifestly unreasonable or irrational or arbitrary manner;

“**ITO**” means an intention to offer indicating the aggregate level and nature of goods GSS intends to make available for inspection by (but shall not be obliged to supply to) a Sightholder during the subsequent 12 month selling period (or such other selling period as is agreed between GSS and a Sightholder from time to time in accordance with the Rough Diamond Supply Agreement);

“**Ombudsman Mandate**” means the Agreement relating to the appointment of the Ombudsman between GSS and the Ombudsman;

“**Rough Diamond Supply Agreement**” means the 2015-2018 Rough Diamond Supply Agreement which sets out the terms governing the contractual relationship between GSS and a Sightholder;

“**Panel**” means the body (or bodies) of De Beers Group senior management comprising business and legal experts which reviews and assesses Strategic Supply Requests by Applicants in order for GSS to make a Strategic Supply Decision;

“**Sightholder**” means an Applicant that qualifies for an allocation of rough diamonds by GSS by way of ITO;

“**Strategic Supply Decision**” means an Admission Decision or a Supply Decision that has been made in accordance with GSS’ prevailing strategic supply objectives following a Strategic Supply Request;

“**Strategic Supply Request**” means a written request made by an Applicant (following an invitation by GSS) for an allocation of rough diamonds by way of Strategic Supply Decision; and

“**Supply Decision**” means a decision of GSS concerning the aggregate value and nature of supply that it proposes to make available to the Applicant for the 12 month period (or such other period as agreed between GSS and an Applicant from time to time in accordance with the Rough Diamond Supply Agreement) to which such proposed supply relates.

Part 2 Appointment and duties of the Ombudsman

(A) Appointment of Ombudsman

- 2** The appointment of a person to hold the office of Ombudsman shall be for a term of five years (extendable at GSS’s option), or a shorter term if the prior written consent of the Commission is given.
- 3** On the termination of the term referred to in paragraph 2 above, or earlier resignation of the Ombudsman, a new person shall be appointed to hold the office of Ombudsman in accordance with these Terms of Reference.
- 4** As soon as reasonably practicable before the effective date of termination and, in any event, within seven (7) working days after the termination of the term referred to in paragraph 2 above, or the earlier resignation of the Ombudsman, GSS will propose to the Commission two candidates as successor to the Ombudsman, who are independent of GSS and are not subject to any Conflicts of Interest (“Proposed Ombudsmen”). The appointment of the Proposed Ombudsmen (or either of them) is subject to approval of the Commission. If the Commission does not reject the Proposed Ombudsmen by notice in writing to GSS within fifteen (15) Commission working days of the proposal, the Proposed Ombudsmen shall be deemed to have been approved. If only one of the Proposed Ombudsmen has been approved

(or deemed to have been approved), then that ombudsman shall be appointed. If both Proposed Ombudsmen have been approved (or deemed to have been approved), then GSS shall, at its own discretion, appoint one of them as soon as reasonably practicable following such approval (or deemed approval).

- 5 If both of the Proposed Ombudsmen are rejected by the Commission, GSS will propose the name of a new ombudsman ("New Ombudsman") within seven (7) working days of being informed by notice in writing from the Commission of the rejection. If the Commission does not reject the New Ombudsman by notice in writing to GSS within fifteen (15) Commission working days of the new proposal, the New Ombudsman shall be deemed to have been approved and then that ombudsman shall be appointed as soon as reasonably practicable following such approval (or deemed approval). The New Ombudsman shall not have any Conflicts of Interest.
- 6 If the New Ombudsman is rejected by the Commission, the Commission shall as soon as is reasonably practicable nominate a suitable ombudsman (the "Commission Ombudsman") which GSS will use its best endeavours to appoint or cause to be appointed as soon as reasonably practicable following the receipt of notice in writing from the Commission of the identity of such Commission Ombudsman. The Commission Ombudsman shall not have any Conflicts of Interest.
- 7 GSS shall have the right to remove the Ombudsman in the circumstances specified in paragraph 9 and if the Ombudsman ceases to perform its functions or for any other good cause (but not because of any disagreement with the Ombudsman's determinations, recommendations or investigative steps) with the prior written consent of the Commission. A replacement shall be appointed in accordance with these Terms of Reference if requested by the Commission.

(B) Conflicts of Interest and Confidentiality

- 8 All current relationships that the Ombudsman has with any Conflict Party are disclosed in Annex 2. On this basis, the Ombudsman confirms that, as of the date of the Ombudsman Mandate, the Ombudsman is independent of all Conflict Parties and has no Conflict of Interest.
- 9 The Ombudsman undertakes not to create a Conflict of Interest during the term of the Ombudsman Mandate and for a period of three years following termination of the Ombudsman Mandate. In particular, the Ombudsman may therefore not during the term of the Ombudsman Mandate or in the period of three years following termination of the Ombudsman Mandate:
 - (a) Have or accept any employment by or be or accept any appointment as Member of the Board or member of other management bodies of any Conflict Parties;
 - (b) Have or accept any assignments or other business relationships with or financial interests in any Conflict Party that might lead to a Conflict of Interest. This affects neither assignments nor other business relationships between the Ombudsman and any Conflict Party nor investments by the Ombudsman in the listed stock or securities of any Conflict Party if such assignments, business relationships or investments are in the normal course of business and are material neither to the Ombudsman nor to the undertaking concerned.

Should the Ombudsman wish to undertake a prohibited assignment, business relationship or investment with any Conflict Party, he must seek the prior approval of the Commission and of GSS. Should the Ombudsman become aware of a Conflict of Interest, the Ombudsman shall promptly inform GSS and the Commission, of such Conflict of Interest. In the event that GSS becomes aware that the Ombudsman has or may have a Conflict of Interest, GSS shall promptly notify the Ombudsman and the Commission, of such Conflict of Interest. Where a Conflict of Interest occurs during the term of the Ombudsman Mandate the Ombudsman undertakes to resolve it immediately. In case the Conflict of Interest cannot be resolved or is not resolved by the Ombudsman in a timely manner, the Ombudsman shall be replaced by GSS with Commission consent in accordance with paragraph 7 above.

- 10** The Ombudsman undertakes to establish measures to ensure the integrity of any entity performing a support function for the Ombudsman and the Assigned Persons during the term of the Ombudsman Mandate and for a period of three years following termination of the Ombudsman Mandate, and their independence from any undue influence that might interfere with or in any way compromise the Ombudsman in the performance of his duties under these Terms of Reference. In particular, save as otherwise expressly provided herein:
- (c) access to confidential information shall be limited to the Ombudsman, any entity performing a support function and Assigned Persons; and
 - (d) the Ombudsman, any entity performing a support function and Assigned Persons shall be prohibited from communicating any information relating to the Ombudsman Mandate and the Ombudsman's functions under these Terms of Reference to any other of the Ombudsman's personnel or any other of the personnel of the entity performing a support function or of the Assigned Persons, except for information of a general nature (e.g. Ombudsman's appointment, fees, etc.), and except for information whose disclosure is required by law.

(C) Ombudsman's duties and responsibilities

- 11** The duties and responsibilities of the Ombudsman shall be:
- (i) to perform the specific duties and responsibilities set out in these Terms of Reference;
 - (ii) to conduct, in accordance with Part 4, the review of the information specified in paragraph 14;
 - (iii) to investigate any Complaint that is made or referred to him in accordance with these Terms of Reference and to determine whether or not Improper Procedures have been followed by GSS and make recommendations, in each case in accordance with Part 5 of these Terms of Reference;
 - (iv) where the Commission so requires, to conduct, in accordance with Part 6, such investigations as are reasonably required to enable him to determine whether or not Improper Procedures have been followed by GSS or whether or not the provisions governing the provision of information to GSS have been properly observed;
 - (v) where he has reasonable grounds to believe that Improper Procedures may have been followed by GSS or that the provisions governing the provision of information to GSS have not been properly observed, to conduct, of his own initiative in accordance with Part 7, such investigations as are reasonably necessary to enable him to determine whether or not Improper Procedures have been followed or

whether or not the provisions governing the provision of information to GSS have been properly observed; and

- (vi) to submit to the Commission, in accordance with paragraph 70, an annual report describing his activities relating to above points (i) to (v) and the follow-up action, if any, taken by GSS.

Part 3 GSS Supply Decisions and Strategic Supply Decisions

- 12** GSS shall take Supply Decisions and communicate them to the Applicant concerned once every 12 months (or such other period as is agreed between GSS and an Applicant from time to time in accordance with the Rough Diamond Supply Agreement).
- 13** When GSS takes Strategic Supply Decisions it shall communicate them, setting out GSS's reasons in sufficient detail to enable the Applicant to determine the principal grounds upon which the Decision has been taken (but excluding, in any event, information that is confidential or that it would otherwise be inappropriate to disclose), to the Applicant concerned in accordance with the Rough Diamond Supply Agreement.

Part 4 Review of Confidential Information concerning Applicants

- 14** In accordance with the procedures agreed with GSS under paragraph 78, the Ombudsman shall review:
 - (i) Confidential Information provided by Applicants to GSS for the purposes of GSS in respect of Strategic Supply Decisions pursuant to clauses 10.1.3 and 10.4 of the Rough Diamond Supply Agreement; and
 - (ii) Confidential Information obtained from Applicants where such Confidential Information is then provided to GSS by third parties acting on behalf of or rendering services to GSS for the purpose of verifying Confidential Information submitted by Applicants in respect of Decisions pursuant to clause 10.4 of the Rough Diamond Supply Agreement (for the avoidance of doubt, nothing in this paragraph 14(ii) requires the Ombudsman to review Confidential Information obtained by third parties acting on behalf of or rendering services to GSS for the purposes of monitoring compliance with the De Beers Best Practice Principles).
- 15** All Confidential Information referred to in sub-paragraphs 14(i) and (ii) above shall be provided by Applicants and the relevant third parties directly to the Ombudsman prior to being shown to GSS.
- 16** In accordance with the procedures agreed with GSS under paragraph 78, the Ombudsman shall review Confidential Information provided under paragraph 14 above in order to identify any information that goes beyond what is (i) reasonably required by GSS for the purposes of the Rough Diamond Supply Agreement, and/or (ii) permitted to be obtained by GSS, under the Rough Diamond Supply Agreement. To the extent that the Confidential Information (or any part thereof) does not go beyond what is (i) reasonably required for the purposes of, and/or (ii) allowed, under the Rough Diamond Supply Agreement, then such Confidential Information shall be released to GSS as soon as is reasonably practicable. However, if the Ombudsman identifies information that does go beyond what is (i) reasonably required by GSS for the purposes of, and/or (ii) permitted to be obtained by GSS, under the Rough Diamond Supply Agreement, he shall as soon as is reasonably practicable inform the Applicant (or the relevant

third party as the case may be) that such information shall not be provided to GSS and shall request the Applicant (or relevant third party as the case may be) promptly to provide a revised (or redacted) version of the information that does not disclose to GSS information that is not required or allowed under the Rough Diamond Supply Agreement. The Ombudsman shall release that revised version of the information to GSS as soon as reasonably practicable.

- 17** If GSS wishes to seek clarification from an Applicant or third party with respect to any of the information that has been provided by that Applicant or third party to GSS, GSS shall contact that Applicant or third party (as relevant) in writing and ensure that a copy of all correspondence with them is sent to the Ombudsman. GSS shall ensure that any response from the Applicant or third party (as relevant) to the request for clarification shall also be copied to the Ombudsman. Nothing in this paragraph shall prevent the Ombudsman, Applicant or third party (as relevant) requiring that, in accordance with paragraph 15, the Applicant or third party send its response directly to the Ombudsman prior to it being shown to GSS. Should the Ombudsman, in accordance with paragraph 16 above, identify information that goes beyond what is required by GSS, or permitted to be obtained by GSS, under the Rough Diamond Supply Agreement, GSS shall ensure that any members of GSS personnel who have taken cognisance of such information shall not be a member of the Panel that is empowered to review and moderate any application to which the information relates.
- 18** Where GSS receives unsolicited information regarding Applicants which has been submitted to GSS contrary to paragraph 15 or has been sent to GSS without also being copied to the Ombudsman contrary to paragraph 17, GSS shall immediately transmit the entirety of the information to the Ombudsman for review under paragraph 16. GSS shall ensure that any members of GSS personnel who have taken cognisance of such information shall not communicate this information to any other member of GSS personnel.
- 19** For the avoidance of doubt, in taking Decisions, GSS shall not rely on any information that goes beyond what is required by GSS, or permitted to be obtained by GSS, under the Rough Diamond Supply Agreement.

Part 5 Investigations by the Ombudsman in relation to Complaints

(A) Initiation of Investigation

- 20** The Applicant shall notify GSS that it has a potential Complaint relating to a Decision, failure to implement a Supply Decision or failure to implement a Strategic Supply Decision and that it wishes to follow the procedures set out in these Terms of Reference as soon as reasonably practicable and, in any event, within 14 days of the Applicant being informed of the relevant Decision (in accordance with paragraph 12, where appropriate) or becoming aware of the failure to implement a Supply Decision or of the failure to implement a Strategic Supply Decision (as relevant).
- 21** Prior to making a Complaint or referring a Complaint to the Ombudsman, the Applicant and GSS will discuss the subject matter of the potential Complaint in good faith and attempt to resolve the same as soon as reasonably practicable. If no resolution is reached within 14 days of GSS being notified of the potential Complaint, the Applicant may make a Complaint to the Ombudsman and GSS may refer the Complaint to the Ombudsman, in each case within 21 days of expiry of the 14 day period. The Ombudsman may investigate a Complaint that is made or referred to him after the expiry of that 21 day period, provided that both GSS and the Applicant give their consent to such an extension of the deadline.

- 22** An Applicant making a Complaint shall give written notice in the form notified by GSS from time to time (with acknowledgement of receipt) to the Ombudsman and GSS, stating the nature of the Complaint and providing in reasonable detail a summary of the issues relevant to the Complaint. The Applicant shall include copies of all documentation available to it which it considers relevant to the Complaint.
- 23** The Ombudsman cannot consider any complaint or representation other than a Complaint in accordance with these Terms of Reference and signed by a statutory director of an Applicant or, in the case of a Complaint referred by GSS, a referral signed by a statutory director of GSS. For the avoidance of doubt, no Complaint can be brought by an Applicant (or referred by GSS) unless it is in respect of Improper Procedures relating to (a) an Admission Decision concerning the admission or removal of the Applicant (rather than of another applicant for admission or of another Sightholder) to or from (as relevant) GSS's list of Sightholders, or (b) a Supply Decision concerning the aggregate value and nature of supply that GSS proposes to make to the Applicant (rather than to another Sightholder), or (c) a Strategic Supply Decision concerning the aggregate value and nature of supply that GSS proposes to make to the Applicant (rather than to another Sightholder or another applicant making a Strategic Supply Request), or (d) failure to implement a Supply Decision, or (e) failure to implement a Strategic Supply Decision. Either the Applicant or GSS may request the Ombudsman to issue a preliminary determination on whether any aspect of the Complaint falls within these Terms of Reference. In the absence of exceptional circumstances and provided that the basis of the Complaint is sufficiently clear, the Ombudsman shall issue a preliminary determination prior to proceeding to investigate the Complaint. Where the basis of the Complaint is insufficiently clear, the Ombudsman shall make such inquiries as may reasonably be required to clarify the Complaint and, where requested, shall issue a preliminary determination as soon as the Complaint has been sufficiently clarified to mean that such a determination can be fairly made.
- 24** GSS shall provide the Ombudsman and the Applicant with written notice in the event that it refers a Complaint to the Ombudsman pursuant to paragraph 21 above.

(B) Ombudsman Procedures

- 25** The Ombudsman shall investigate a Complaint as soon as reasonably practicable following its submission or referral provided that the Applicant has complied with paragraphs 20, 21 and 22 above and, in the case of a referral by GSS, that GSS has complied with paragraphs 21 and 24 above.
- 26** In investigating a Complaint, the Ombudsman will:
- (i) during the investigation, give both parties an opportunity to make representations;
 - (ii) send to the parties a provisional assessment, setting out his reasons, any proposed determination and recommendation and a time limit within which each party must respond; and
 - (iii) on or as soon as reasonably practicable after expiry of the time limit referred to in (ii) above, proceed to issue his determination and recommendation.
- 27** The parties will be informed of their right to make representations before the Ombudsman makes a determination or recommendation. If the Ombudsman considers that a determination or recommendation can be made without convening a hearing, he will do so. If not, he will invite the parties to attend a hearing. No hearing will be held after the Ombudsman has issued his determination or recommendation.

- 28** A party who wishes to request a hearing must do so in writing, setting out the issues he wishes to raise and (if appropriate) any reasons why it considers the hearing should be held in private, so that the Ombudsman may consider whether the issues are material, whether a hearing should take place and, if so, whether it should be held in private.
- 29** The Ombudsman may, in relation to the evidence which may be required or admitted when he considers a Complaint, give directions as to:
- (i) the issues on which evidence is required;
 - (ii) the extent to which the evidence required to decide those issues should be oral or written;
 - (iii) the way in which the evidence should be presented to the Ombudsman; and
 - (iv) the steps to be taken to protect the Confidential Information (including, for the avoidance of doubt, the Business Secrets) of any person.
- 30** The Ombudsman may:
- (i) require GSS and the Applicant to provide such documentation (save for legally privileged advice) as the Ombudsman considers relevant to the Complaint, provided that the Ombudsman shall not be entitled to require submission of documentation by third parties unless GSS and the Applicant so agree or unless the third party acts on behalf of GSS or provides services to GSS pursuant to paragraph 10.6 of the Rough Diamond Supply Agreement (e.g. gathering or verifying information);
 - (ii) exclude evidence that would otherwise be admissible in a court of law or include evidence that would not be admissible in such a court;
 - (iii) reach a decision on the basis of what has been supplied and take account of the failure of either party to provide information that the Ombudsman has requested; and
 - (iv) dismiss a Complaint if the Applicant fails to supply required information.
- 31** If the Applicant fails to comply with a time limit, the Ombudsman may either proceed to the next stage or, if appropriate, dismiss the Complaint.
- 32** All investigations by the Ombudsman shall be carried out in English.
- 33** The Ombudsman shall issue his initial determination and, if relevant, recommendation in relation to any Complaint relating to an Admission Decision as soon as reasonably practicable. The Ombudsman shall endeavour to issue his initial determination and any recommendation within six months after the disputed Admission Decision but may extend the period for consideration by up to three months where the circumstances of the Complaint (such as its complexity or the necessity to consider new evidence) so require.
- 34** The Ombudsman shall issue his initial determination and, if relevant, recommendation in relation to any Complaint relating to a Supply Decision, a Strategic Supply Decision, failure to implement a Supply Decision or failure to implement a Strategic Supply Decision as soon as reasonably practicable and, in any event, at least 2 months prior to commencement of the supply period to which GSS's next Decision relates, or within such other period as the Ombudsman, GSS and the Applicant agree in writing.

(C) Ombudsman determinations and recommendations

- 35** Where the Ombudsman is satisfied that Improper Procedures have been followed, he shall issue a determination to that effect. If the Ombudsman is not so satisfied, he shall reject the Complaint and issue a determination to that effect.
- 36** Where the Ombudsman has issued a determination that Improper Procedures have been followed by GSS, the Ombudsman shall recommend that the relevant Decision (or failure to implement a Supply Decision or a Strategic Supply Decision) be re-considered by GSS in accordance with the appropriate procedures. Any such recommendation pursuant to this paragraph shall be binding on GSS. The Ombudsman shall have no other powers of recommendation.
- 37** All determinations and recommendations of the Ombudsman shall be in English, in writing and specify the reasons upon which they are based. A copy of all determinations and recommendations shall be provided to the Applicant and GSS.
- 38** Any determination or recommendation of the Ombudsman may, in addition, impose all or any part of the reasonable fees and direct costs of the prevailing party and incremental costs of the Ombudsman upon the unsuccessful party. In considering any award of costs under this paragraph, the Ombudsman will have regard to whether:
- (i) the Applicant has prevailed solely on grounds other than those particularised in its Complaint (in which case it will not usually be appropriate to award more than 50% of the Applicant's reasonable fees and direct costs against GSS); and
 - (ii) any reconsidered Decision made by GSS following a determination of the Ombudsman is more favourable to the Applicant than the original Decision (absent which it will not usually be appropriate to award more than 50% of the Applicant's reasonable fees and direct costs against GSS).

For the avoidance of doubt, the Ombudsman shall not impose upon GSS any of the Applicant's reasonable fees and direct costs to the extent they relate to matters which the Ombudsman has determined (in accordance with paragraph 23 above or otherwise) do not fall within the scope of these Terms of Reference.

- 39** The Ombudsman shall not disclose any Confidential Information in any determination or recommendation. This obligation shall not prevent the Ombudsman from providing all such Confidential Information to the Commission, including the Confidential Information on which his determination or recommendation is based, if the Commission so requests.

(D) GSS's duties in relation to determinations and recommendations by the Ombudsman

- 40** In relation to disputes concerning Admission Decisions, GSS shall ensure that the Ombudsman's recommendation (and any re-considered Admission Decision) is implemented in accordance with the following table:

Circumstances	Period for implementation
Admission Decision concerning an existing Sightholder.	As soon as reasonably practicable and, in any event, on or before the later of (a) 12 months from the disputed Admission Decision and (b) 3 months after the date of the Ombudsman's determination.
Admission Decision concerning a new Applicant where no appeal is made against the Ombudsman's determination and/or recommendation.	As soon as reasonably practicable and, in any event, on or before the later of (a) 12 months from the disputed Admission Decision and (b) 3 months after the date of the Ombudsman's determination.
Admission Decision concerning a new Applicant where the Ombudsman's determination and/or recommendation is appealed, but upheld by the arbitrator.	Promptly after the date of the arbitrator's decision and, in any event, on or before 2 months from the date of the arbitrator's decision.
Admission Decision concerning a new Applicant where the Ombudsman's determination and/or recommendation is appealed and, following arbitration, the Ombudsman issues a further determination and/or recommendation.	Promptly after the date of the Ombudsman's further recommendation and, in any event, on or before the later of (a) 6 months from the date of the arbitrator's decision and (b) 3 months after the date of the Ombudsman's determination.

41 The provisions of this paragraph apply with respect to any recommendation of the Ombudsman to reconsider a Supply Decision or a Strategic Supply Decision. GSS shall:

- (i) use its best endeavours to issue, during the supply period to which the disputed Supply Decision or Strategic Supply Decision relates, a re-considered Supply Decision or Strategic Supply Decision for the remainder of that supply period, subject to GSS's other ITOs and commitments to supply and provided that GSS shall not be required to redirect goods that have been offered to any Applicant or Applicants; and
- (ii) ensure that, in any event, in considering the Supply Decision or Strategic Supply Decision for the following supply period, it implements the recommendation of the Ombudsman and any re-considered Supply Decision or Strategic Supply Decision resulting therefrom.

42 The provisions of this paragraph apply with respect to any recommendation of the Ombudsman to reconsider a failure to implement a Supply Decision or Strategic Supply Decision. GSS shall ensure that it implements the recommendation as soon as reasonably practicable and if, as a result, GSS must implement or revise a Supply Decision or Strategic Supply Decision, GSS shall:

- (i) use its best endeavours to issue, during the supply period to which the failure to implement relates, a further Supply Decision or Strategic Supply Decision for the remainder of that supply period which reflects the Supply Decision or Strategic Supply Decision to be implemented or revised (as relevant) subject to GSS's other ITOs and commitments to supply and provided that GSS shall not be required to redirect goods that have been offered to any Applicant or Applicants; and

- (ii) ensure that, in any event, in considering the Supply Decision or Strategic Supply Decision for the following supply period, it implements the recommendation of the Ombudsman and any Supply Decision or Strategic Supply Decision to be implemented or revised resulting therefrom.

(E) Compensation where a Decision cannot be corrected

43 This section applies where:

- (i) the Ombudsman recommends that GSS re-consider a Supply Decision or Strategic Supply Decision or failure to implement a Supply Decision or failure to implement a Strategic Supply Decision; and
- (ii) GSS reconsiders the Supply Decision or Strategic Supply Decision or failure to implement a Supply Decision or failure to implement a Strategic Supply Decision and, in order for the Ombudsman recommendation to be implemented, the Applicant should have received additional goods in the remainder of the supply period to which that Supply Decision or Strategic Supply Decision relates; but
- (iii) GSS is unable to supply the Applicant with such additional goods by reason of its other ITOs and commitments to supply (including the offer of such goods to any other Applicant or Applicants).

44 In the circumstances set out in paragraph 43, the Applicant may request the Ombudsman to make a recommendation to GSS as to the amount of compensation that should be paid to the Applicant in respect of the loss suffered by the Applicant through GSS's inability to supply the additional goods that the Applicant would have received in the remainder of the supply period to which that Supply Decision or Strategic Supply Decision relates but for the circumstances stated in paragraph 43(iii).

45 In determining the amount of compensation to be recommended, the Ombudsman shall have regard only to the net after tax profit that the Applicant could reasonably have expected to make in respect of the sale of the additional goods that it would have received in the remainder of the supply period to which that Supply Decision or Strategic Supply Decision relates but for the circumstances stated in paragraph 43(iii).

46 The provisions of paragraphs 26 – 32 inclusive shall apply by analogy.

47 Any recommendation made by the Ombudsman shall be binding upon GSS subject to GSS's right to invoke any of the dispute resolution procedures set out in Part 5(F) of these Terms of Reference. For the avoidance of doubt, if either the Applicant or GSS invokes the dispute resolution procedure set out in Part 5(F) of these Terms of Reference in accordance with the procedures set out in that Part, the issues which are the subject of the Ombudsman's recommendation under this Part 5(E) shall be dealt with in accordance with Part 5(F) and that recommendation shall, in those circumstances, cease to be binding on GSS.

48 The Ombudsman may impose all or any of the reasonable fees and direct costs incurred by the Ombudsman in making a recommendation under this Part 5(E) on either GSS or the Applicant, but absent any such determination, GSS shall pay any reasonable fees and direct costs incurred by the Ombudsman in making a recommendation under this Part 5(E).

(F) Dispute Resolution Procedure

- 49** Any Complaint which is not resolved to the satisfaction of either GSS or the Applicant following either (a) a determination or recommendation or (b) a dismissal of a Complaint prior to the issuing of a determination, shall be resolved in accordance with one of the procedures set out in paragraphs 50 and 51, provided that the party wishing to refer any determination, recommendation or dismissal to arbitration or litigation shall give written notice of such referral to the other party as soon as reasonably practicable and, in any event, within 14 days of the date of the Ombudsman's determination, recommendation or dismissal (as the case may be). Neither the Applicant nor GSS may bring any substantive proceedings in relation to a dispute in any other forum. This is without prejudice to either party's right to bring ancillary applications in any court in support of substantive English proceedings or an arbitration.
- 50** The dispute may be resolved by arbitration subject to English law and pursuant to the rules of the London Court of International Arbitration ("LCIA"). The arbitration shall be conducted in London in the English language by a single arbitrator. The arbitrator shall be familiar with, and have experience of, the diamond industry. In addition to any other remedies which may properly be granted by the arbitrator, the arbitrator may:
- (i) uphold the Ombudsman's determination, recommendation or dismissal (as the case may be);
 - (ii) quash the Ombudsman's determination or recommendation (as the case may be) and refer the matter back to the Ombudsman for a further determination or recommendation (as relevant) in accordance with these Terms of Reference. If the matter is referred back to the Ombudsman and the Ombudsman issues a determination rejecting the Complaint where previously he had recommended that GSS re-consider the relevant Decision (or failure to implement a Supply Decision or failure to implement a Strategic Supply Decision), GSS shall not be required to implement the Ombudsman's previous recommendation (or any re-considered Decision); and, if GSS had, in accordance with paragraphs 40, 41 and 42, implemented the recommendation (or any re-considered Decision), GSS shall be entitled to revert to its original Decision (or level of supply which led to the Complaint of a failure to implement a Supply Decision or failure to implement a Strategic Supply Decision, as the case may be) at any time after receipt of the Ombudsman's new determination; or
 - (iii) quash the Ombudsman's dismissal and refer the matter back to the Ombudsman for a determination or recommendation in accordance with these Terms of Reference.
- 51** The dispute may be resolved by litigation in the English courts.
- 52** The claimant shall be entitled to select any of the dispute resolution procedures set forth above that is applicable to the dispute. This selection shall be binding on the other party subject to paragraphs 53 to 56.
- 53** If GSS is the claimant and selects to proceed by way of arbitration, it shall serve a notice to that effect on the Applicant ("the Arbitration Notice"). Arbitration shall become the dispute resolution procedure unless the Applicant informs GSS in writing within 30 days of the date of the receipt of the Arbitration Notice that it requires the dispute to be resolved by litigation.
- 54** If the dispute is to be resolved by litigation:

54.1 the parties shall, jointly or individually, apply to the court for an order that no Business Secrets be referred to in open court or in any resulting judgment or order.

54.2 "Business Secrets" includes (without limitation):

- (i) the inputs to, workings of and outputs from mechanisms, calculations, methodologies, processes and/or measurements and/or computer models developed by GSS to assist in determining Decisions;
- (ii) the ITO of any Applicant other than the Applicant making the Complaint; and
- (iii) the actual value and nature of goods supplied at any sight to any Applicant other than the Applicant making the Complaint.

55 If arbitration proceedings are already pending between GSS and the Applicant, the arbitrator may determine, where in his opinion it is expedient so to do, that any further disputes shall be resolved in the same arbitral proceedings. If he so determines, the parties shall be treated as having consented to such disputes being resolved accordingly and neither party shall commence or continue any other proceeding (whether by way of arbitration or litigation) with respect to that dispute.

56 If court proceedings are already pending between GSS and the Applicant which arise under or in connection with the arrangements constituted by the Rough Diamond Supply Agreement, any further such disputes must be resolved by way of litigation.

57 The Applicant hereby irrevocably appoints a person in England (which may, for example, be the London office of its broker, a law firm or a bank) as its agent for the service of process, and it will provide to GSS such details of the person so appointed as GSS may request.

Part 6 Investigations by the Ombudsman at the request of the Commission

58 The Commission may request the Ombudsman to investigate whether or not Improper Procedures have been followed by GSS or whether or not provisions governing the provision of information to GSS by Applicants or third parties have been properly observed.

59 If the Commission makes such a request, the Commission shall give written notice to the Ombudsman, stating the nature of its request and providing a summary of the issues relevant to its request.

60 The Ombudsman shall conduct such inquiries as he considers reasonably necessary to investigate the subject matter of the Commission's request and shall provide the Commission with a report of his findings in relation thereto (to which paragraph 69 will apply). For this purpose, in conducting such an investigation, the provisions of paragraphs 26 – 32 shall, so far as they are appropriate, apply by analogy.

Part 7 Investigations by the Ombudsman on his own initiative

61 The Ombudsman may conduct an investigation under this Part where he has reasonable grounds for believing that either (a) Improper Procedures may have been followed by GSS or (b) the provisions governing the provision of information to GSS have not been properly observed.

62 Before commencing an investigation under this Part, the Ombudsman shall notify GSS of his intention to commence an investigation and provide a summary of the grounds on which he

believes that Improper Procedures may have been followed. Within 14 days after the date of such notice, GSS may submit representations to the Ombudsman in which case the Ombudsman shall consider whether, having regard to GSS's representations and any other material circumstances, it is appropriate to commence the investigation. If, following that consideration, the Ombudsman continues to believe that he has reasonable grounds for believing that Improper Procedures may have been followed by GSS, he shall commence such investigations as are reasonably necessary to enable him to determine whether Improper Procedures have been followed.

- 63** In conducting such an investigation, the provisions of paragraphs 26 – 32 shall, so far as they are appropriate, apply by analogy.
- 64** If, having conducted his investigation and heard GSS's comments on his initial determination, the Ombudsman concludes that GSS has followed Improper Procedures, the Ombudsman shall issue a final determination to that effect and may include in the determination such recommendations as he thinks fit with a view to correcting the Improper Procedures identified in the determination.
- 65** If, at any stage of the investigation, the Ombudsman concludes that GSS has not followed Improper Procedures in the manner that led him to initiate the investigation, he shall discontinue the investigation and issue a determination to that effect (of which a copy will be given to GSS).
- 66** For the avoidance of any doubt, any determination of the Ombudsman pursuant to paragraph 64 may, in addition, impose all or any part of the incremental costs of the Ombudsman upon GSS.
- 67** Any determination and recommendation made by the Ombudsman pursuant to paragraph 64 shall not be binding on GSS but GSS shall provide the Ombudsman with a report explaining the action that it has taken following the final determination and recommendation and, where it has not fully implemented the final determination and recommendation, explaining why it has not done so.

Part 8 Ombudsman's reports to the Commission

- 68** When the Ombudsman issues a final determination and/or recommendation (including for the avoidance of doubt following an investigation that the Ombudsman has initiated under Part 7), he shall simultaneously notify it to the Commission. Upon request by the Commission, the Ombudsman shall provide a copy of all documents in his possession on which his decision was based.
- 69** In accordance with Council Regulation (EC) No 1/2003 and Commission Regulation (EC) No 773/2004, the Commission shall only use any report or information supplied to the Commission by the Ombudsman for the purposes of the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union. For the avoidance of doubt, such reports cannot be relied upon by Applicants under these Terms of Reference.
- 70** The Ombudsman shall provide to the Commission an annual written report summarising his activities under these Terms of Reference in respect of that year. The report shall be provided no later than 30 March of the following calendar year. The report shall, in particular, cover:
- the fulfilment by the Ombudsman of his duties and responsibilities pursuant to paragraph 11 of these Terms of Reference;

- the steps taken by GSS with regard to Ombudsman's determinations and recommendations; and
- any issues or problems which the Ombudsman has encountered in the execution of his duties and responsibilities.

71 The Ombudsman will publish on the GSS Extranet a non-confidential summary of the annual report that it has sent to the Commission.

Part 9 GSS's additional obligations

72 GSS shall ensure that the Ombudsman has such unrestricted access (subject to reasonable notice) to its premises, staff, systems, information, records and documentation (irrespective of the form in which such information, records and documentation is stored), save for legally privileged advice, as he might reasonably require for the fulfilment of the duties and responsibilities assigned to him.

73 GSS shall be responsible for agreeing with the Ombudsman appropriate terms and conditions of engagement.

74 Subject to applicable laws, GSS's corporate policy shall provide for a range of disciplinary procedures and appropriate sanctions in respect of GSS staff whose actions or omissions are found to give rise to a breach by GSS of the Rough Diamond Supply Agreement.

75 GSS shall make the existence of the Ombudsman procedure known by:

- (a) providing Applicants with a copy of the Terms of Reference prior to the announcement of any Admission Decision under the Rough Diamond Supply Agreement;
- (b) providing Applicants who qualify as a Sightholder under the Rough Diamond Supply Agreement (which shall incorporate the Terms of Reference) upon or as soon as reasonably practicable after notification of their admission;
- (c) making available to GSS non-Sightholder rough diamond customers with a copy of the Terms of Reference; and
- (d) (in addition to those documents published on the Ombudsman's website), making available on its internet site the Terms of Reference, the Ombudsman's contact details as well as any other relevant documents (e.g. procedural guides).

76 Within six weeks of receipt of the Ombudsman's determination, GSS shall inform the Ombudsman of the steps taken in order to implement the Ombudsman's recommendations in accordance with these Terms of Reference.

77 In any case where GSS implements the recommendation of the Ombudsman pursuant to paragraphs 41(ii) or 42(ii), it shall promptly inform the Ombudsman of all relevant factors relating to any re-considered Supply Decision or Strategic Supply Decision. In circumstances where GSS has concluded that it cannot implement a further Supply Decision or Strategic Supply Decision (e.g. because it cannot redirect goods that have been offered to other Applicants), GSS will explain the reasons to the Ombudsman for not implementing a further Supply Decision or Strategic Supply Decision.

78 GSS shall ensure practical working arrangements for the effective implementation of Part 4 in discussion with the Ombudsman (for example, elaboration of procedures for the submission of information, guidelines for the Applicants as to the required information as well as

submission procedures, an agreed timetable and procedure for the Ombudsman's review process etc.).

79 GSS shall inform the Commission of any modifications to these Terms of Reference.

Part 10 Governing Law

80 Save for GSS, an Applicant and the European Commission, no third party has rights (including under the Contracts (Rights of Third Parties) Act 1999) to enforce these Terms of Reference (or arrangements entered into under them).

81 These Terms of Reference are governed by, and shall be construed in accordance with, the laws of England and Wales.

31 March 2015

ANNEX 1

Non-exhaustive list of Conflict Parties

CATEGORIES OF CONFLICT PARTIES

The De Beers Group of Companies
Existing Sightholders
Applicants for supply as Sightholders or Accredited Buyers in the 2015–2018 contract period
Customers of De Beers Auction Sales
Diamond mining competitors (including, but not limited to, Alrosa Co. Ltd., Dominion Diamond Corporation, Rio Tinto Diamonds, Petra Diamonds Limited)

ASSOCIATIONS

World Diamond Council (WDC)
World Federation of Diamond Bourses (WFDB)
International Diamond Manufacturers Association (IDMA)
Council for Responsible Jewellery Practices (CRJP)
Confédération Internationale de la Bijouterie, Joaillerie et Orfèvrerie (CIBJO)
Gem & Jewellery Export Promotion Council (GJEPC) (India)
Antwerp Diamond High Council (HRD)
European Council of Diamond Manufacturers (ECDM)
The Israel Diamond Institute (IDI)
Jewelers Vigilance Committee (JVC)
Jewelers of America (JA)
British Jewellers' Association (BJA)
National Association of Goldsmiths (NAG)
Israeli Diamond Manufacturers Association (IsDMA)
Diamond Manufacturers and Importers Association (DMIA)
American Gem Society (AGS)
Manufacturing Jewelers Society of America
Canadian Jewelers Association (CJA)
Australian Jewelers Association (AJA)

ANNEX 2

Disclosure of any relationships with the Ombudsman

Dermot Gleeson, S.C.,
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Dublin 7.

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17th December 2014

I, Dermot Gleeson Senior Counsel of the Law Library, Four Courts, Dublin 7, the Supplier of Choice Ombudsman confirm that as of the 17th of December 2014 there exists no conflict of interest of which I am aware in respect of my role as Ombudsman and that I am independent of any of the conflict parties which are known to me.

I confirm that in this connection I have reviewed the non-exhaustive list of parties (which list has been furnished to me by De Beers) and is set out in Annex 1 – Non-exhaustive list of Conflict Parties to the 2014 Terms of Reference for the Ombudsman.

I further undertake to avoid taking any steps which would create any conflict of interest during the term of my mandate and for three years after the conclusion of the mandate.


Dermot Gleeson

De Beers Global Sightholder Sales

GUIDE TO THE OMBUDSMAN

(Fourth Edition, 1 December 2014)

A. Introduction

Background

The office of Ombudsman was established in 2002¹, when the European Commission (the "Commission") approved a series of documents (known as the Supplier of Choice Documentation) that would govern the relations between The Diamond Trading Company Limited ("the DTC") and its present and future Sightholders. As part of these arrangements, it was agreed that an independent Ombudsman would be established for the purposes of considering Complaints relating to:

- decisions in respect of the admission of Sightholders to the DTC client base ("Admission Decisions"); and
- decisions to supply Sightholders or failures to implement decisions to supply Sightholders ("Supply Decisions").

The Terms of Reference for the Ombudsman govern the remit of the Ombudsman function and provide details of the Ombudsman procedures. Effective from 1 May 2007, the Terms of Reference of the Ombudsman were extended to include:

- the capacity to conduct independent investigations either on his own initiative, or at the request of the European Commission; and
- a role in ensuring that Confidential Information which goes beyond what is required or permitted to be obtained by the DTC ("excessive Confidential Information") is not passed to DTC.²

On 31 March 2013, De Beers' contracting party for sightholder sales became De Beers Global Sightholder Sales (Proprietary) Limited ("DBGSS"). The sightholder sales

¹ Established by a Notice issued pursuant to Article 19(3) of EC Council Regulation No 17 and published in the Official Journal on the 9th November

² The Terms of Reference were subsequently updated in January 2008 and December 2010

scheme also covers sales to South African Sightholders made by De Beers Sightholder Sales South Africa (“SSSA”), formerly DTC South Africa, and sales to Namibian Sightholders via Namibia Diamond Trading Company (“NDTC”).³ For the purposes of this Guide, I refer to DBGSS, or any other member of the De Beers group fulfilling sightholder sales as “GSS”.

In July 2014, GSS announced its updated model for the allocation of rough diamonds during the period from March 2015 to 2018. In addition to sales to Sightholders by way of term contract, a small proportion of additional goods (referred to as “Strategic Supply”) will be available to invited applicants that meet certain Strategic Supply objectives. Further, explain goods will be made available to “Accredited Buyers” (in addition to Sightholders). An Accredited Buyer might have applied to qualify as a Sightholder.

A revised draft of the Terms of Reference for the Ombudsman was provided to Applicants for supply during the 2015 to 2018 contract period on 1 December 2014; whilst still in draft, GSS has confirmed it is unlikely to be subject to any substantive changes. The amendments in the draft Terms of Reference reflect the changes to the distribution model, reduce the extent of the Confidential Information required to be reviewed by the Ombudsman and revise the definition of Improper Procedures (to which any valid Complaint must be referenced).

Purpose of this Guide

This Guide has been issued by the Ombudsman as an additional source of information about the powers and procedures of the Ombudsman. It does not supersede the Terms of Reference for the Ombudsman and defined terms used in this Guide have the same meaning as in the Terms of Reference for the Ombudsman.

This Guide supersedes the ‘Guide to the Ombudsman (Third Edition May 2011)’ issued on 3 May 2011 (and all earlier Guides to the Ombudsman and Guidance Updates).

This Guide includes, at section C below, the principles by which the Ombudsman acts and, at sections F and G below, a brief summary and explanation of his powers and of the complaints procedure.

³ Effective 15 October 2013, DTC Botswana ceded its rights and obligations to DBGSS in respect of local sales in Botswana

B. The Ombudsman

The present Ombudsman is Mr Dermot Gleeson SC, a senior barrister and former Attorney General of Ireland, who has many years experience as a practitioner and adviser in the fields of commercial and administrative law. He has held a number of directorships in public companies. He was appointed as Ombudsman on 7 July 2003, and his appointment was extended in 2007 and again in 2014 until 30 April 2018.

The Ombudsman may be contacted by writing to Ms Rachel Kramer, Secretary to the Ombudsman, P.O. Box 46148, London EC4A 4WZ, England or at ombudsman@socombudsman.com. The Secretary may be contacted on +44 (0)20 7694 5281.

C. Principles

The Ombudsman is wholly independent and impartial in the exercise of his functions.

The Office of the Ombudsman is physically and organisationally separated from those persons and entities subject to his jurisdiction.

The Ombudsman will at all times exercise his functions free from outside influence and free from actual or potential conflicts of interest.

The Ombudsman's primary role is to ensure that, in respect of Decisions which are the subject of Complaints made or referred to him, the provisions of the relevant contractual documentation have been adhered to and also to ensure that GSS has not acted in a manifestly unreasonable, irrational or arbitrary manner.

The Ombudsman cannot act outside the limits of his jurisdiction, which are prescribed by the Ombudsman's Terms of Reference.

The Ombudsman will receive, consider and determine each Complaint in an objective and fair manner, free from bias, and will treat all parties without favour or prejudice.

The Ombudsman will complete investigations of Complaints in a timely manner.

D. Confidentiality

The Ombudsman will not disclose in any determination or recommendation, information of the kind covered by the obligation of professional secrecy within the

meaning of Article 339 of the Treaty on the Functioning of the European Union (formerly Article 287 of the Treaty establishing the European Community).

Furthermore, the Ombudsman will not reveal:

- information which he has promised to keep confidential; or
- information whose confidentiality must be respected by law; or
- information whose disclosure would result in unnecessary harm to the commercial interests of the parties to the Complaint or to third parties.

E. The Ombudsman's remit in respect of review of Confidential Information concerning Applicants

From 1 May 2007, the Ombudsman's Terms of Reference were extended to include the independent review of certain documents containing information about Applicants used for the purposes of Admission or Supply Decisions. This review is to ensure that the documents do not contain any excessive Confidential Information which goes beyond what is required by GSS or permitted to be obtained by GSS under the contractual documentation. Under Part 4 of the Ombudsman's Terms of Reference (as revised), the Ombudsman is required to review:

- (i) Confidential Information provided by Applicants to GSS for the purposes of GSS taking Strategic Supply Decisions; and
- (ii) Confidential Information obtained from Applicants where such Confidential Information is then provided to GSS by a third party retained by GSS to verify the accuracy of Confidential Information submitted by Applicants' in respect of Admission, Supply or Strategic Supply Decisions.

If the Ombudsman considers that information provided by an Applicant is confidential and goes beyond what is required or permitted, he will request the Applicant to provide a revised (or redacted) version of the information within a defined time period. If the Applicant fails to provide an appropriately revised (or redacted) version, the Ombudsman will make the redaction without any replacement text, and will forward the document to GSS in that form.

F. The Ombudsman's remit in respect of Complaints brought by Applicants

The Ombudsman's duties and responsibilities

The duties and responsibilities of the Ombudsman are:

- to investigate any Complaint that is made or referred to him in accordance with the Terms of Reference;
- following such investigation, to determine whether or not Improper Procedures have been followed by GSS; and
- in the event that he determines that Improper Procedures have been followed by GSS, to recommend that the relevant Decision (or failure to implement a Supply or Strategic Supply Decision) be reconsidered by GSS in accordance with the appropriate procedures.

What matters can be reviewed

The Ombudsman has power to consider Complaints by Applicants and referrals by GSS in respect of Improper Procedures in relation to the following:

- an Admission Decision concerning the Admission or Removal of the Applicant to or from the list of Sightholders;
- a Supply Decision concerning the aggregate value and nature of supply that GSS proposes to make to the Applicant for Sightholder status;
- a Strategic Supply Decision being the Admission or Supply Decision made by GSS in response to a Strategic Supply Request; and
- failure to implement a Supply or Strategic Supply Decision.

Who May Apply

The Ombudsman will consider Complaints from any Applicant, whether an existing Sightholder or a new Applicant:

- who has applied for admission to the list of Sightholders; or
- who has applied for supply of rough diamonds as a Sightholder from GSS under the contractual arrangements; or
- who has applied for Strategic Supply admission or supply.

The Ombudsman will also consider Complaints referred to him by GSS.

Grounds of Review

The Ombudsman will only consider Complaints about Improper Procedures in relation to the above mentioned reviewable matters. The Ombudsman's remit is limited to the investigation of qualifying Complaints in accordance with the Ombudsman's Terms of Reference.

Under Part 5 of the Ombudsman's Terms of Reference, the Ombudsman's role in respect of any Complaint made or referred to him is to determine whether or not Improper Procedures have been followed by GSS. "Improper Procedures" means (in respect of any Decision or any failure to implement a Supply Decision or any failure to implement a Strategic Supply Decision) GSS (a) failing to act in accordance with the Contractual Documentation; or (b) acting in a manifestly unreasonable or irrational or arbitrary manner.

It is not in the power of the Ombudsman to adjudicate on the merits of the relevant contractual documentation, the criteria applied or any relevant weightings which the arrangements attach to them. To the extent that a Complaint is based upon grounds pertaining to the merits of the GSS scheme itself, such grounds will be deemed inadmissible by the Ombudsman.

When to Apply

Applicants must comply with the procedures, time limits and requirements of prior good faith negotiations set out in Part 5(A) of the Terms of Reference before making a Complaint to the Ombudsman. In particular, an Applicant must notify GSS that it has a potential Complaint as soon as reasonably practicable and in any event within 14 days of being informed of the relevant Decision or becoming aware of the failure to implement a Supply Decision or Strategic Supply Decision, as appropriate. Furthermore, prior to making a Complaint or referring a Complaint to the Ombudsman, the Applicant and GSS will discuss the subject matter of the Complaint in good faith and attempt to resolve their differences as soon as reasonably practicable. If no decision is reached within 14 days of GSS being notified of the Complaint, the parties have 21 days thereafter to make or refer the Complaint to the Ombudsman.

Late notification of Complaints and extensions of time

In accordance with paragraph 21 of the Ombudsman's Terms of Reference, Complaints that are referred to the Ombudsman after expiry of the 21 day period for notification of Complaints may be investigated by the Ombudsman provided that both parties give their consent to the extension of the deadline, but the Ombudsman has discretion to decline to consider late Complaints even where the parties agree to modified time limits.

Where the time limit for notification of the Complaint is extended by agreement of the parties, the Ombudsman may consider it necessary to impose strict time limits upon the parties in respect of provision of evidence in order to allow him sufficient time for his inquiries.

If any party fails to comply with a time limit, the Ombudsman has the power under paragraph 31 of the Ombudsman's Terms of Reference to either proceed to the next stage of the investigation or to dismiss the Complaint. However, the Ombudsman will consider requests for extensions of time from either party where there are reasonable grounds for so doing.

How to submit a Complaint

Complaints or referrals should be addressed directly in writing to the Ombudsman at ombudsman@socombudsman.com, as well as to GSS or to the Applicant, as appropriate. Complaints or referrals should be signed by a competent officer of the Applicant or of GSS, as appropriate.

Complaints or referrals should state the nature of the Complaint or referral and provide in reasonable detail a summary of the issues relevant to the Complaint or referral. The Applicant or GSS, as the case may be, must include copies of all documentation available to them which they consider relevant to the Complaint or referral.

Subject to the above requirements, there is no prescribed format for the submission of Complaints or referrals, and there is no fee payable in respect of the making of either a Complaint or a referral.

G. Outline of Ombudsman's procedures

Overview

All investigations by the Ombudsman are carried out in English.

The Ombudsman may give advice or directions on the procedure for making or referring a Complaint to him and may issue further general guidelines in the future.

When investigating a Complaint, the Ombudsman will give both parties an opportunity to make representations.

Either the Applicant or GSS may request the Ombudsman to issue a preliminary determination on whether any aspect of a Complaint falls within the Ombudsman's Terms of Reference. In such a case, in the absence of exceptional circumstances and provided that the basis of the Complaint is sufficiently clear, the Ombudsman will issue a preliminary determination on Admissibility prior to proceeding to investigate any resultant Complaint. In the event that the basis of the Complaint is insufficiently clear, the Ombudsman may make such inquiries as to allow him to clarify the Complaint before proceeding to issue such a preliminary determination on Admissibility.

Information required for the Ombudsman's procedures

The Ombudsman will request submissions from both parties in respect of the Complaint or, where admissibility has been contested, on those grounds of Complaint deemed admissible by the Ombudsman.

Following receipt of those submissions, the Ombudsman may make further, separate requests for evidence from each party within prescribed time limits. Evidence provided by the parties will not be made available to the opposing party if it comprises Confidential Information. The evidence requested will be such documentation (save for legally privileged advice) as the Ombudsman considers relevant to the Complaint.

In relation to the evidence which may be required or admitted when he considers a Complaint, the Ombudsman may:

- give directions as to the issues on which evidence is required;
- give directions as to whether the evidence should be oral or written; and the way in which it should be presented to the Ombudsman; and

- impose time limits for complying with these directions.

The Ombudsman may seek meetings with either party and may request unrestricted access to key personnel and the systems of either party.

The Ombudsman will reach a decision on the basis of the information provided and in doing so may also take account of the failure of either party to provide requested information. The Ombudsman may dismiss a Complaint if the Applicant fails to supply required information.

If either party fails to comply with a time limit, the Ombudsman may either proceed to the next stage or, if appropriate, dismiss or uphold the Complaint.

The Ombudsman's inquiries of GSS

The Ombudsman will have unrestricted access (subject to reasonable notice) to the premises, staff and systems of GSS and, save for legally privileged advice, to all such information, records and documentation of GSS as he may reasonably require for the fulfilment of the duties and responsibilities assigned to him.

In investigating Complaints of Improper Procedures, the Ombudsman and his staff will, where appropriate:

- (i) seek witness statements from, and/or question, GSS personnel in regard to the process underlying the Decision and may require a demonstration of the process with unrestricted access to the detailed considerations and calculations performed; and
- (ii) follow the evidential trail of the complainant's application through each stage of the assessment process from the data provided to GSS to the ultimate assessment of the applicant relative to all other applicants.

Format and volume of submissions

Submissions provided by the parties should contain a clear and concise written summary of all the relevant matters in respect of each ground of Complaint and should be accompanied by statements from relevant witnesses and copies of all relevant documents (for example, this may include correspondence between the parties, documents referred to in the witness statements, and other key documents). All pages

should be uniquely numbered (i.e. paginated) and an index should be provided which is fully referenced to all the attached documents.

Where submissions contain Confidential Information, the parties should provide a non-confidential version to the other party (copied to the Ombudsman).

In cases of Complaints relating to Improper Procedures, submissions from GSS must also include documentation recording the assessment of the complainant's application at each stage in the evaluation and allocation process.

The Ombudsman may prescribe the format in which evidence requested by him should be provided in accordance with paragraph 29 of the Ombudsman's Terms of Reference. Unless otherwise indicated, evidence should be provided in a similar format to submissions, i.e. paginated and fully referenced, and should comprise (a) statements from relevant witnesses and (b) material documentary evidence.

The Ombudsman may in some cases provide parties with a detailed list of the issues/queries on which evidence is required. In particular, the Ombudsman may seek specific evidence to support inter alia (i) any unsubstantiated statements made by the parties in their submissions, and (ii) any gaps in the trail of evidence provided to date.

Evidence from third parties

In accordance with paragraph 30 of the Ombudsman's Terms of Reference the Ombudsman may also, with the prior agreement of the parties, request third parties to submit relevant documentation. In considering any such documentation the Ombudsman will fully respect principles of fair procedures and natural justice insofar as his investigations and determinations may impact upon the interests of such third parties.

Oral hearing

If the Ombudsman considers that a determination or recommendation can be made without convening a hearing, he will do so. If not, he will invite the parties to attend a hearing. A party who wishes to request a hearing must do so in writing, setting out the issues which such party wishes to raise. No hearing will be held after the Ombudsman has issued his determination or recommendation.

Provisional assessment and Final Determination

All determinations and recommendations of the Ombudsman will be in English, in writing and specify the reasons upon which they are based. A copy of all determinations and recommendations shall be provided to the Applicant and to GSS.

At the completion of his inquiries, either with or without a hearing and in accordance with such directions as the Ombudsman may have made, the Ombudsman will issue an initial determination or provisional assessment ("Provisional Assessment") to the complainant and GSS. This will set out his preliminary conclusions and recommendations, if any, in respect of the Complaint giving reasons upon which the conclusions are based. The Provisional Assessment will prescribe the time limits within which the parties may provide a written response. The Provisional Assessment will not contain any Confidential Information in accordance with paragraph 39 of the Ombudsman's Terms of Reference.

The Provisional Assessment will record the background to the Complaint, details of any procedural issues decided, the details of the matters complained of and the response to those Complaints, the steps taken by the Ombudsman, his Provisional Assessment and reasons in respect of the Complaint and his initial determination in relation to the award of costs.

The parties are afforded the opportunity to provide written comments upon the Provisional Assessment and any initial award of costs which the Ombudsman will then consider before issuing his final determination (the "Final Determination").

The Final Determination will record the Ombudsman's final determination in respect of the Complaint and the award of costs. The Ombudsman does not intend to publish any Final Determinations unless both parties agree to this course of action and the Ombudsman considers it appropriate to do so. Final Determinations are notified to the European Commission in accordance with paragraph 68 of the Ombudsman's Terms of Reference.

In relation to recommendations by the Ombudsman to reconsider an Admission Decision, Supply Decision, Strategic Supply Decision or to reconsider a failure to implement a Supply Decision or a Strategic Supply Decision, the Ombudsman may require GSS to keep him apprised of the steps taken to implement (if possible) such

Decisions in accordance with paragraphs 40, 41 and 42, as well as with paragraphs 76 and 77 of the Ombudsman's Terms of Reference.

Award of costs

In accordance with paragraph 38 of the Ombudsman's Terms of Reference, the Ombudsman has the power to impose all or any part of the reasonable fees and direct costs of the prevailing party and the incremental costs of the Ombudsman upon the unsuccessful party, subject to certain further considerations.

In general, the Ombudsman is mindful that Complaints must be made in many cases without the complainant having full visibility of the detailed operation and workings of GSS' evaluation and allocation process. The Ombudsman is of the view that a bona fide complainant should not be penalised in costs for bringing a Complaint which, had the complainant been granted full visibility of all stages in the assessment process, it could have seen to be unsustainable.

On the other hand, the Ombudsman is more inclined to impose a costs award upon complainants who bring unsuccessful Complaints where they have full knowledge of all the relevant facts at the time they make the Complaint.

Notwithstanding these general considerations, in considering any award of costs under paragraph 38 of the Terms of Reference, the Ombudsman is also obliged to consider (i) whether the Applicant has prevailed solely on grounds other than those particularised in its Complaint, and (ii) whether the result of any reconsidered Decision made by GSS following a determination of the Ombudsman would be less favourable (or neutral) for the complainant compared to the result of the original Decision. In either case, it will not usually be appropriate to make an award in favour of the Applicant of more than 50% of the Applicant's reasonable fees and direct costs.

Where the Ombudsman makes a preliminary determination on Admissibility in accordance with paragraph 23 of the Terms of Reference and determines that any aspect of the Complaint does not fall within the scope of the Ombudsman's Terms of Reference, the Ombudsman is then prohibited under paragraph 38 of the Terms of Reference from imposing any of the Applicant's reasonable fees and direct costs relating to those matters that do not fall within the scope of the Terms of Reference on GSS.

Timescale

The Ombudsman will investigate and determine a Complaint as soon as reasonably practicable following its submission or referral.

The Ombudsman's Terms of Reference requires the Ombudsman to issue his Provisional Assessment as soon as reasonably practicable and, in any event:

- in respect of an Admission Decision: on or before 6 months after a disputed Admission Decision, but the Ombudsman may extend the period for consideration by up to 3 months where the circumstances of the Complaint (such its complexity or the necessity to consider new evidence) so require; and
- in respect of a Supply Decision or Strategic Supply Decision: at least 2 months prior to commencement of the supply period to which GSS' next Supply Decision relates or within such other period as the Ombudsman, GSS and the Sightholder agree in writing.

H. Compensation where a Supply Decision cannot be corrected

Under Part 5(E) of the Ombudsman's Terms of Reference compensation may be requested by a Sightholder in certain cases where the Ombudsman has determined that Improper Procedures have occurred.

These provisions apply where:

- (i) the Ombudsman recommends that GSS reconsider a Supply Decision or a Strategic Supply Decision, or failure to implement a Supply or Strategic Supply Decision; and
- (ii) GSS reconsiders the Supply Decision or Strategic Supply Decision, or failure to implement a Supply decision or Strategic Supply Decision and finds that, in order for the Ombudsman's recommendation to be implemented, the Applicant should have received additional goods in the remainder of the Supply period to which that Supply Decision or Strategic Supply Decision relates; but

- (iii) GSS is unable to supply the Applicant with such additional goods by reason of its other ITOs and commitments to supply (including the offer of such goods to any other Applicant or Applicants).

In such cases, where the Applicant requests the Ombudsman to recommend the payment of compensation (instead of GSS supplying additional goods to which the Applicant is deemed entitled), the compensation is limited to the profit which the applicant could reasonably have expected to have made in respect of such additional goods, had they been supplied.

Any recommendation made by the Ombudsman shall be binding on GSS subject to GSS' right to invoke any of the dispute resolution procedures set out in Part 5(F) of the Ombudsman's Terms of Reference.

I. The Ombudsman's remit in respect of the investigation of Complaints at the request of the European Commission

In addition to investigating Complaints, the Ombudsman may be requested by the Commission (in accordance with Part 6 of the Ombudsman's Terms of Reference) to investigate whether Improper Procedures have been followed or whether the provisions governing the provision of information to GSS have been properly observed.

The Ombudsman is obliged to provide a report on his findings arising from any such investigation to the Commission.

J. The Ombudsman's remit in respect of the investigation of matters on his own initiative

The Ombudsman is also empowered to conduct an investigation (in accordance with Part 7 of the Ombudsman's Terms Of Reference) where by reason of facts or information that have come to his attention in the course of his duties he has reasonable grounds for believing that Improper Procedures have been followed or that the provisions governing the provision of information to GSS have not been properly observed.

The Ombudsman shall issue a determination on his findings which shall not be binding on GSS, although GSS shall be required to provide a report to the Ombudsman explaining the action it has taken on foot of such findings. Any such determination will

also simultaneously be notified to the Commission in accordance with the Ombudsman's Terms of Reference.

K. Ombudsman's Reports to the European Commission

The Ombudsman shall notify any Final Determinations made by him, to the Commission.

The Ombudsman shall submit an annual report to the European Commission describing activities and follow up actions by GSS no later than 30 March of the following calendar year (a non-confidential summary of this report will be published on the GSS Extranet).

1 December 2014

GLOSSARY OF TERMS

Accredited Buyer or **DBAB** means an Applicant or a qualifying customer which meets the Compliance Criteria but which does not qualify for supply as a Sightholder. References to “Accredited Buyer” or “DBAB” in the 2015-2018 Supply Documentation shall include or be deemed to refer to, as the case may be, “Applicant”, as the context so requires.

Admission Decision means a decision of GSS concerning admission of the Applicant to, or removal of the Applicant from, GSS’ list of Sightholders pursuant to the 2015-2018 Supply Documentation.

AFSA means the Arbitration Foundation of South Africa.

Aggregated Diamonds means Boxes containing Diamonds sourced from any one country or combination of countries (but excluding boxes containing Diamonds sourced solely from a mine or mines in Canada or Namibia (to the extent applicable)).

Ancillary Workers means those workers whose primary role is non-diamond related and includes (but is not limited to):

- (i) General Manager (non-diamond)
- (ii) Management staff (non-diamond)
- (iii) Finance and accounts staff (non-diamond)
- (iv) Non diamond related maintenance staff
- (v) Import & export staff
- (vi) IT staff
- (vii) Human resources staff
- (viii) Canteen staff
- (ix) Security staff
- (x) Office administration staff
- (xi) Receptionist
- (xii) General office staff
- (xiii) Stores clerk
- (xiv) Medical staff
- (xv) Trainees (non-diamond).

Anti-Corruption Laws means:

- (i) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (“OECD Convention”);
- (ii) the Foreign Corrupt Practices Act (“FCPA”) of 1977 of the United States of America (as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998);
- (iii) the Bribery Act 2010 of the United Kingdom;
- (iv) the Prevention of Corruption Act, the Penal Code and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act of Singapore;

- (v) the United Nations Convention against Corruption 2003; and/or
- (vi) any other applicable law which:
 - (a) prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or advisor of such person; and/or
 - (b) is broadly equivalent to the FCPA and/or the Bribery Act 2010, or was intended to enact the provisions of the OECD Convention, or which has as its objective the prevention of corruption, and which is applicable in the jurisdiction in which we and you are registered, conduct business and/or in any aspect of the relevant Contract is to be performed.

Applicant means a corporate entity applying for Sightholder status or Accredited Buyer status, as applicable, from GSS and, unless the context otherwise requires, any member of its Applicant Group. References to “Applicant” in the 2015-2018 Supply Documentation shall (i) include, or (ii) be deemed to refer to, as the case may be, “Sightholder” or “Accredited Buyer”, as the context so requires.

Applicant Group has the same meaning as Compliance Group, as defined in the Introduction to Sightholder/Accredited Buyer Groups, in respect of all references in the 2015-2018 Rough Diamond Distribution Application Process.

Applicant Guidance Notes or **Applicant Notes** means the information published by GSS from time to time to assist Applicants in completing their applications for rough diamond supply from GSS (International), and/or GSS (Botswana) and/or SSSA and/or De Beers Canada.

Approved Auditor means the auditor of an Applicant that has been approved by GSS for the purpose of submitting a Financial Workbook in respect of the Applicant complying with the Financial Compliance Criteria of the 2015-2018 Rough Diamond Distribution Application Process.

Arbitration Notice means a notice served by GSS as the claimant on the Sightholder or Accredited Buyer, as applicable, to proceed with a dispute by way of arbitration.

BBBEE means Broad-Based Black Economic Empowerment as defined in the South African Broad-Based Black Economic Empowerment Act No. 53 of 2003 as revised from time to time (relevant for applications to SSSA only).

Beneficiation Compliance Criteria means together the Beneficiation Relative Performance Criteria and the Mandatory Beneficiation Compliance Criteria.

Beneficiation Relative Performance Criteria means the criteria set out in Annexes 3 and 4 of the 2015-2018 Supply Agreement.

Best Practice Principles or **BPP** means the standards of conduct with regards to business, social and environmental responsibilities that apply to the entire De Beers Group, all Sightholders and Accredited Buyers and certain third parties, including Substantial Contractors of the De Beers Group and Sightholders or Accredited Buyers, as further defined in the Best Practice Principles Programme Manual, as published from time to time on the De Beers Group website.

Box means a box of Diamonds sorted by Category and description and offered from time to time by GSS to Sightholders and Accredited Buyers.

BPP Assurance Programme or **Assurance Programme** means the systematic means of monitoring compliance by members of the De Beers Group, Sightholders, Accredited Buyers,

relevant Contractors (which include, for the avoidance of doubt, Substantial Contractors) and, where relevant, their business partners in the diamond industry, with the Best Practice Principles. The BPP Assurance Programme has been developed to provide evidence to supply chain partners, consumers and other interested stakeholders which confirms that the exploration, extraction, sorting, cutting and polishing of Diamonds, and the manufacture and sale of diamond jewellery by members of the De Beers Group or by Sightholders or Accredited Buyers, are undertaken in a professional, ethical and environmentally friendly and accountable manner.

Business Secrets includes (without limitation):

- (i) the inputs to, workings of and outputs from assessments, allocations and/or the computer models developed or used by GSS to assist in determining Admission Decisions and Supply Decisions;
- (ii) the ITO of any Sightholder other than the Sightholder making a complaint; and
- (iii) the actual value and nature of Diamonds supplied at any Sight to any Sightholder other than the Sightholder making a complaint.

Category means one or more of the categories (as the context so requires) of Diamonds as may be amended by GSS in its absolute discretion from time to time.

Citizen means a citizen of Botswana as defined in the Citizenship Act of Botswana 1982.

Commercial Group has the meaning given to that term in Annex 5 of the 2015-2018 Supply Agreement.

Commission means the European Commission.

Complaint means a complaint made by an Applicant, who is applying to become a Sightholder only, in accordance with the Ombudsman Terms of Reference to the effect that GSS adopted Improper Procedures in (i) making a Decision or (ii) failing to implement a Supply Decision.

Compliance Criteria means a set of ethical and financial criteria (as published by GSS from time to time) used by GSS in order to assess an Applicant's eligibility for supply from GSS as a Sightholder and/or Accredited Buyer.

Compliance Declaration means the letter of acceptance and applicant Compliance Criteria declarations that must be submitted to GSS by each Applicant's Key Individuals and on behalf of each Applicant Group in order to be eligible to apply for Sightholder or Accredited Buyer status.

Compliance Group has the meaning given to that term in Annex 5 to the 2015-2018 Supply Agreement,

Compliance Roadmap means in relation to an Existing Sightholder Applicant that applies for supply pursuant to the 2015-2018 Rough Diamond Distribution Application Process and which is not fully compliant with one or more of the Financial Compliance Criteria by the application process submission date (17 October 2014), a description of how it intends to become fully compliant with such Compliance Criteria for the purposes of accounting periods starting on or after 1 January 2016.

Compliance Statement means the documents that Sightholders and Accredited Buyers are required to submit to GSS in order to be eligible to apply for Sightholder or Accredited Buyer status and includes the relevant Compliance Declarations.

Confidential Information means information of the kind covered by the obligation of professional secrecy within the meaning of Article 339 of the Treaty on the Functioning of the European Union (ex-Article 287 of the Treaty establishing the European Community).

Consolidation (IFRS) Group has the meaning given to that term in Annex 5 of the 2015-2018 Supply Agreement.

Contract means any contract for the sale of Boxes between GSS and a Sightholder or an Accredited Buyer.

Contractor has the meaning given to it in the Best Practice Principles Programme Manual, as published from time to time on the De Beers Group website.

DBAS means De Beers Auction Sales Singapore PTE. Limited.

De Beers Group means the ultimate parent or the top entity of the De Beers Group and any corporate entity in which such parent or top entity directly or indirectly (i) holds or controls a majority of the voting rights either by means of an equity shareholding or by written agreement with the shareholders; or (ii) can appoint or remove a majority of the board of directors. Any Producer Partnership DTC also forms part of the De Beers Group.

De Beers Rough Diamond Source means rough diamonds sourced from GSS, NDTC, SSSA and DBAS including but not limited to ITO availability, Ex Plan Availability, Exceptional Stones, Un-aggregated Diamonds and any other out of balance stocks offered by De Beers from time to time.

Decision means an Admission Decision or a Supply Decision.

Demonstrated Demand means the value of purchases made by a Sightholder, Accredited Buyer or Applicant (as relevant) from a De Beers Rough Diamond Source over the immediately preceding Selling Period and/or Reference Period (or part thereof) by reference to the Minimum Demonstrated Demand Threshold and/or the Producer Country Minimum Demonstrated Demand Threshold.

Demonstrated Demand Requirements means Sightholders with an ITO in the previous Selling Period will be allocated an ITO following the ITO Re-planning Process provided they (i) meet the Minimum Demonstrated Demand Threshold and/or the Producer Country Minimum Demonstrated Demand Threshold (as relevant), and (ii) meet the Minimum Box Demand Level and/or the Producer Country Minimum Box Demand Level.

Diamond means all natural rough gem quality diamonds, which are uncut, uncleaved, unsawn and untreated and which may be offered for sale by GSS to Sightholders or Accredited Buyers, as the case may be.

Diamond Producing Countries means Botswana, Namibia, Canada and South Africa, as the context so requires.

Diamond Related Business includes (i) a corporate entity deriving any revenue from the sale of rough diamonds, polished diamonds or diamond-containing products, (ii) a holding company whose holdings are in businesses of this nature, or (iii) a corporate entity whose principal business is in direct association with the diamond pipeline. All references relate to natural diamonds only and exclude entities solely involved in diamond mining.

Diamond Worker means those workers whose primary role and daily work requires them to be involved with unprocessed, semi-processed or fully processed diamonds, and includes (but is not limited to):

- (i) Diamond Production Manager
- (ii) Quality Controller
- (iii) Auto Polisher Operator
- (iv) Sarin / OGI / Helium M Box Operator
- (v) All Fixers and Setters
- (vi) Acidising Staff (stone boiling and cleaning)
- (vii) Rough Sorter
- (viii) Polished Sorter
- (ix) Diamond Production Supervisor
- (x) Diamond Planner / Marker
- (xi) Production control administration staff
- (xii) Abrasive Sawyer
- (xiii) Laser Operator
- (xiv) Girdle Polisher (Manual and Automatic)
- (xv) Polisher (preparing, blocking, bottom stars and halves)
- (xvi) Auto-Polishing Operator
- (xvii) Bruter (Manual and Automatic)
- (xviii) Diamond Trainers and Instructors
- (xix) Maintenance staff (Diamond related)
- (xx) Diamond Trainees.

For the purposes of the GSS (Botswana) Operational Facility Policy only, Diamond Worker shall mean those workers who fall within the definition set out above and who are also Citizens.

DIE means a designated investment exchange as recognised by the FCA.

Ex Plan Availability means supply of non-ITO goods for a Sightholder and/or an Accredited Buyer which may comprise of surplus, cut-offs, buy-backs, refusals and out of balance stocks which it shall make available in the form of individual assortments, including, for the avoidance of doubt, any non-ITO goods supplied by DBAS.

Exceptional Stone(s) means Diamonds which are either true fancy colours (as from time to time determined by GSS) and/or are individually valued by GSS at US\$250,000 or more (or such other value as GSS may, in its absolute discretion, decide).

Existing Sightholders means Sightholders that qualified for supply in accordance with the 2012-2015 Supplier of Choice Documentation.

Expatriate means a person who is not a citizen of Botswana as defined in the Citizenship Act of Botswana 1982, Chapter 01:01, as amended from time to time.

Facility has the definition given to it in the Operational Facility Policy as published from time to time by GSS (Botswana) or SSSA (as applicable).

FCA means the UK Financial Conduct Authority.

Financial Compliance Criteria means the IFRS Compliance, Unqualified Audit and Maximum Leverage criteria, as referred to in Annex 1 - Mandatory Compliance Criteria to the 2015-2018 Supply Agreement.

Financial Workbook means the pro-forma template a Sightholder and/or Accredited Buyer Applicant must submit to GSS as part of the 2015-2018 Rough Diamond Distribution Application Process to demonstrate satisfaction of certain Compliance Criteria.

Force Majeure Event means the occurrence or effect of any event or circumstance (or any combination of events and/or circumstance) that: (i) is beyond the reasonable control of GSS (or the relevant member of the De Beers Group) or the Sightholder or Accredited Buyer (as the case may be); and (ii) partly or wholly prevents, hinders or delays due performance by that party of its obligations under the 2015 – 2018 Supply Agreement (other than the obligation to pay money) and, provided that the above conditions are satisfied, includes but is not limited to:

- (i) fire, flood, washout, storm, lightning, windstorm, hurricane or other acts of God;
- (ii) acts of public enemies, war (whether declared or undeclared), civil war, piracy, terrorist activities, embargo, blockage, revolution, political disturbance, sabotage, explosion, riot, insurrection, mobilisation, civil commotion;
- (iii) strikes, lockout, labour disputes or other form of industrial action or industrial disturbances, stoppages of workmen;
- (iv) acts, orders or restrictions of governmental or local authorities (including interruptions occurring as a result of such acts, orders or restrictions of governmental or local authorities) or of any court, or controls on exports; and
- (v) any circumstance or event which affects GSS' (or any member of the De Beers Group's) ability to produce, transport, deliver or sell Diamonds including mining events (including a roof collapse or slope failure as relevant), other production, facility or transport infrastructure damage failure or breakdown, or technical damage, failure or breakdown of GSS' (or the relevant member of the De Beers Group's) IT/software systems.

Global Minimum Box Demand Level means the purchases at a Box level that a Sightholder, Accredited Buyer or Applicant must have made globally across all supply locations to a value greater than or equal to 3x minimum Box.

GSS means De Beers Global Sightholder Sales (Proprietary) Limited.

GSS (Botswana) means the sale of rough diamonds to Sightholders and/or Accredited Buyers by GSS for beneficiation in Botswana.

GSS (International) means the sale of rough diamonds to 'international' Sightholders and/or Accredited Buyers by GSS in Botswana (but not necessarily for beneficiation purposes)

GSS Rough Diamond Distribution means the distribution model adopted in respect of the sale of Diamonds by GSS.

HMRC means Her Majesty's Commissioner of Revenue & Customs.

IFRS means International Financial Reporting Standards.

Improper Procedures means, in respect of any Decision and any failure to implement a Supply Decision and any failure to implement a Strategic Supply Decision in accordance with the 2015-

2018 Supply Documentation, GSS acting in a manifestly unreasonable, irrational or arbitrary manner.

ITO means the aggregate quantity and nature of Diamonds GSS intends to make available for inspection by (but shall not be obliged to supply to) a Sightholder at each relevant Sight Location during the subsequent Selling Period (or such other Selling Period as is agreed between GSS and a Sightholder from time to time in accordance with the 2015-2018 Supply Documentation).

ITO Re-planning Process means the process by which a Sightholder's ITO is calculated for a subsequent Selling Period subject to the satisfaction of the Demonstrated Demand Requirements and being allocated at least one Box at a Minimum Box Allocation Level.

ITO Swaps Policy means the swaps policy which may be offered by GSS to Sightholders.

KAM Team means one or more Key Account Managers.

Key Account Manager or **KAM** means the main point of contact between Sightholders with Planned ITOs and GSS who assists in managing that relationship.

Key Individual means an individual who:

- (i) is the principal/owner of the Applicant; and/or
- (ii) is a partner in the Applicant; and/or
- (iii) is a director or shadow director (as recognised by local law) of the Applicant; and/or
- (iv) holds a senior day to day management position in the Applicant; and/or
- (v) is the legal or beneficial holder of a majority of the shares in the Applicant or is the individual entitled to exercise or control the exercise of a majority of the voting rights over the shares in the Applicant; and/or
- (vi) is entitled or able to appoint or remove a majority of the members of the board of the Applicant or to otherwise exercise dominant influence over the Applicant.

KPCS means the Kimberley Process Certification Scheme.

Large Stone(s) means a Diamond which (i) weighs greater than 14.8 carats and (ii) has a value that is greater than US\$1,000 per carat (or such other value as may be determined by GSS from time to time in its absolute discretion), but shall not include an Exceptional Stone (or any other Category as may be determined by GSS from time to time).

LCIA means the London Court of International Arbitration.

Mandatory Beneficiation Compliance Criteria means the criteria set out in Annexes 3 and 4 of the 2015-2018 Supply Agreement.

Minimum Box Allocation Level means the lowest value by reference to minimum number of Boxes that a Sightholder, Accredited Buyer or Applicant needs to be allocated at a Box level in the ITO Re-planning Process in order to qualify for an ITO in that Box (subject to also meeting the Minimum Overall ITO Level). If following the ITO Re-planning Process the allocation is less than the Minimum Box Allocation Level, the initial allocation of the relevant Box or Boxes will be removed and redistributed. The Minimum Box Allocation Level is the same as the Minimum Box Demand Level.

Minimum Box Demand Level means the purchases at a Box level that a Sightholder, Accredited Buyer or Applicant must have made over the immediately preceding Selling Period and/or Reference Period (or part thereof) in order to participate in the ITO Re-planning Process

for that Box. This is set at a minimum of 3x the minimum Box size for GSS (International) supply unless the existing ITO in the 2014/15 Selling Period was less than 3x minimum Box and their Global Minimum Box Demand Level was greater than or equal to 3x minimum Box..

Minimum Demonstrated Demand Threshold means the minimum threshold of Demonstrated Demand for a GSS (International) ITO which is the value of purchases made by a Sightholder, Accredited Buyer or Applicant (as relevant) from a De Beers Rough Diamond Source over the immediately preceding Selling Period and/or Reference Period (or part thereof) in order to be able to participate in the ITO Re-planning Process. An Existing Sightholder with an ITO of less than US\$15m in the 2014/15 Selling Period will need to have Demonstrated Demand of at least US\$10m in the 2014/15 Selling Period to participate in the 2015/16 ITO Re-planning Process. An Existing Sightholder will need to have Demonstrated Demand of at least US\$15m in the 2015/16 Selling Period to participate in the 2016/17 ITO Re-planning Process. For all non-existing Sightholders, the Minimum Demonstrated Demand Threshold to participate in the 2015/16 ITO Re-planning Process will be US\$15m.

Minimum Overall ITO Level means the lowest overall value in US dollars that an Accredited Buyer needs to be allocated in an ITO Re-planning Process in order to qualify for an ITO and become a Sightholder at a level of US \$10m.

NDTC means the Namibia Diamond Trading Company (Proprietary) Limited.

Non-Substantial Contractor has the meaning given to it in the Best Practice Principles Programme Manual, as published from time to time on the De Beers Group website. For the avoidance of doubt, Non-Substantial Contractor includes any relevant Virtual Contractor. A Contractor that is not a Substantial Contractor but that is used or engaged by four or more Sightholders or Accredited Buyers (or Compliance Groups, as defined in Annex 5 to the 2015-2018 Supply Agreement) shall be deemed to be a Non-Substantial Contractor for the purposes of the 2015-2018 Supply Documentation (as applicable).

Ombudsman means the person appointed by the Commission for the purposes of considering (amongst other things) Complaints relating to Admission Decisions and Supply Decisions.

Ombudsman Mandate means the agreement relating to the appointment of the Ombudsman under the 2015-2018 Supply Documentation between GSS and the Ombudsman.

Operational Facility means a factory or facility owned, controlled or which is leased or rented (or equivalent thereof) by a Sightholder in the territory of Botswana and/or South Africa (as applicable), such that the Sightholder manages and operates the facility for the purpose of preparing, polishing and/or manufacturing diamonds sourced from GSS (Botswana) and/or SSSA to support beneficiation, including maximising the economic benefit through job creation and the development of a diamond manufacturing industry in Botswana and/or South Africa (as applicable).

Operational Facility Policy means the policy as published from time to time by GSS (Botswana) or SSSA (as applicable) relating to the operational status of a Sightholder and/or an Accredited Buyer Facility.

PDS means preferred delivery schedule of a Sightholder.

Planned ITO means an ITO under which a Sightholder will (i) receive the Planned ITO Services and (ii) pay the Supply Planning Fee to GSS or SSSA (as the case may be).

Planned ITO Services means the relevant services set out in Appendix A to the Sightholder Supply Planning Fee Terms and Conditions which are provided by GSS or SSSA (as the case may be) to Sightholders that voluntarily elect to receive a Planned ITO.

Planned Supply Planning Services means the relevant services set out in Appendix A to the Accredited Buyer Supply Planning Fee Terms and Conditions which are provided by GSS or SSSA (as the case may be) to Accredited Buyers that voluntarily elect to receive a Planned Supply Planning Service.

Producer Country Minimum Box Demand Level means the purchases at a Box level that a Sightholder, Accredited Buyer or Applicant must have made over the immediately preceding Selling Period and or Reference Period (or part thereof) in order to participate in the ITO Re-planning Process for that Box. For GSS (Botswana) supply 1x minimum Box for the 2015/16 ITO Re-planning Process changing to 3x minimum Box for the 2016/17 ITO Re-planning Process. For SSSA supply 2x minimum Box for the 2015/16 and subsequent ITO Re-planning Processes.

Producer Country Minimum Demonstrated Demand Threshold means the minimum threshold of producer country Demonstrated Demand for producer country (Beneficiation) ITOs and is as follows:

- (i) GSS (Botswana) US \$15m
- (ii) SSSA US \$5m
- (iii) Ontario US \$5m
- (iv) Northwest Territories US \$5m.

Producer Partnership DTC means any joint venture sales company in which the De Beers Group is in partnership with any of the Diamond Producing Countries or any other country.

Reference Period means the period evidencing Demonstrated Demand through purchases from DBAS typically commencing on 1 March and ending on 28 February in the immediately subsequent calendar year.

Representatives means in relation to a person (or group of persons), its Key Individuals, its (or their representatives) employees, officers, directors, agents, advisers, consultants, contractors and sub-contractors (and includes in the case of a party, any person performing that party's obligations under a contract).

2015-2018 Rough Diamond Distribution Application Process means the process by which Applicants apply for Sightholder and/or Accredited Buyer status in respect of a 2015-2018 Supply Agreement over the Supply Period.

Sanction Authority means any of the United Nations, the European Union, Her Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the United States State Department, the governments of the Commonwealth of Australia, Switzerland, South Africa or any replacement of other regulatory body enforcing economic and trade sanctions legislation in such countries.

Sanctioned Entity means any person, being an individual corporation, company, association or other entity who:

- (i) is the subject or target of a SDN Sanction or in respect of which a SDN Sanction has been imposed or targeted; or

- (ii) is owned, operated, controlled by any person who is the subject or target of a SDN Sanction or in respect of which a SDN Sanction has been imposed or targeted; or
- (iii) is the subject or target of a State Sanction or in respect of which a State Sanction has been imposed or targeted.

Sanctions means any SDN Sanction, State Sanction and any other similar sanctions, regulations, statutes, prohibitions and official embargo measures that relate to the enforcement of economic and trade sanctions which are maintained, amended and imposed by any Sanction Authority (each a Sanction).

SDN Sanction means any Sanction used as a basis for listing a person on specially designated nationals or blocked person's lists and or any replacement lists which are maintained and imposed by any Sanction Authority.

Selling Period means an ITO supply period typically commencing on 31 March and ending on 30 March in the immediately subsequent calendar year.

Services means any of the services set out in Appendix A to the Supply Planning Fee Terms and Conditions, and includes both the Standard ITO Services and Planned ITO Services (in each case, in respect of a Sightholder) and the Standard Supply Planning Services and Planned Supply Planning Services (in each case, in respect of an Accredited Buyer), or any one of them, as applicable.

Sight means the occasion during an ITO organised by GSS at venues and times to be determined by it in its absolute discretion when the Sightholder may inspect Boxes offered for sale.

Sightholder means any firm, corporate entity or other trading organisation to which Boxes are or may be supplied subject to the 2015 – 2018 Supply Agreement and additional 2015-2018 Supply Documentation. References to "Sightholder" in the 2015-2018 Supply Documentation shall (i) include, or (ii) be deemed to refer to, as the case may be, "Applicant", as the context so requires.

Sightholder Signature means the logo depicted in the Sightholder Signature Licence and Guidelines, as may be revised or updated from time to time.

Sightholder Signature Licence means the licence pursuant to which a Sightholder is entitled to use, subject to the terms of such licence, the Sightholder Signature.

Sight Location means any location at which GSS organises Sights in either Botswana or South Africa (as the context so requires) or any other country or venue as may be determined by GSS from time to time.

SSSA means De Beers Sightholder Sales South Africa for the sale of rough diamonds to Sightholders and/or Accredited Buyers by GSS for beneficiation in South Africa.

Standard ITO means an ITO under which a Sightholder will receive the Standard ITO Services.

Standard ITO Services means the relevant services set out in Appendix A to the Sightholder Supply Planning Fee Terms and Conditions which are provided by GSS or SSSA (as the case may be) to Sightholders that voluntarily elect to receive a Standard ITO.

Standard Supply Planning Services means the relevant services set out in Appendix A to the Accredited Buyer Supply Planning Fee Terms and Conditions which are provided by GSS or SSSA (as the case may be) to Accredited Buyers that voluntarily elect to receive a Standard Supply Planning Service.

State Sanction means any program that prohibits/and or restricts (i) trade with or investment in, or the transfer of property or assets to or from, a specified country, including its government, government subdivisions, agencies and other entities under the control or acting on behalf of government or (ii) engaging in transactions that relate to investing in and/or provision of advice or assistance in relation to a specified country which, in each case, is maintained, amended and imposed by any Sanction Authority.

Strategic Supply means the supply of rough diamonds by GSS (in its sole and absolute discretion) to an Applicant on and subject to the terms and conditions set out in the 2015 – 2018 Supply Agreement, which, for the avoidance of doubt, will be supplied in the same way as ITO goods.

Strategic Supply Request means the formal request which may be provided by GSS (in its sole and absolute discretion) to an Applicant to apply to receive Strategic Supply before the start of each Selling Period.

Substantial Contractor has the meaning given to it in the Best Practice Principles Programme Manual, as published from time to time on the De Beers Group website. For the avoidance of doubt, Substantial Contractor includes any relevant Virtual Contractor.

2015-2018 Rough Diamond Supply Agreement or 2015-2018 Supply Agreement means the contractual agreement between GSS (International), GSS (Botswana), Sightholder Sales South Africa or De Beers Canada (as the case may be) and a Sightholder or Accredited Buyer for the supply of Diamonds over the Supply Period.

Supply Decision means a decision of GSS concerning the aggregate value and nature of supply that it proposes to make available to the Applicant for the 12 month period (or such other period as may be agreed between GSS and an Applicant from time to time in accordance with the 2015-2018 Supply Documentation) to which such proposed supply relates.

2015-2018 Supply Documentation means together (or, where relevant, any of) the 2015-2018 Supply Agreement, the Best Practice Principles and the associated BPP Assurance Programme, Conditions of Sale, Supply Planning Fee Terms and Conditions, the Sightholder Signature Licence, the Ombudsman Terms of Reference, any Compliance Roadmaps and any documents referred to in those documents, in each case from time to time in force.

Supply Period means the period commencing on 31 March 2015 and terminating on 30 March 2018.

Supply Planning Fee means, in respect of (i) those Sightholders that voluntarily elect to receive a Planned ITO; or (ii) those Accredited Buyers that voluntarily elect to receive a Planned Supply Planning Service, the fee that is equal to 1.5 per cent of the total value in US dollars (or part thereof) of the Boxes purchased by the relevant Sightholder or Accredited Buyer (as the case may be) at each Sight Location during the Selling Period (or such other amount or period as is notified by GSS or SSSA (as the case may be) from time to time in accordance with the 2015-2018 Supply Documentation), which is payable by such Sightholders or Accredited Buyers (as the case may be) to GSS or SSSA (as the case may be) for the Planned ITO Services or Planned Supply Planning Services (as set out more fully in condition 3.3 and Appendix B to the Supply Planning Fee Terms and Conditions) (as the case may be).

Supply Planning Fee Terms and Conditions means the Sightholder Supply Planning Fee Terms and Conditions and the Accredited Buyer Supply Planning Fee Terms and Conditions (as applicable).

Third Party Verification or **3PV** means the process by which GSS instructs a Third Party Verifier to verify (i) the content of a Compliance Statement and Declaration submission made by an Applicant or a Sightholder (as the case may be) to GSS or (ii) compliance by the Sightholder or Accredited Buyer (or member of their respective Compliance Groups), or relevant Contractor, as applicable, with the 2015-2018 Supply Documentation or the Best Practice Principles (as applicable).

Third Party Verifier means an independent organisation that GSS has engaged to undertake Third Party Verification.

Un-Aggregated Diamonds means Boxes containing Diamonds sourced solely from a mine or mines in Canada or a Category of Diamonds (to the extent applicable).

US GAAP means United States Generally Accepted Accounting Principles as recognised by the U.S. Securities and Exchange Commission.

Virtual Contractor has the meaning given to it in the Best Practice Principles Programme Manual, as published from time to time on the De Beers Group website. For the avoidance of doubt, a Virtual Contractor may be deemed to be a Substantial Contractor or a Non-Substantial Contractor, as the case may be, for the purposes of the 2015-2018 Supply Documentation (as applicable).

31 March 2015