



LETŠENG DIAMONDS

STANDARD TERMS AND CONDITIONS APPLICABLE TO THE SUPPLY OF GOODS AND SERVICES TO LETŠENG DIAMONDS (PTY) LTD

1. DEFINITIONS

- 1.1. **Anti-Corruption Laws** means the Bribery Act, 2010 (UK) as applied to UK companies and their subsidiaries as well as those laws concerning bribery, corruption or similar activities in the Kingdom of Lesotho and the Republic of South Africa;
- 1.2. **Confidential Information** means, in relation to either Party, information relating to it or its holding company or subsidiaries of its holding company ("the Group") which is made available (whether before or after this Agreement is executed) in writing, visual or machine readable form (including by fax and other forms of electronic submission) or orally to the other Party or such other Party's advisors for the purposes of delivery, considering, negotiation, advising in relation to or furthering the transaction contemplated in terms of this Agreement and includes any information, analysis, compilations, notes, studies, memoranda or other documents derived from, containing or reflecting such information but excludes information which:
 - 1.2.1. is publicly available at the time of its disclosure under this Agreement; or
 - 1.2.2. becomes publicly available following disclosure under this Agreement (other than as a result of disclosure by the recipient or any other person contrary to the terms of this Agreement); or
 - 1.2.3. was lawfully in the recipient's possession prior to disclosure under this Agreement (as can be demonstrated by the recipient's written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to it being so disclosed; or
 - 1.2.4. following disclosure under this Agreement, becomes available to the recipient (as can be demonstrated by the recipient's written records or other reasonable evidence) from a source other than the disclosing Party, which source is not bound by an obligation of confidentiality to the disclosing Party in relation to such information.
- 1.3. **Contractor** means the service provider or supplier of goods to the Principal, as the case may be, as specified in the Purchase Order.
- 1.4. **Intellectual Property** means, but is not limited to, copyright, patents, trademarks, service marks, designs, inventions, trade secrets, know how, trade or business names and all other intellectual property and proprietary rights, whether registrable or not and in whatever form embodied, including all documentation and materials describing or embodying the foregoing;
- 1.5. **Mining Agreement** means the agreement relating to the mining lease, entered into between the Principal and the Government of Lesotho on 02 October 2019.
- 1.6. **Premises** means the mine situated at Letšeng-la-Terai, Mokhotlong District, Lesotho.
- 1.7. **Principal** means Letšeng Diamonds (Pty) Ltd, a company registered in Lesotho under registration number i95/259.
- 1.8. **Purchase Order** means a written order for the supply of goods and/or services issued by the Principal to the Contractor.

2. PAYMENT TERMS

- 2.1. The Principal will not be liable for payment to any Contractor for the supply of any goods or services unless a Purchase Order was received by the Contractor from the Principal.
- 2.2. The Contractor shall, by not later than the 5th (fifth) day of the following month for the supply of any goods or services during the preceding month (the "Required Invoice Date"), furnish the Principal with a tax invoice in respect of the amounts due to the Contractor for the supply of goods or services, together with any other documents which the Principal deems necessary and/or reasonably requires to support the amounts claimed in that invoice.
- 2.3. In addition, the Contractor shall furnish the Principal with a monthly statement capturing all the tax invoices issued by the Contractor to the Principal for the relevant month, by no later than the 5th (fifth) day of the following month ("Required Statement Date")
- 2.4. The Principal shall, (if it has no objection in respect of such statement, which objection may be raised at any time prior to or subsequent to payment) pay the amounts due in respect of such statement to the Contractor, within 30 (thirty) days of the date of the relevant statement. The Contractor is not entitled to render a statement or to receive any payment unless the goods in respect of which the payment is to be made have been delivered to the Premises by the Contractor in proper condition, or the services have been properly rendered, unless the parties otherwise agree on the payment terms in writing.
- 2.5. The Contractor shall send the invoice and Statement referred to in this clause to accountspayables@letseng.co.ls
- 2.6. All amounts payable in terms of this agreement will be inclusive of Value-Added Tax in terms of the Lesotho Value Added Tax Act No. 9 of 2001.

- 2.7. The Principal shall deduct withholding and other taxes as required by any relevant legislation, including but not limited to the Lesotho Income Tax Act No. 9 of 1993, from amounts to be paid to the Contractor.
- 2.8. In the event that the Contractor pollutes the environment at the mine or breaches any of the provisions of **clause 3.6** of the Principal's Health, Safety and Environment Contractor Specifications, the Principal shall deduct from the fee payable to the Contractor either in instalment or once off in full, the costs incurred by the Principal for the remediation of any environmental damage made by the Contractor. The costs shall be calculated based on, but not limited to, the following:
 - 2.8.1. the then market price of the products or services used for remediation, dependent on the extent of damage;
 - 2.8.2. products and service provider transportation costs;
 - 2.8.3. laboratory testing costs (note: treatment takes longer than anticipated due to low temperature condition at the mine);
 - 2.8.4. Cost of remediation (Labour costs).

3. TAXES AND LICENCES

- 3.1. The Contractor shall comply with all the tax laws of Lesotho, including but not limited to the Income Tax Act of 1993, the Value Added Tax Act of 2001 and the Customs and Excise Act of 1982 as amended. The Principal shall not make any payment of any duties or taxes on behalf of the Contractor.
- 3.2. The Contractor warrants that it has all the business and other licences and registrations that are required for it to supply services or goods to the Principal as required by the laws of Lesotho and any other relevant country, as well as all necessary permits relating to the Contractor or its personnel, including any work permits required for any of its personnel.
- 3.3. The Contractor indemnifies the Principal against any claims or actions by any party, including any Government department or agency that may be brought by such third party in relation to the supply of services or goods to the Principal.

4. THE CONTRACTOR'S RESPONSIBILITIES

- 4.1. The Contractor will render any and all services in a professional and workmanlike manner, in accordance with high industry standards, and, if relevant, to specification.
- 4.2. All goods or services supplied to the Principal will be of the specified quality, will comply with all industry standards, and if relevant, to all specifications provided by the Principal.
- 4.3. Should any goods or services supplied or rendered not conform to the required quality standards, the Contractor will, free of charge, replace the defective goods or properly render the services within 7 (seven) days of written notice received from the Principal. Where at the discretion of the Principal this is not practicable, the Principal may ask for a refund of any amount paid in respect of the relevant goods or services, or that the Principal be credited with such amount.
- 4.4. The Contractor will for its own account provide all the staff required to meet its contractual obligations.
- 4.5. The Contractor agrees to familiarise itself with all of the Principal's policies that apply to it, and agrees to procure the relevant policies from the Principal.

5. THE PRINCIPAL'S RESPONSIBILITIES

The Principal shall, where relevant, provide the necessary working facilities, information and data in its possession, to enable the Contractor to discharge its responsibilities under any agreement between the parties.

6. INFORMATION AND CONFIDENTIALITY

- 6.1. The receiving party will treat and hold as confidential all Confidential Information communicated to it by the disclosing party.
- 6.2. The Contractor agrees that it will use the confidential information only for the purposes of supplying the goods or services and will only make the confidential information available to those of its personnel who are actively involved in the execution of any obligations under an agreement with the Principal, and then only on a "need to know" basis, and to implement reasonable security measures in this regard.
- 6.3. The Contractor agrees that it or its personnel will not directly or indirectly use or disclose any of the confidential information to any third party without the Principal's prior written consent.
- 6.4. Any documents provided to a party by the other party including written instructions, drawings, notes, memoranda, electronically transmitted information and records that comprise the disclosing party's confidential information which have or will come into the possession of the receiving party and its personnel, will be, and will at all times remain, the sole and absolute property of the disclosing party and shall promptly be handed over to the disclosing party by the receiving party when no longer required for the purposes of providing services or goods.

- 6.5. If the receiving party is uncertain about whether certain information is to be treated as confidential information, then such party is obliged to treat it as confidential information until the disclosing party advises in writing that the information can be disclosed.
- 6.6. Each party shall return or destroy all of the original confidential information and any copies and reproductions (both written and electronic) in its possession and in the possession of any third party to whom it has disclosed such confidential information:
 - 6.6.1. at any time upon the disclosing party giving written notice to do so; and/or
 - 6.6.2. within 14 (fourteen) calendar days of the date of termination of the Contractor's relationship with the Principal;
- 6.7. Each party shall avoid any material conflict of its own interests and those of the other party (and any of its affiliates) and, in particular, a party:
 - 6.7.1. shall not derive any economic benefit to which a party is not entitled by reason of the supply of the goods or services from the other party, its affiliates or from any other person in circumstances where that benefit is obtained in conflict with the interests of the other party and/or its affiliates; and
 - 6.7.2. shall notify the other party in writing, at the earliest opportunity practical under the circumstances, of the nature and extent of any direct or indirect material conflict of interests which a party may have or which may arise in respect of a party's interests and those of the other party and/or any of its affiliates.
- 6.8. The provisions of this **clause 6** shall survive the termination of this agreement.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. All rights, title and interest in and to the intellectual property that belonged to a party prior to the commencement date of this agreement shall remain the sole property of such party.
- 7.2. All rights, title and interest in and to the intellectual property relating to any products owned by the parties, their vendors, and / or Contractors and the software used to implement such products shall at all times remain the sole property of such parties, their vendors or Contractors.
- 7.3. Neither party shall in any manner alter or effect the display of the respective intellectual property (and disclaimers) of the other party, vendors or Contractors, without the prior written approval of the other party, vendor or Contractor or permit any other person to use such products.
- 7.4. The ownership of the rights in and pertaining to any new invention, discovery or improvement developed pursuant to this agreement specifically for the Principal or as part of the supply of goods or services, shall vest in the Principal, unless the parties agree otherwise in writing.
- 7.5. Should ownership in any such intellectual property vest in the Contractor or its shareholders, owners, directors, agents, consultants, employees, or any other associated person (collectively referred to herein as personnel), due to the operation of law, or for any other reason, the Contractor and all its personnel hereby agree to, promptly after having received a request to this effect from the Principal, cede or assign all such rights and transfer all ownership in all such intellectual property to the Principal, and the Contractor and its personnel hereby agree to sign any forms or documents of any nature to cede or assign rights or transfer ownership to the Principal to give effect to the provisions of this **clause 7**.
- 7.6. Ownership of the rights in and pertaining to any new invention, discovery or improvement developed specifically by the Contractor for its own account, shall vest in the Contractor.
- 7.7. Either party indemnifies the other party against any claim by any third party based upon an alleged infringement of any patent, trademark, copyright or other intellectual property.
- 7.8. All intellectual property belonging to the Principal ('The Principal's intellectual property') will remain the Principal's property and the Contractor will have no ownership of or other rights, title or interest in the Principal's intellectual property, except as provided in this Agreement.
- 7.9. As of the commencement date of this agreement, the Principal grants to the Contractor the right to use the Principal's intellectual property, without charge to the Contractor, solely for the supply of goods or services to the Principal. The Principal's intellectual property will be made available to the Contractor in such form and on such media as exists on the commencement date of this agreement. Except as otherwise approved or requested by the Principal, the Contractor will cease all use of the Principal's intellectual property when it no longer supplies the goods or services and shall return all the Principal's intellectual property.
- 7.10. The Contractor agrees to make all of its personnel aware of the provisions of this **clause 7** and agrees to enter into appropriate agreements with all of its personnel to ensure that provisions of this clause can effectively be enforced by the Principal against all personnel. The Contractor hereby indemnifies the Principal against all and any losses that the Principal may suffer should the Principal not be able to enforce any of its rights as set out in this agreement against any member of the Contractor's personnel due to the Contractor having failed to enter into appropriate agreements with its personnel.

8. LIMITATION OF LIABILITY

- 8.1. Notwithstanding any provision to the contrary in these standard terms and conditions, under no circumstances will the Principal be liable to the Contractor for any special, consequential, indirect

- or punitive damages, including without limitation, any loss of use, income or profits or anticipated profits, or loss of savings or business opportunities, business reputation, or goodwill, howsoever arising, whether such damages are based on agreement, delict, breach of any warrantee, or any other cause of action, and regardless of whether the Principal should have known about or foreseen the damages.
- 8.2. The Contractor indemnifies, protects and defends the Principal, its agents and employees from and against all actions, claims, losses and damages arising from any negligent act or omission by the Contractor in the performance of its obligations under the agreement, including any violation of legal provisions, or rights of others, in respect of patents, trademarks, and other forms of intellectual property such as copyright.
 - 8.3. The Contractor hereby warrants that in supplying the goods or services, it will not infringe the rights of any third party (including any copyright or other intellectual property rights), and the Contractor hereby indemnifies and holds the Principal harmless against all losses, damages, actions, proceedings, liabilities and/or claims of any nature whatsoever and howsoever arising which may be suffered or incurred by or be made against the Principal by reason of any breach of this warranty.

9. FORCE MAJEURE

- 9.1. Neither party will be liable to the other for any default or delay in the performance of its obligations as per the purchase order if it, and to the extent that such default or delay is caused by any act of God, war or civil disturbance, court order, or any other circumstance beyond its reasonable control, including but not limited to failures and fluctuations in electrical power or communications, (to the extent that such failures and fluctuations are beyond its reasonable control), destruction of production facilities or material by fire, earthquake or storm, labour disturbance, or temporary or permanent unavailability of any product essential to the fulfilment of its obligations as per the purchase order; provided however, that neither party shall be entitled to the benefits of this **clause 9.1** unless such party ("the Non-performing party") is without fault in causing such default or delay, and such default or delay could not have been prevented by the non-performing party through the use of alternative sources, workaround plans or other means (including with respect to the Contractor by the Contractor meeting its obligations to perform disaster recovery services).
- 9.2. Following any circumstance of force majeure, the Non-performing party shall notify the other party as soon as possible; be excused from further performance or observance of its obligation(s) so affected for so long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and co-operate with the other party in implementing such contingency measures as that other party may reasonably require.
- 9.3. The Contractor may not recover from the Principal any expense related to any circumstance of force majeure or the recommencement of its performance following such circumstance of force majeure, save for any amounts payable during termination as set out in the purchase order, if applicable.
- 9.4. If, in the reasonable discretion of the Principal, any circumstance of force majeure hinders the supply of goods or services which the Principal reasonably determines as critical, then at the Principal's discretion, the Principal may:
 - 9.4.1. if the circumstance of force majeure continues for more than 7 (seven) consecutive days, procure such critical goods or services from an alternative Contractor at the Principal's expense for so long as the circumstance of force majeure prevents the Contractor from supplying the goods or services, and the Principal's obligation to pay to the Contractor its fees and charges shall be reduced by the portion attributable to the supply of goods or services in question. The amount of the reduction shall rebuttably be presumed to be, and the Principal shall in the first instance be entitled to off-set against amounts payable to the Contractor, the Principal's costs in procuring the services in question from an alternative Contractor. If the Contractor objects to any part or the whole of such charges, and the parties cannot within a reasonable period resolve such dispute, it shall be referred for arbitration in terms of the Arbitration Foundation of Southern Africa ("AFSA") Rules; or
 - 9.4.2. if the circumstance of force majeure continues for more than sixty (60) consecutive days, terminate the purchase order either in whole or in part. In the case of a termination in part there shall be an equitable adjustment of the Contractor's fees and charges. In either event, the Contractor shall be required to satisfy its applicable obligations with respect to termination of this agreement.

10. TERMINATION

This agreement shall commence on the date of the issuance of an order and shall terminate upon complete delivery of the goods and/or services. In the event of a breach of this agreement, this agreement can be cancelled as set out in the breach clause below. Either party reserves a right to terminate this agreement by giving 14 days' written notice of cancellation to the Contractor.

11. SEVERABILITY

Any term or provision in these standard terms and conditions held to be illegal or unenforceable will be deemed amended to conform with the relevant legislation or legal requirement, or if it cannot be so amended without materially affecting the intention of the parties, it will be struck out, and the remainder of the terms of these standard terms and conditions will remain enforceable.

12. GOVERNING LAWS AND JURISDICTION

The laws of Lesotho shall govern the validity and interpretation of this Agreement, and the parties agree to the jurisdiction of the High Court of Lesotho.

13. SECURITY, HEALTH, SAFETY AND ENVIRONMENT

To the extent that the Contractor attends at the Principal's Premises:

- 13.1. the Contractor shall comply with all the Principal's health, safety and environmental policies, standards, procedures and requirements including the Principal's Health, Safety and Environment Contractor Specifications and the waste disposal standards, procedures and requirements. The Principal shall be responsible for providing all such standards, procedures and requirements in writing initially, and from time to time as and when these standards, procedures and requirements are amended and updated by the Principal;
- 13.2. the security and other regulations in force at the Principal shall be strictly adhered to by the Contractor and its personnel and sub-contractors at all times, particularly with regard to goods, personnel and equipment entering and leaving the Principal's Premises; and in addition:
 - 13.2.1. when on the Principal's Premises, the Contractor and its personnel and sub-contractors shall, if so required, submit themselves and their belongings to be searched at any time and in such manner as the Principal deems necessary, including being x-rayed;
 - 13.2.2. the taking of tools and equipment into the Mine is controlled and the Contractor and its personnel and sub-contractors shall abide by all regulations pertaining to this;
 - 13.2.3. accommodation of the Contractor's personnel and sub-contractors shall be the responsibility of the Principal. The Contractor shall not permit its Personnel to create any informal or squatter settlement on or adjacent to any premises of the Principal;
- 13.3. Should the Contractor bring into the Principal's Premises, any radioactive material, the Contractor shall be responsible for safe disposal of such material or hazardous waste from the use or maintenance of such material. The Contractor shall ensure that such disposal is done in accordance with the Basel Convention and other applicable laws and shall not remove any such material or hazardous waste from the Principal's Premises without the written approval of the the Principal's Health, Safety and Environment department.
- 13.4. The Contractor personnel and sub-contractors shall acquaint themselves with, and comply with, all the Applicable Laws and policies adopted by the Principal in respect of security. The Contractor acknowledges and agrees that:
 - 13.4.1. the Contractor's personnel and sub-contractors shall submit themselves to integrity testing and polygraph tests at any time and in whatever reasonable manner the Principal considers necessary;
 - 13.4.2. the Contractor's sub-contractors will only be permitted to enter the Principal's security areas subject to security clearance and approval by the Principal. The Contractor shall, on behalf of any of its sub-contractor, apply on the prescribed form for such sub-contractor's access to Premises at least 24 hours before anticipated entry;
 - 13.4.3. all Contractor's personnel and sub-contractors shall strictly adhere to all security and other regulations in force at the Mine;
 - 13.4.4. any person entering or leaving the security areas shall pass through the Principal's security entrances;
 - 13.4.5. any persons leaving the security areas shall submit themselves and or their personal effects to a search by the security officer on duty. Such search may include the dismantling or taking apart of any article;
 - 13.4.6. covert and overt surveillance cameras, audio monitoring equipment and alarms are installed in the various plants and buildings to protect the Principal's assets. It is an offence to intentionally damage, interfere with or move any installed security surveillance/audio monitoring equipment, cameras, alarms or cables or intentionally interfere in any way whatsoever;
 - 13.4.7. unless the Contractor's personnel and sub-contractors accept the provisions herein contained, freely and voluntary, they shall be prohibited from entering the Mine;
 - 13.4.8. any person deemed to pose a risk to the security of the Principal may be removed from the Premises by a security official and be refused re-entry;
 - 13.4.9. all persons accepting the provisions hereof will be issued with the Principal's identity card or permit and shall produce such permit whenever required to do so by a member of the security department on the Premises;
 - 13.4.10. the Principal or its security personnel shall at all times have open access to any area controlled by the Contractor for security purposes;

- 13.4.11. sorting, scratching, tampering or deliberately looking for diamonds in concentrate or any gravel by any person is strictly forbidden. Unauthorised handling of concentrate or kimberlite or gravel will be regarded as illegal sorting;
- 13.4.12. in the event the personnel or the sub-contractor of the Contractor is found in possession of diamonds, without a reasonable explanation thereof, or being reported for suspicion of having been in possession of diamonds at any particular time while in the employ of the Contractor or sub-contractor or prior to that or there being a strong suspicion of such possession, or in the event of corroborated allegations of such personnel or sub-contractor engaging in illicit dealings that may be harmful to the Principal, its personnel, property or products, the event will immediately be reported in writing to the Principal, the Lesotho Mounted Police and the Commissioner of Mines. Thereafter the said personnel will immediately be removed from the Premises and will not be allowed to return to the Premises until such time as proceedings to be brought against the said personnel or sub-contractor has been terminated in his/her favour.
- 13.5. The Principal may request replacement of the Contractor's personnel or sub-contractor who violates the policies, standards, procedures and other regulations of the Principal and the Contractor shall ensure that such request is immediately complied with subject to a Contractor's internal investigation and subject to relevant legislation and regulatory requirements.

14. BREACH

- 14.1. In the event that either party (the Defaulting Party) commits a breach of any of the material provisions of these terms and conditions, the party not in breach (the Aggrieved Party) shall be entitled to give the Defaulting Party written notice to remedy the breach complained of. If the Defaulting Party fails to comply with that notice within 10 (ten) days after receipt thereof (subject to any other provisions of these terms and conditions to the contrary), the Aggrieved Party shall be entitled to either cancel any agreement between the Parties that is of an on-going nature as against the Defaulting Party or to claim specific performance, without prejudice to the Aggrieved Party's right to claim damages and further without prejudice to such other rights as the Aggrieved Party may have at law.
- 14.2. Upon the occurrence of any of the events as set out below either party shall have the right to terminate this Agreement forthwith by notice in writing to the other party, without prejudice to any right the cancelling party may have against the other party for damages or otherwise:
 - 14.2.1. the Contractor effects or attempts to effect a compromise or composition with its creditors; or
 - 14.2.2. the Contractor is provisionally or finally liquidated, is placed under curatorship, or is placed in judicial management, whether provisionally or final; or
 - 14.2.3. the Contractor ceases or threatens to cease to carry on its normal line of business in the country of its incorporation of registration and/or in Lesotho; or
 - 14.2.4. the Contractor has caused or allowed any judgment to be entered against it which will materially impact on the supply of the goods or services, and failed within 14 (fourteen) days after such judgment coming to its knowledge to take steps to appeal against or apply for rescission of such judgment; or
 - 14.2.5. the Contractor has passed a special resolution for its winding up or dissolution; or
 - 14.2.6. the Contractor defaults or threatens to default in the payment of its liabilities generally, or commit any act or omission which would, in the case of an individual, be an act of insolvency.

15. HIRING OF EMPLOYEES AND CONDITIONS OF EMPLOYMENT

- 15.1. Neither party shall for the duration of any agreement between the parties solicit for employment, nor offer employment to, nor enter into any agreement for services with any person who is employed by the other party. The party that breaches this clause shall pay compensation to the innocent party in an amount that is equivalent to one year's basic salary of the recruited person.
- 15.2. The Contractor shall observe the provisions of the Labour Code Order 1992 ("the Labour Code") as Amended, particularly those relating to conditions of employment and employment of non-nationals.
- 15.3. The Contractor shall ensure that all its employees are insured in line with the Workmen's Compensation Act 1977 as amended, and shall furnish proof of same to the Human Resources (HR) department of the Principal at least two days before date of entry on Premises.
- 15.4. The Contractor shall ensure that all its non-national employees have the necessary permits permitting them to legally take on employment and to reside in Lesotho in line with the Labour Code and Aliens Control Act 1966 prior to assuming their duties.
- 15.5. Contractor shall observe the employment quotas provided by the Mining Agreement and shall comply with all other employment provisions therein entailed. Extracts of same shall be available from the Principal Human Resource department.
- 15.6. The Principal has zero tolerance to slavery and human trafficking and is committed to ensuring that there is no modern slavery or human trafficking in its supply chains or in any parts of its business.

- 15.7. The Contractor warrants that it has put in place policies, procedures and mechanisms, to avoid, identify and deal with modern slavery or human trafficking, and further agrees that it will align such policies, procedures and mechanisms to the policies, procedures and mechanisms of the Principal to the extent that the Principal's policies, procedures and mechanisms are more stricter than its own.
- 15.8. The Contractor agrees to use the following key performance indicators (KPIs) to measure its effectiveness in ensuring that slavery and human trafficking is not taking place in any part of its business or supply chains:
- 15.8.1. Performance of internal audits on procurement and other business policies;
 - 15.8.2. Use of labour monitoring and payroll systems; and
 - 15.8.3. Personal contact with next link in the supply chain and their understanding of, and compliance with, its expectations stemming from its obligations in terms of this clause.
- 16. WAIVER**
No waiver of any of these terms and conditions will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the waiver, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 17. ENTIRE AGREEMENT**
These terms and conditions constitute the entire agreement between the parties in respect of the subject matter hereof and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in writing and signed by both parties.
- 18. MONITORING AND LIAISON**
If so requested by the Principal, the parties shall jointly implement and maintain a performance management system. The Contractor and the Principal shall each designate an authorised person or department to act in its name for the purposes of smooth implementation of the terms of this Agreement.
- 19. NON-EXCLUSIVITY**
19.1. Nothing in these terms and conditions shall be construed as creating an exclusive relationship between the Principal and the Contractor.
19.2. In the event that the Contractor fails to supply and deliver goods or fails to properly provide services within the time periods agreed between the parties in writing, the Principal is entitled to obtain the supply of goods or services from a third party, and in the event of receiving a supply from a third party, the Principal shall not be liable to the Contractor for payment of the goods or services not delivered or rendered within the agreed time periods.
- 20. ASSIGNMENT AND SUB-AGREEMENTING**
The Contractor will not assign or otherwise transfer any rights or obligations under these terms and conditions, without the prior written consent of the Principal, which consent may not be unreasonably withheld.
- 21. NON-VARIATION**
No variation or consensual cancellation of these terms and conditions, and no addition to them shall be of any force or effect unless reduced to writing and signed by both parties.
- 22. INSURANCE**
The Principal may request that the Contractor properly and to the satisfaction of the Principal insures against all of the Contractor's liabilities under these terms and conditions. Written proof that such insurance has been taken out by the Contractor and is being maintained shall be given to the Principal within 7 (seven) days of request by the Contractor.
- 23. RISK**
The risk in and ownership of the goods supplied shall pass to the Principal on delivery of the goods at the Principal's Premises.
- 24. MINING AGREEMENT**
The Contractor acknowledges that it is familiar with the relevant clauses of the Mining Agreement that relate to Contractors at the Premises, and that may be applicable to the supply rendered by the Contractor to or at the Premises, and the Contractor agrees that it will comply with all relevant provisions of the Mining Agreement, and that it will not do anything that will in any way endanger the Principal's rights under the Mining Agreement.

25. ANTI-BRIBERY AND CORRUPTION MEASURES

- 25.1. The UK Bribery Act (the “Act”) which came into force in 2010 makes it an offence in the UK to fail to take proper measures in the prevention of bribery and corruption in its business activities worldwide. Gem Diamonds Limited has agreed to adhere to the provisions of the Act which also requires all entities in the Gem Diamonds Group (the “Group”) to do the same.
- 25.2. In complying with the Act, the Principal, as an entity in the Group, is required to put in place “adequate procedures” for the prevention of bribery and corruption. One such procedure is to ensure that all third parties are made aware of and comply with the relevant provisions of the Act.
- 25.3. It has always been the Principal’s policy to conduct business in an honest and ethical way, and without the use of corrupt practices or acts of bribery to obtain an unfair advantage. To this end, the Principal requires all its Consultants and/or Business Partners to:
- 25.3.1. comply with the Act, the Lesotho Prevention of Corruption and Economic Offences Act of 1999, and the Principal’s Anti-bribery Policy (the Policy);
- 25.3.2. not do or omit to do anything likely to cause the Principal to be in breach of any laws or provisions in 25.3.1 above;
- 25.3.3. not give, offer, promise, receive, or request any bribes, including in relation to any public official;
- 25.3.4. maintain throughout the term of its relationship with the Principal a program designed to ensure compliance with the laws and policies referred to in **clause 25.3.1** above, including an education and training program and measures reasonably calculated to prevent and detect violations of the Act;
- 25.3.5. allow the Principal, whether itself or through an agent, to conduct an audit of records and information held by the Consultant and/or Business Partner or its sub-contractors or any other relevant person in relation to the performance of the Consultant’s and/or Business Partners services to the Principal;
- 25.3.6. promptly notify the Principal of any allegation of fraud, bribery or corruption or unlawful practices made against the Consultant and/or Business Partner in court, arbitration or administrative proceedings, or any investigation commenced in respect of such allegations; at any time prior to, or during the term of the Consultant and/or Business Partner’s relationship with the Principal.

26. ACKNOWLEDGEMENTS BY THE CONTRACTOR

- 26.1. By accepting the purchase order for goods and/or services issued by the Principal and/or by signing below, the Contractor acknowledges that they have read and understood these terms and conditions as set out in this document well as the Policy and agrees to be bound by these terms and conditions and to, at all times, act in accordance with the relevant provisions of the Policy.
- 26.2. The Contractor’s representative warrants that the Contractor has the power, authority and legal right to sign and perform this Agreement and that the agreement to these standard terms and conditions has been duly authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with this document.
- 26.3. These standard terms and conditions shall be valid and binding upon the Contractor notwithstanding that the Contractor has signed an electronic copy thereof and whether or not such electronic copy contains the signature for and on behalf of the Contractor. An electronic signature on this document shall be deemed an original signature and shall not be subject to a dispute on the basis that it is an electronic signature.

Accepted and agreed:

For and on behalf of

Organisation:

Name:

Designation:

Date:

Witness