

# DE BEERS GROUP

## ANNEX 2

### COMPLIANCE CRITERIA REQUIREMENTS

An Applicant must comply with the following Compliance Criteria as at **11 March 2020** for GSS and SSSA submissions, and/or **8 June 2020** for NDTC submissions (unless otherwise stated), and as applicable, throughout the duration of the 2021-2023 Supply Period.

#### Minimum Threshold Application Criteria<sup>1</sup>:

Supply Contract Location	Criterion	Criterion Description	Applicable GSS Group Definition
<b>GSS (International) &amp; GSS (Botswana)</b> Sightholder Supply Contract	<b>Turnover</b>	The Applicant confirms that its Consolidation Group has generated annual average turnover of at least US \$30m over the years 2017 to 2019 (inclusive).	Consolidation Group
<b>NDTC SSSA</b> Sightholder Supply Contract	<b>Turnover</b>	The Applicant confirms that its Consolidation Group has generated annual average turnover of at least US \$20m over the years 2017 to 2019 (inclusive).	Consolidation Group
<b>GSS (International) &amp; GSS (Botswana)</b> Sightholder Supply Contract	<b>Rough Utilisation</b>	The Applicant confirms that its Consolidation Group has purchased rough diamonds (from any source) at an annual average of at least US \$20m over the years 2017 to 2019 (inclusive).	Consolidation Group
<b>NDTC SSSA</b> Sightholder Supply Contract	<b>Rough Utilisation</b>	The Applicant confirms that its Consolidation Group has purchased rough diamonds (from any source) at an annual average of at least US \$15m over the years 2017 to 2019 (inclusive).	Consolidation Group

<sup>1</sup> The Minimum Threshold Application Criteria are only applied in respect of an application for Sightholder status and is not re-assessed on an annual basis over the term of the 2021-2023 Supply Period.

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## Ethical Compliance Criteria:

Supply Contract Location	Criterion	Criterion Description	Applicable GSS Group Definition
<p><b>GSS (International)</b>  <b>GSS (Botswana)</b>  <b>NDTC</b>  <b>SSSA</b></p> <p>Sightholder Supply Contract</p>	<p><b>Best Practice Principles</b></p>	<p>The Applicant confirms that it:</p> <ul style="list-style-type: none"> <li>(i) will have full, unqualified compliance at all times with the Best Practice Principles and participate in the associated Best Practice Principles Assurance Programme; and</li> <li>(ii) will submit and comply at all times with the Compliance Group Declaration of Integrity; and</li> <li>(iii) will submit and oversee compliance of Key Individual Declarations of Integrity for each Key Individual within its Compliance Group.</li> </ul>	<p>Compliance Group</p>

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## Financial Compliance Criteria<sup>2</sup>:

Supply Contract Location	Criterion	Criterion Description	Applicable GSS Group Definition
<b>GSS (International)</b> <b>GSS (Botswana)</b> <b>NDTC</b> <b>SSSA</b> Sightholder Supply Contract	<b>IFRS Compliance</b>	An Applicant must declare a corporate group structure in accordance with IFRS, US GAAP or IND-AS <sup>3</sup> , and the provision of group financial data (using the GSS pro forma Financial Workbook template <sup>4</sup> consolidated according to IFRS, US GAAP, IND-AS or Japanese GAAP).	Consolidation Group
	<b>Unqualified Audit</b>	An Applicant must provide an unqualified audit sign-off of its financial data by means of the Financial Workbook by a GSS Approved Auditor.	Consolidation Group
	<b>Maximum Leverage</b>	An Applicant must have a maximum debt to equity ratio of at least 70 to 30 (i.e. gearing of 233%).	Consolidation Group

<sup>2</sup> An Applicant is required to comply with the Financial Compliance Criteria as at 11 March 2020, and thereafter annually in respect of each respective financial year end over the duration of the 2021-2023 Supply Period.

<sup>3</sup> IND-AS means IFRS Converged Indian Standards.

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## Beneficiation Compliance Criteria:

Supply Contract Location	Criterion	Criterion Description
<b>GSS (Botswana)</b> Sightholder Supply Contract	<b>Licence</b>	The Applicant confirms it has a valid Precious Stone Cutters Licence and a Precious Stone Dealers Licence issued by the Ministry of Minerals, Energy and Water Resources in Botswana.
<b>NDTC</b> Sightholder Supply Contract	<b>Licence</b>	The Applicant confirms it has a valid Namibian Cutting and Polishing Licence issued by the Ministry of Mines and Energy in Namibia.
<b>SSSA</b> Sightholder Supply Contract	<b>Licence</b>	The Applicant confirms it has a valid Beneficiation Licence in accordance with the terms of the Diamonds Act 1986.
<b>GSS (International) GSS (Botswana)</b> <b>NDTC</b> <b>SSSA</b> Sightholder Supply Contract	<b>Operational Facility</b>	The Applicant confirms it has or will have an Operational Facility by 1 January 2021 (as applicable).
<b>SSSA</b> Sightholder Supply Contract	<b>BBBEE Scorecard</b>	The Applicant confirms it has a valid BBBEE Scorecard.

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## ANNEX 3

### SUPPLY CONSIDERATIONS

For the purpose of the 2021-2023 Supply Period, GSS will make rough diamond admission and supply decisions by assessing an Applicant's relative strength against the (i) Principal Supply Considerations applicable to each contract type; and (ii) Overall Supply Considerations, in both cases in light of the information contained the Applicant's Application for supply, its Account Plan<sup>5</sup>, the applicant's Demonstrated Demand<sup>6</sup> and GSS's broader understanding of the Applicant's diamond business.

Supply Contract Type & Supply Location	Principal Supply Considerations
<p><b>Manufacturer Supply Contract</b></p> <p>GSS (International)</p>	<p>Supply is allocated on the basis of an Applicant's manufacturing ability. In assessing an Applicant, GSS will consider (amongst other factors):</p> <ul style="list-style-type: none"> <li>➤ Manufacturing expertise, effectiveness &amp; commitment;</li> <li>➤ Actual polished output (scale, specialisation(s));</li> <li>➤ Distribution capability (reach, differentiation, services, leadership);</li> <li>➤ Supply chain management (systems, control, governance, integration); and</li> <li>➤ Sustainable competitive advantage.</li> </ul>
<p><b>Beneficiation Manufacturer Supply Contract</b></p> <p>GSS (Botswana) NDTC SSSA</p>	<p>In addition to the Supply Considerations of the Manufacturer Supply Contract, a Beneficiation Manufacturer Supply Contract is allocated supply on the basis of an Applicant's <u>local</u> manufacturing ability. In assessing an Applicant, GSS, NDTC, SSSA (as applicable) will consider (amongst other factors):</p> <ul style="list-style-type: none"> <li>➤ Manufacturing capacity &amp; capability; and</li> <li>➤ <u>Local</u> rough utilisation and skills transfer over the duration of the 2015-2020 Supply Agreement.</li> </ul>
<p><b>Dealer Supply Contract</b></p> <p>GSS (International)</p>	<p>Supply is allocated on the basis of an Applicant's dealing ability. In assessing an Applicant, GSS will consider (amongst other factors):</p> <ul style="list-style-type: none"> <li>➤ Leadership (by segment – geography, product, customer segment, etc);</li> <li>➤ Geographic reach;</li> <li>➤ Broad base of primary sources;</li> <li>➤ Scale;</li> <li>➤ Services; and</li> <li>➤ Customer management.</li> </ul>

<sup>5</sup> An Applicant or Sightholder (as applicable) is required to submit information for inclusion into its Account Plan as required from time to time by GSS, the content of which will be taken into consideration for supply decisions and allocations over the duration of the 2021-2023 Supply Period.

<sup>6</sup> An Applicant's level of Demonstrated Demand over the duration of the preceding Selling Period will be taken into consideration in supply allocations for the 2021 Supply Period (and annually thereafter per new Selling Period).

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Overall Supply Considerations	
<b>Applicant</b>	<p>An Applicant's:</p> <ul style="list-style-type: none"><li>➤ Commitment to rough diamonds;</li><li>➤ Ability to work with De Beers to create joint additional value;</li><li>➤ Sustainability (corporate governance, succession planning, transparency, strong business reputation, etc);</li><li>➤ Future potential; and</li><li>➤ Coherence between application &amp; Account Plan.</li></ul>
<b>De Beers</b>	<ul style="list-style-type: none"><li>(i) Availability of supply, particularly of the kind(s) sought by the Applicant.</li><li>(ii) The practical workability of GSS' systems for the distribution of Diamonds, including in particular:<ul style="list-style-type: none"><li>(a) the efficient administration of the Sight system;</li><li>(b) the need to provide boxes of a specified minimum size in order to ensure consistency of supply;</li><li>(c) GSS' ability to supply a minimum level of commercially efficient supply; and</li><li>(d) the need to manage GSS' distribution risk in the light of prevailing demand/market conditions.</li></ul></li><li>(iii) The political, legal and economic requirements of certain Diamond Producing Countries/territories/local governments and/or authorities.</li><li>(iv) The need to consider the wider De Beers Group's commercial risk between customers and geographical regions/locations, cutting centres and consumer markets.</li></ul>

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## ANNEX 4

### CUSTOMER GROUPS & CONTRACTUAL TERM DEFINITIONS

#### Consolidation Group Definition

**Consolidation Group**<sup>7</sup> means a Parent/Consolidation Top Co 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 2019-2020 Supply Documentation<sup>8</sup>).

**Parent/Consolidation Top Co** 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 and/or acts as a corporate guarantor 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%<sup>9</sup> or more of the voting power (directly or indirectly)

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<sup>7</sup> The GSS Consolidation 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 Group.

<sup>8</sup> Note a Diamond Related Business that is "independent" but under common ownership for the purposes of the Consolidation will nonetheless be required to be included in the Compliance Group (and therefore is subject to the Best Practice Principles Assurance Programme).

<sup>9</sup> 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.

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of an investee, it will be presumed that the investor has significant influence over the investee unless no such influence can be clearly demonstrated.

## Compliance Group Definition

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

**Ultimate Beneficiary Company (“UBC”)** means the top entity of the Sightholder’s corporate structure as the context so requires, which exercises control over its direct or indirect Subsidiaries. In some cases, it may be possible to have more than one ultimate beneficiary; for example, some structures may have two holding companies, each holding 50% of an entity, with Subsidiary entities sitting below (in which case there would be two ultimate beneficiaries).

**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 in the context of the Compliance Group 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 (as the case may be) the Compliance Group (or any part thereof).

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## Eligible Entity Definition

**Eligible Entity** means an entity that forms part of the Compliance Group and is either (i) a Sightholder (as applicable); or (ii) a Subsidiary that is a Diamond Related Business which is controlled by a Sightholder<sup>10</sup>. An Eligible Entity will qualify for and be entitled to: (i) IP Licencing; (ii) Invoicing; and (iii) Receipt of Shipments, save that an Eligible Entity that participates in any way in Laboratory-Grown Diamond Business Activities shall not: (a) qualify for, or be entitled to, IP Licencing; or (b) whether by way of sub-licencing or otherwise, be entitled to use the Sightholder Signature or the trade marks “DTC” or “DIAMOND TRADING COMPANY”.

**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).<sup>11</sup>

**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 (save in respect of an entity that has both natural diamond operations and LGD Business Activities)<sup>12</sup>.

**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 and the provision of a licence pursuant to which a Sightholder is entitled to use, subject to the terms of such licence, the trade marks “DTC” and “DIAMOND TRADING COMPANY”.

**Laboratory-Grown Diamond** or **LGD** means any object or product that has been either partially or wholly artificially crystallised or re-crystallised due to human intervention such that, with the exception of being non-natural, the product meets the requirements specified in the definition of the word ‘diamond’ (as defined in the BPP Manual).

**Laboratory-Grown Diamond Business Activities** means including, but not limited to, the manufacturing, polishing, processing, and/or trading (sale or purchase) of LGDs and/or jewellery incorporating LGDs, as applicable.

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<sup>10</sup> 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).

<sup>11</sup> Therefore, a joint venture entity in which a party has equal or less voting rights (at board and shareholder level) or holds an equal or less amount of the issued share capital in the joint venture entity is excluded from the definition of Control for the purposes of IP Licencing.

<sup>12</sup> For the avoidance of any doubt, entities that have both natural diamond operations and LGD Business Activities shall be subject to full participation in the BPP Assurance Programme.

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**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.

**Subsidiary** means an entity that is controlled by another entity.

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## ANNEX 5

### NOTES TO THE KEY INDIVIDUAL DECLARATION OF INTEGRITY

A Key Individual is a natural person that performs one or more of the following functions on behalf of a Diamond Related Business entity within a Sightholder Compliance Group and includes but is not limited to the following:

**A A Key Individual by means of ownership/Dominant Influence, defined as:**

- (i) an individual who is (a) a Beneficiary/Beneficial Owner; and/or (b) a Partner in/of an entity within a Compliance Group; and/or
- (ii) an individual who is (a) entitled or able to appoint or remove a majority of the members of the board; and/or (b) otherwise exercise a Dominant Influence, in all of the above, in respect of a Compliance Group entity.

**B A Key Individual by means of an operational role, defined as:**

- (i) an individual who is a director or a shadow director of an entity in a Compliance Group (in each case, in either an executive or non-executive capacity, including any analogous roles as recognised by applicable local law), which shall include, without limitation, a chief executive officer, a chief financial officer, a chief operational officer, or any equivalent or analogous terms for such roles which may be used by the relevant entity from time to time; and/or
- (ii) an individual who holds a day-to-day Management Position in a Compliance Group entity; and/or
- (iii) an individual who holds themselves out to third parties as, or can reasonably be assumed to be, carrying out any of the functions set out above in relation to a Compliance Group entity.

**Notes:**

- 1 A Key Individual may only represent one Compliance Group, unless (a) the Key Individual (i) is a Beneficiary/Beneficial Owner of two or more Compliance Groups; and (ii) can only exercise majority control (by any means) over one of the Compliance Groups (i.e. all other beneficial interests in other Compliance Groups are non-controlling interests); and/or (b) the Compliance Group has a Joint Venture arrangement with another Compliance Group, in which case the Key Individual may also be a Key Individual of the Joint Venture entity.
- 2 It is a further requirement that a full declaration is submitted in respect of all entities within a Sightholder Compliance Group entity. For example, it is necessary to identify all Key Individuals per the definition to ensure that each individual Compliance Group entity has its own Key Individual or group of Key Individuals. You may assign the same individual to more than one entity within your Compliance Group.
- 3 It is the responsibility of each Sightholder to ensure the BPP SMART system is up to date at all times, such that all Key Individuals satisfying the above definition are included on the BPP SMART system. Sightholders should reference each of the above definitions, as applicable,

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to classify<sup>13</sup> each of their Key Individuals by means of (i) ownership/Dominant Influence; and/or (ii) an operational role on the BPP SMART system.

## Glossary to the Key Individual Definition:

**Beneficiary/Beneficial Owner** means the top four owners in percentage terms, who own directly or indirectly (either legally and/or through a beneficial interest, including through a trust structure), the issued share capital (i.e. a shareholder) of a Compliance Group entity or all owners of 10% or more in percentage terms, if the top four owners together constitute less than 50% of the issued share capital (or such other percentage as may be communicated by GSS from time to time for any applicable purpose or purposes).

**Compliance Group** means as this term is set out in Annex 4 to these Applicant Notes.

**Diamond Related Business** means as this term is set out in Annex 4 to these Applicant Notes.

**Dominant Influence** means the right (including but not limited through an entity's constitutional documents, contractual arrangements and/or any other custom or arrangement) to give directions with respect to the operating and financial policies of an entity which its directors/shadow directors (in each case, including any analogous roles as recognised by applicable local law) are obliged to comply with whether or not they are for the benefit of that entity.

**Joint Venture** means a contractual agreement joining together two or more parties for the purpose of operating a particular business venture, in which the parties have (i) joint voting rights; and/or (ii) together hold the issued share capital of the Joint Venture entity.

**Management Position** means an individual (other than an officer) at a senior level of organisational management that has specific executive powers and/or responsibility, either alone or jointly with others, in respect of:

- (a) performing a significant role in the management of the whole, or a substantial part, of the organisation's activities; and/or
- (b) making managerial decisions or exercising managerial functions affecting the future strategy, development and business prospects of the organisation; and/or
- (c) overseeing or directing the day to day operations or the conduct of the organisation (including the measurement and control of risk) and controls the effective performance of such operations.

**Partner** means a person who participates in a partnership arrangement in which two or more individuals share the profits and liabilities of a business venture which is carried on in common between the relevant partners with a view to profit.

**Sightholder** means a Sightholder customer.

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<sup>13</sup> Note that if a Key Individual satisfies the definition of ownership/Dominant Influence and holds an operational role, both classifications should be selected on the BPP SMART system.