

PROJECT :

CONTRACT : Contractual Terms and Conditions and Documentation Development

CLIENT : Diamond Trading Company Botswana

CONSULTANT :

DRAFT

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SECTION 1: GENERAL INFORMATION

FORM OF AGREEMENT

Between DIAMOND TRADING COMPANY BOTSWANA

of Plot 63016, Airport Road, Block 8 Gaborone, Botswana

(hereinafter called “the Client”)

and

of

(hereinafter called “the Consultant”)

WHEREAS:

The Client desires that certain Services should be performed by the Consultant, namely:
[Brief description of Services]

And has accepted an offer/proposal by the Consultant for the performance of such Services.

THE CLIENT AND THE CONSULTANT AGREE AS FOLLOWS:

1. In the Agreement words and expressions shall have the same meanings as are respectively assigned to them in Clause 1.1 of the General Conditions of the Client/Consultant Model Service Agreement.
2. The following documents shall be deemed to form and be read and construed as part of the Agreement and shall be given the order of precedence as below:
 - a. This Form of Agreement;
 - b. The Client/Consultant Model Service Agreement;
 - i Particular Conditions;
 - ii General Conditions;
 - c. Appendices 1 to 5
 - d. Any letter of acceptance by the Client incorporated into the Agreement under Sub-Clause 1.1.1; and
 - e. Any letter of offer/proposal by the Consultant incorporated into the Agreement under Sub-Clause 1.1.1.
3. In consideration of the payment to be made by the Client to the Consultant under the Agreement, the Consultant hereby agrees with the Client to perform Services in conformity with the provisions of the Agreement

4. The Client hereby agrees to pay the Consultant in Consideration of the performance of the Services such amounts as may become payable under the provisions of the Agreement at the times and in the manner prescribed by the Agreement

AUTHORISED SIGNATURE(S) OF CLIENT:

Signature _____

Name _____

Position _____

Date _____

AUTHORISED SIGNATURE(S) OF CONSULTANT:

Signature _____

Name _____

Position _____

Date _____

AUTHORISED SIGNATURE(S) OF WITNESS:

Signature _____

Name _____

City/Town _____

Date _____

AUTHORISED SIGNATURE(S) OF WITNESS:

Signature _____

Name _____

City/Town _____

Date _____

SECTION 2: CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract shall be Client/Consultant Model Services Agreement FIDIC Fifth Edition 2017 (not bound into this document but deemed integrally included).

PARTICULAR CONDITIONS

(to be read with the Client/Consultant Model Services Agreement FIDIC Fifth Edition 2017)

PART A - REFERENCES FROM CLAUSES IN THE GENERAL CONDITIONS

1.1	Definitions	
1.1.4	Client's Representative	[Name of Representative]
1.1.5	Commencement Date	
1.1.8	Consultant's Representative	
1.1.9	Country	Botswana
1.1.22	Project	
1.1.24	Time for Completion	
1.3	Notices and other Communications	
1.3.1(c)	Communication	Electronic communication accepted: e-mail
1.3.1(d)	Address for communications	
	Client's address:	Plot 63016, Airport Road Block 8 Gaborone, Botswana
	Email: (only when e-mail is accepted as a valid system for electronic communications)	[To be identified]
	Facsimile number:	Not applicable
	Consultant's address:	
	Email: (only when e-mail is accepted as a valid system for electronic communications)	
	Facsimile number:	Not applicable
1.4	Law and Language	
1.4.1	Law governing Agreement	Botswana
1.4.2	Ruling language of Agreement	English
1.43	Language for communications	English
1.8	Confidentiality	

1.8.3	Period for expiry of confidentiality	
1.9	Publication	
1.9.1	Publication restrictions	Per General Conditions
3.9	Construction Administration	Not included in Service
4.1	Agreement Effective	Date of notification of award
7.4	Third Party Changes on Consultant	Exemption does not Apply
8.2	Duration of Liability	
8.2.1	Period of Liability	Six months
8.3	Limit of Liability	
8.3.1	Limit of Liability	Contract Amount paid to the Consultant
9	Insurance	
9.1.1	Insurance to be taken out by the Consultant Professional Indemnity Insurance Public Liability Insurance	
10	Disputes and Arbitration	
10.4.1	Arbitration rules	[International Chamber of Commerce (or as stated below):]
10.4.1	Language of Arbitration	English

PART B - ADDITIONAL OR AMENDED CLAUSES

Definitions	1.1.1	Replace "... and any letters of offer and acceptance attached to any of the above" with "... and any letters of offer and acceptance or any other documents attached to any of the above".
	1.1.21	Delete this sub-clause.
Confidentiality	1.8.4	Add sub-clause: "The non-disclosure agreement signed between the parties will apply subject to and augmentary to the sub-clauses 1.8.1 to 1.8.3".
Information	2.1.1	Insert "or other time schedule" between "to the Programme" and "provide to the Consultant"
Decisions	2.2.1	Insert "or other time schedule" between "to the Programme" and "so as not to delay..."
Client's Financial Arrangements	2.4	Deleted in its entirety.

Supply of Client's Equipment and Facilities	2.5.1	Insert "or other time schedule" between "to the Programme" and "free of cost".
Services of Others	2.8.1	Add "... , who may delegate the interface management to a third party" at the end of the last sentence of the second paragraph.
Scope of Services	3.1.2	Insert "or other time schedule" between "with the Programme" and "as may be amended".
Changes in Consultant's Personnel	3.7.3	Add sub-clause: "The requirements of 3.7.1 and 3.7.2 above will apply only to personnel supplied to work in a position of secondment or similar reporting to the Client's personnel, and personnel identified in Appendix 1: Scope of Services".
Programme	4.3.1	This sub-clause is deleted.
	4.3.2	This sub-clause is deleted.
Delays	4.4.3	Insert "or other time schedule" between "to the Programme" and "and any constraints therein".
Rate of Progress of Services	4.5.1	Insert "or other time schedule" between "shall revise the Programme" and "and shall issue a Notice".
Suspension of Services	6.1.2(c)	This sub-clause is deleted.
Insurances to be taken out by Consultant	9.1	<i>[to be compared with DTC standard provisions and arrangements]</i>
	9.1.2	Insert "of the country or countries respectively where the Consultant's personnel are working" between "by the applicable law" and "for the duration of the Services".

SECTION 3: APPENDICES

1. SCOPE OF SERVICE

A. SUMMARY OF SCOPE

B. OBJECTIVES

C. TYPES OF ENQUIRIES AND CONTRACTS

The service will consider a suite of:

D. METHOD STATEMENT

E. DELIVERABLES

F. EXCLUSIONS

-

2. PERSONNEL, EQUIPMENT, FACILITIES AND SERVICES OF OTHERS TO BE PROVIDED BY CLIENT

3. REMUNERATION AND PAYMENT

A. REMUNERATION

4. PROGRAMME

5. RULES FOR ADJUDICATION

SECTION 4: ATTACHMENTS

ATTACHMENT 1: NON-DISCLOSURE UNDERTAKING

(1 page follows)

NON-DISCLOSURE UNDERTAKING
TO
DIAMOND TRADING COMPANY BOTSWANA
IN RESPECT OF GENERAL CONSULTANT SERVICES TO BE PROVIDED

The consultant”) do hereby and herewith

- 1.0 Acknowledge that knowledge and information particular to certain project works or proposed project works will come to our attention in the course of providing services to Diamond Trading Company Botswana.
- 2.0 Undertake for and on behalf ourselves and our consultants, advisors, partners, members, associates, employees, contractors, sub-contractors, agents and sub-agents (as applicable), whether permanent or temporary, to make every effort to hold in trust and confidence all confidential information received and not to use, pass on, publish, disclose or in any manner make available any such confidential information to anyone outside the acknowledged circle of project involvement.
- 3.0 Agree that for the purposes hereof “confidential information” shall mean:
 - 3.1 all information disclosed to us or which comes to our knowledge, directly or indirectly as a result of our receiving or having received any invitation to tender for any contract or attending or having attended any discussion relative to the negotiation for the award of and execution of any contract pursuant thereto whether or not the negotiations are successful and whether or not the contract is awarded or executed; but subject at all times that the aforesaid provisions, shall not include information which:
 - 3.1.1 at the time it was disclosed, was already known to us or was public knowledge, or thereafter became public knowledge other than through my/our default, or
 - 3.1.2 became known to us, without restriction as to its use and disclosure, from a third party with valid title thereto, or
 - 3.1.3 was or is developed by or known to us and any of our consultants, advisors, partners, members, associates, employees, contractors, sub-contractors, agents or sub-agents, either before or subsequent to the disclosure of such information to us or such consultants, partners, associates, employees, contractors, sub-contractors, agent or sub-agent having no knowledge of the content of such disclosure.
- 4.0 Undertake to disclose such confidential information only to those of our consultants, advisors, partners, members, associates, employees, contractors, sub-contractors, agents or sub-agents, whether permanent or temporary, who require knowledge of such information to enable the carrying out of any work directly or indirectly connected with the required service.
- 5.0 Undertake to refrain from using commercially, technically or otherwise confidential information without the prior written consent of Diamond Trading Company Botswana.
- 6.0 Undertake not to use any intellectual property rights belonging to Diamond Trading Company Botswana without written permission.

THUS DONE AND SIGNED BY AT

THIS DAY OF

.....
SIGNATURE