1 DEFINITIONS

1.1 In this Contract:

“Business Days” means a working day, other than applicable weekend days or bank or public holiday, in the country of incorporation of the relevant member of ES-KO’s Group as detailed in the Purchase Order;

“Conditions” means the terms and conditions set out in this document as amended from time to time in accordance with clause 20.9;

“Contract” means the contract between ES-KO and the Supplier for the purchase of Goods and/or Services, made up of these Conditions, the Purchase Agreement (when applicable), the Purchase Order and any other documents specified by ES-KO as being part of the Contract in the Purchase Order;

“CDM Regulations” means the Construction (Design and Management) Regulations 2015;

“Data Protection Legislation” means the General Data Protection Regulation ((EU) 2016/679) (to the extent that it applies to the relevant member of ES-KO’s Group ) (“GDPR”), Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 and all applicable laws and regulations that relate to the protection and processing of personal data and privacy including together with any mandatory guidance and code of practice issued by the competent authorities, all as amended, replaced or superseded from time to time;

“Deliverables” means all documents, products and materials developed by the Supplier or its agents, contractors and employees (whether individually, collectively or jointly, developed with ES-KO), as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

“Documentation” means all accompanying documentation relating to the quality, standard, origin, shipment, transit and/or delivery of Goods as detailed in the Purchase Order or otherwise requested in writing by ES-KO, including but not limited to any export licence, customs documentation, certificates of conformity, origin and quality;

“ES-KO” means ES-KO International SAM, or any member of its Group as detailed in the Purchase Order;

“Final Customer” means the person, firm or organisation to whom the Goods are to be sold by ES-KO as part of its services;

“Goods” means any and all goods (or part of them) to be provided by the Supplier under this Contract, including those set out in the Purchase Order;

“Group” in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group;

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and similar or equivalent rights or forms of protection in any part of the world;

“ISO Standard” means the relevant standard applicable to the provision of goods and/or services as published by the International Organization of Standardization;

“Premises” means, unless otherwise set out in the Purchase Order, the final delivery location for the Goods and/or the location at which the Services are to be performed, as specified in the Purchase Order;

“Purchase Order” means the purchase order form completed and submitted to the Supplier by ES-KO detailing the Goods and/or Services to be purchased by ES-KO;

“Services” means any and all services (or part of them) to be provided by the Supplier under this Contract, including those set out in the Purchase Order;

“Supplier” means the person, firm or company set out on the Purchase Order.

2 BASIS OF CONTRACT

2.1 The Purchase Order constitutes an offer by ES-KO to purchase the Goods and/or Services from the Supplier in accordance with these Conditions. ES-KO may revoke an offer at any time prior to the Contract coming into force.

2.2 The Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:

2.2.1 the Supplier issuing a written acceptance of the Purchase Order, or

2.2.2 the Supplier carrying out any act consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (“Commencement Date”). In the event that there has been no deemed acceptance in accordance with this clause 2.2 within 20 Business Days of ES-KO making an offer, the offer shall automatically be deemed to be revoked.

2.3 Where, upon receipt of a Purchase Order, the Supplier makes a counter-offer to supply the Goods and/or Services on new conditions, such counter-offer shall only be validly accepted by ES-KO if such acceptance is in writing and signed by a duly authorised representative of ES-KO. Only upon ES-KO’s express acceptance of the counter-offer shall the Contract come into existence.

3 SUPPLY OF GOODS

3.1 The Supplier represents and warrants that the Goods shall:

3.1.1 correspond with their description and any applicable specification or standard, as set out in the Purchase Order, in the Procurement Agreement (when applicable) and/or in any other relevant written agreement between ES-KO and Supplier. Where no standard is stated in the Purchase Order in the Procurement Agreement (when applicable) and/or in any other relevant written agreement between ES-KO and Supplier.

Edition 2019
3.1.2 comply with the Final Customer’s specifications;

3.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), be fit for any purpose for which they are ordinarily used, and be fit for any purpose held out by the Supplier or made known to the Supplier by ES-KO (expressly or by implication) and in this respect ES-KO relies on the Supplier’s skill and judgement;

3.1.4 be free from defects in design, materials and workmanship and remain so for 12 months after delivery, subject to any other guarantee arrangements agreed in writing between ES-KO and the Supplier or any manufacturer guarantee; and

3.1.5 comply with all applicable statutory, regulatory and Final Customer’s requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including but not limited to all applicable environmental, health and safety laws and regulations and the World Health Organization’s Hazard Analysis Critical Control Point System (HACCP), and

3.1.6 Not use or specify for use goods and materials which do not comply with the guidelines contained in the latest edition of the publication “Good Practice in Selection of Construction Materials” published by the British Council for Offices.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 ES-KO and/or the Final Customer may inspect and test the Goods at any time prior to delivery upon reasonable advance notice to the Supplier and/or upon delivery of the Goods. Where inspection is carried out prior to delivery, the Supplier agrees to afford ES-KO safe access to its premises within its normal business hours for the purposes of carrying out inspection and the Supplier shall remain fully responsible for the Goods despite any such inspection or testing.

3.4 If following such inspection or testing ES-KO considers that the Goods do not comply or are unlikely to comply with the Supplier’s warranties at clause 3.1, ES-KO shall:

3.4.1 where prior to delivery, inform the Supplier and the Supplier shall immediately take such remedial action to ensure compliance such as but not limited to replacement with compliant Goods that shall be shipped by any expedited means of procurement (including fly delivery) and reimburse and/or pay (as the case may be) all inspection, surveying, testing costs and any additional costs, loss or expenses incurred by ES-KO which are in any way attributable to the Supplier’s failure to comply such as but not limited to penalties, performance credits, etc.; or

3.4.2 where upon or after delivery, inform the Supplier and the Supplier shall immediately take such remedial action to ensure compliance such as but not limited to replacement with compliant Goods that shall be shipped by any expedited means of procurement (including fly delivery) and any additional costs, loss or expenses incurred by ES-KO which are in any way attributable to the Supplier’s failure to comply such as but not limited to penalties, performance credits, etc. Without limiting or affecting other rights or remedies available to it, ES-KO shall also be entitled to exercise the remedies set out in clause 6.

3.5 ES-KO may conduct further inspections and tests after the Supplier has carried out any remedial actions.

3.6 Any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Contract or be interpreted in any way as acceptance by ES-KO or the Final Customer of the Goods.

### DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their final destination in good condition without damage or deterioration and in compliance with any special requirements set out in the Purchase Order and, where appropriate, with regulations governing the dispatch of hazardous cargo by sea, air or overland. The Supplier shall ensure all packaging is sufficient to withstand rough handling and exposure to extreme temperatures and that such packaging maintain Goods organoleptic qualities and sanitary integrity (where applicable);

4.1.2 each delivery of the Goods is accompanied by the Documentation and a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (where applicable) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

4.1.3 it states clearly on the delivery note any requirement for ES-KO to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost and risk of the Supplier. In the absence of any such note, packaging material shall be considered non-returnable and may be destroyed, reused or recycled by ES-KO; and

4.1.4 unless otherwise provided in the Purchase Order, if the Goods are damaged in transit, the Supplier shall, free of charge either replace or repair (as ES-KO shall elect) the damaged Goods within 7 days of ES-KO notifying the Supplier of the damage.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the date specified in the Purchase Order, or, if no such date is specified, on such date as may be agreed between the parties. Time is of the essence in relation to any of those performance dates;

4.2.2 to the Premises or such other location specified in the Purchase Order or as instructed by ES-KO prior to delivery ("Delivery Location"); and

4.2.3 during ES-KO’s normal business hours on a Business Day, or as otherwise instructed by ES-KO.

4.3 Unless otherwise provided in the Purchase Order, delivery of the Goods shall be completed on the completion of unloading the Goods from the transporting vehicle at the Delivery Location (including off-loading and stacking) and ES-KO signing for the delivery.

4.4 The Supplier shall not deliver the Goods in instalments without ES-KO’s prior written consent. Where it is agreed that the Goods may be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or, at all or any defect in an instalment shall entitle ES-KO to the remedies set out in clause 6.1.

4.5 Unless otherwise provided in the Purchase Order, title and risk in the Goods shall pass to ES-KO on completion of the delivery.

4.6 The Supplier shall provide ES-KO with periodic updates regarding the progress of the Purchase Order and delivery of Goods. If the Supplier considers or becomes aware that it will be unable to deliver Goods by the date specified in the Purchase Order, notwithstanding the
remedies available to ES-KO in clause 6.1, the Supplier shall notify ES-KO immediately in writing and, at the Supplier's cost, use expedited means of delivery to deliver the Goods including fly.

5

SUPPLY OF SERVICES

5.1

The Supplier shall from the date set out in the Purchase Order and for the duration of the Contract supply the Services to ES-KO in accordance with the terms of the Contract.

5.2

The Supplier shall meet any performance dates for the Services specified in the Purchase Order or as ES-KO otherwise notifies the Supplier and time is of the essence in relation to any of those performance dates.

5.3

In providing the Services, the Supplier represents and warrants that:

5.3.1

the Supplier will co-operate with ES-KO and comply with all of ES-KO's instructions in all matters relating to the Services;

5.3.2

the Services shall be performed with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

5.3.3

the Supplier shall use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

5.3.4

the Services will conform with all descriptions, standards and specifications set out in the Purchase Order or as ES-KO otherwise notifies the Supplier, and that the Deliverables shall be fit for any purpose that ES-KO expressly or impliedly makes known to the Supplier. Where no standard is stated in the Purchase Order, the Supplier warrants that the Services shall be performed in accordance with the relevant ISO Standard and British Standards;

5.3.5

the Supplier will ensure that it has all equipment, tools and vehicles and such other items as are required to provide the Services;

5.3.6

the Supplier will use the best quality goods, materials, standards and techniques, and ensure the Deliverables, and all goods and materials supplied and used in the Services or transferred to ES-KO, will be free from defects in workmanship, installation and design;

5.3.7

the Supplier will obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

5.3.8

the Services will comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services including but not limited to all applicable environmental, health and safety laws and regulations, the World Health Organization's Hazard Analysis Critical Control Point System (HACCP), and any other relevant and applicable statutes, local and statutory authority requirements and all other requirements of which the Supplier has been, or is, notified in writing by ES-KO;

5.3.9

the Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at any of ES-KO's premises;

5.3.10

the Supplier will hold all materials, equipment and tools, drawings, specifications and data supplied by ES-KO ("ES-KO Materials") in safe custody at its own risk, maintain ES-KO Materials in good condition until returned to ES-KO, and not dispose or use ES-KO Materials other than in accordance with ES-KO's written instructions or authorisation;

5.3.11

the Supplier will not do or omit to do anything which may cause ES-KO to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges and warrants that ES-KO may rely or act on the Services;

5.3.12

the Services will comply with any additional obligations set out in the Purchase Order; and

5.3.13

the Supplier will comply with its duties and obligation under the CDM Regulations.

6

REMEDIES

6.1

If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, ES-KO shall, without limiting or affecting other rights or remedies available to it but taking into account any sums paid by the Supplier or deducted from the price in respect of the delay in accordance with clause 6.2, have one or more of the following rights:

6.1.1

to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.1.2

to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

6.1.3

to recover from the Supplier any costs incurred by ES-KO in obtaining substitute goods and/or services from a third party as well as any transportation costs (including fly delivery costs);

6.1.4

to obtain reimbursement of all inspection and testing costs performed by ES-KO in accordance with clause 3 above;

6.1.5

to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;

6.1.6

to claim damages for any additional costs, loss or expenses incurred by ES-KO which are in any way attributable to the Supplier's failure to meet such dates such as but not limited to penalties, performance credits; and

6.1.7

to suspend payment of all outstanding invoices until the Supplier has remedied its failure in full.

6.2

Unless otherwise provided in the Purchase Order, if the Goods are not delivered by the applicable date or the Services are not performed by the applicable date, or both, ES-KO may, at its option, claim or deduct [2]% of the price of the Goods for each week's delay in delivery of the Goods and/or claim or deduct [2]% of the price of the Services for each week's delay in performance of the Services by way of liquidated damages, up to a maximum of 40% of the total price of the Goods (in respect of late delivery of the Goods) and up to a maximum of 30% of the total price of the Services (in respect of late performance of the Services).

6.3

If the Supplier has delivered Goods that do not comply with the warranties set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, ES-KO shall have one or more of the following rights, whether or not it has accepted the Goods:

6.3.1

to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.3.2

to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

6.3.3

to require the Supplier to repair or replace the rejected Goods with Goods that are compliant with Client's requirement (when applicable) that shall be shipped by fly.
delivery), or to provide a full refund of the price of the rejected Goods (if paid);

6.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

6.3.5 to recover from the Supplier any expenditure incurred by ES-KO in obtaining substitute goods from a third party as well as any transportation costs (including fly delivery costs); and

6.3.6 to obtain reimbursement of all inspection and testing costs performed by ES-KO in accordance with clause 3 above; and

6.3.7 to claim damages for any additional costs, loss or expenses incurred by ES-KO arising from the Supplier's breach of any of the warranties set out in clause 3.1 such as but not limited to penalties, performance credits.

If the Supplier has supplied Services that do not comply with the requirements of clause 5.3 then, without limiting or affecting other rights or remedies available to it, ES-KO shall have one or more of the following rights:

6.4.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.4.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;

6.4.3 to require the Supplier to provide repeat performance of the Services that shall be compliant with Client's requirements (when applicable) and performed by any expedited means, or to provide a full refund of the price paid for the Services (if paid);

6.4.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

6.4.5 to recover from the Supplier any expenditure incurred by ES-KO in obtaining substitute services or deliverables from a third party as well as any transportation costs (including fly delivery costs); and

6.4.6 to claim damages for any additional costs, loss or expenses incurred by ES-KO arising from the Supplier's failure to comply with clause 5.3 such as but not limited to penalties, performance credits.

These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

ES-KO's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

ES-KO'S OBLIGATIONS

7.1 ES-KO shall:

7.1.1 provide the Supplier with reasonable access at reasonable times to the Premises for the purpose of providing the Services and/or the Delivery Location for the purpose of delivering the Goods; and

7.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

CHARGES AND PAYMENT

8.1 The price for the Goods:

8.1.1 shall be the price set out in the Purchase Order;

8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by ES-KO;

8.1.3 shall be payable in US dollars unless otherwise agreed in writing between the parties.

The charges for the Services shall be set out in the Purchase Order, shall be payable in US dollars (unless otherwise agreed between the parties) and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by ES-KO, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

In respect of the Goods, the Supplier shall invoice ES-KO on or at any time after completion of delivery. In respect of the Services, the Supplier shall invoice ES-KO on completion of the Services. Each invoice shall include such supporting information required by ES-KO to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

Unless otherwise provided in the Purchase Order, in consideration of the supply of Goods and/or Services by the Supplier, ES-KO shall pay the invoiced amounts within 90 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

The Supplier shall separately state on each invoice any import duties or sales, use, value added, excise or similar tax. The Supplier shall not charge tax if ES-KO is exempt from such taxes and furnishes the Supplier with a certificate of such exemption. ES-KO will be responsible for any sales, use, VAT, or similar taxes, import duties or any other such assessment however designated.

Payment by ES-KO of any invoice received by it pursuant to this clause 8 are made only in accordance with the terms of the Contracts and shall not be deemed to be an acceptance of any terms and conditions proposed by the Supplier's documents.

If ES-KO fails to make a payment due to the Supplier under the Contract by the due date, then ES-KO shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.

The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow ES-KO to inspect such records at all reasonable times on request.

ES-KO may at any time, without notice to the Supplier, set off any liability of the Supplier to ES-KO against any liability of ES-KO to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, ES-KO may convert either liability at a market rate of exchange for the purpose of setting-off. Any exercise by ES-KO of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

CHANGES

The Supplier shall not make changes to Goods or Services or to the manufacturing, testing, quality or other processes, the bill of materials, materials, design, tools, sources of materials, or locations used to manufacture, assemble, or package the Goods or perform Services (in each case following the date of the Purchase Order) without ES-KO's prior written approval. Any unauthorised change of any type will render the changed Goods and Services non-conforming and will constitute a material breach of the Supplier's obligations under this Contract, and the Supplier shall be responsible for all resulting damage, loss and/or expense incurred by ES-KO.

ES-KO may request changes to the Goods and/or Services (including packaging and delivery requirements) at any time (prior to the despatch of Goods, where Goods are to be supplied) upon written notice to the Supplier. The Supplier shall implement the requested changes, and the Purchase Order will be deemed amended to incorporate the changes.
However, if the requested changes will affect the cost of performance or the time required to perform, the Supplier shall advise ES-KO in writing within 7 days of ES-KO's change request, and shall not implement the change without ES-KO's written approval.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 Save as otherwise expressly provided in this Contract, neither the Supplier nor ES-KO shall receive any right, title or interest in or to the Intellectual Property Rights of the other party.

10.2 Subject to clause 10.4, all Intellectual Property Rights in the Deliverables shall be vested in ES-KO and the Supplier hereby irrevocably assigns to ES-KO and its successors and assigns (including by way of present assignment to permit the future rights) with full title guarantee, absolutely and free from all encumbrances, all the Supplier's right, title and interest in and to any and all present and future Intellectual Property Rights throughout the world for the full unexpired period of such rights and all renewals, reversions and extensions of such period as may be provided under any applicable law throughout the world in or relating to all Deliverables together with all accrued rights of action in respect of any infringement of such rights for the full term of such rights.

10.3 The Supplier agrees to waive any claim to moral rights conferred on the Supplier by the Copyright, Designs and Patents Act 1988 or any rights of a similar nature under laws now or in the future in force in any jurisdiction which the Supplier may have in and to any and all Deliverables.

10.4 To the extent that any of the Deliverables contain any materials owned or controlled by a third party, the Supplier shall:

10.4.1 disclose the existence of such materials to ES-KO before accepting the Order pursuant to clause 2.2; and

10.4.2 in consultation with ES-KO obtain such perpetual royalty-free licences (with the right to sub-licence on terms no broader than those granted hereunder), assignments or other consents as are required to permit the use, copying and distribution of such third party materials by ES-KO for any purpose relating to the Goods and/or Services or exercise of its business or function.

10.5 The Supplier shall on request by ES-KO and at its expense, promptly deliver to ES-KO all copies of the Deliverables in its control or possession.

11 LIABILITY

11.1 Neither party limits its liability for: death or personal injury caused by its negligence, or that of its employees, agents or subcontracts (as applicable); fraud or fraudulent misrepresentation; breach of any obligation as to title implied by statute (including by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982); any indemnity given under this Contract; or any liability to the extent it cannot be limited or excluded by law.

11.2 Unless different provided in the Purchase Order and subject to clause 11.1, the aggregate liability of ES-KO in respect of any loss or damage suffered by the Supplier and arising out of or in connection with this Contract, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the greater of:

(1) the price payable by ES-KO to the Supplier pursuant to this Contract during the 3 months preceding the event giving rise to the claim, and
(2) the sum of £1000.

11.3 Subject to clause 11.1, ES-KO shall not be liable, in contract, tort (including negligence) or for breach of statutory duty in any other way for:

11.3.1 any loss arising directly or indirectly from or in connection with loss of revenues, profits, contracts or business;

11.3.2 any loss of goodwill or reputation; or

11.3.3 any indirect or consequential losses,

suffered or incurred by the Supplier arising out of or in connection with any matter under this Contract.

11.4 The Supplier acknowledges and agrees that the limitations contained in this clause 11 are reasonable in all the circumstances and confirms that it has taken independent legal advice in relation to this clause 11.

12 INDEMNITY AND INSURANCE

12.1 Unless different provided in the Purchase Order, during the term of the Contract and for a period of ten (10) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such liabilities that may arise under or in connection with the Contract (and whether a claim is made in respect of such liability during or after termination of the Contract), and shall, on ES-KO's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12.2 The Supplier shall keep ES-KO indemnified in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential loss, loss of reputation and all interest, penalties, fines, legal and other professional costs and expenses (calculated on a full indemnity basis) awarded against or incurred or paid by ES-KO as a result or in connection with:

12.2.1 any claim made against ES-KO for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding ES-KO Materials);

12.2.2 any claim made against ES-KO by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables or caused by acts or omissions of the Supplier; and

12.2.3 any claim made against ES-KO by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

12.3 This clause 12 shall survive termination of the Contract.

13 CONFIDENTIALITY

13.1 “Confidential Information” means confidential or proprietary data, materials or information disclosed by ES-KO to the Supplier:

13.1.1 in writing, graphic, machine recognisable, electronic, sample or any other tangible or visually perceptible form, which is clearly designated as “confidential” and/or “proprietary” at the time of disclosure or which ought reasonably to be considered proprietary and/or confidential to the Supplier; and

13.1.2 in oral form, if it would be reasonable given the circumstances surrounding disclosure to conclude that ES-KO considered such orally disclosed information confidential or proprietary. Notwithstanding the foregoing, all information disclosed and/or delivered by ES-KO relating to the Contract, including product specifications, prototypes, designs, samples, quality and manufacturing procedures, testing processes and results, customer information, cost or price information, demand or volume information, market share and financial projections and other similar information and the existence of the Contract and its terms and conditions, is Confidential Information whether or not confirmed or designated as “confidential” or “proprietary”.

13.2 The Supplier that it shall not at any time disclose to any person any Confidential Information, except as permitted by clause 13.3.

13.3 The Supplier may disclose the ES-KO's Confidential Information:
13.3.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Supplier’s obligations under the Contract. The Supplier shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses ES-KO’s Confidential Information must comply with this clause; and

13.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.4 The Supplier shall not use ES-KO’s Confidential Information for any purpose other than to perform its obligations under the Contract.

14 DATA PROTECTION

14.1 The Supplier shall comply with its obligations under Data Protection Legislation.

14.2 To the extent the provision of the Goods and/or Services will involve the processing of any personal data, the Supplier shall:

14.2.1 process ES-KO’s Personal Data, subject to clause 14.2.5, only for the duration of the Contract;

14.2.2 process the Personal Data only to the extent necessary for the purposes of performing its obligations under the Contract and otherwise in accordance with the documented instructions of ES-KO applicable laws. If the Supplier considers that any of ES-KO’s instructions infringe the Data Protection Legislation, the Supplier shall notify ES-KO immediately;

14.2.3 ensure that all persons authorised by it to process the Personal Data are subject to appropriate duties of confidentiality;

14.2.4 have at all times during the term of the Contract appropriate technical and organisational measures in place to protect any Personal Data against unauthorised or unlawful processing and against accidental loss, alteration, destruction or damage, including all measures required under GDPR Article 32;

14.2.5 cease processing the Personal Data immediately upon the termination or expiry of the Contract or, if sooner, on cessation of the contractual activity to which it relates and, at ES-KO’s election, delete or return all Personal Data to ES-KO, and delete all existing copies unless applicable law requires their retention;

14.2.6 make available to ES-KO all information reasonably necessary to demonstrate compliance with the obligations set out in this clause, and allow for and contribute to audits, including inspections, conducted by ES-KO or its representative;

14.2.7 at the earliest opportunity and in any event within 24 hours after having become aware, notify ES-KO of any unauthorised or unlawful processing of any of the Personal Data to which this clause applies and of any loss or destruction or other damage and shall take such steps consistent with good industry practice to mitigate the detrimental effects of any such incident on the Data Subjects and fully co-operate with ES-KO in dealing with such incident and its consequences;

14.2.8 co-operate as requested by ES-KO to enable ES-KO to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of Personal Data processed by the Supplier under the Contract and/or comply with any assessment, enquiry, notice or investigation by the relevant supervisory authority which shall include the prompt provision of all Personal Data requested by ES-KO; and

14.2.9 assist ES-KO in ensuring its compliance with Data Protection Legislation with the obligations in respect of security of Personal Data, notifications of breaches of Data Protection Legislation to supervisory authorities, communications of breaches of Data Protection Legislation to Data Subjects, the carrying out of data protection impact assessments and any consultations with supervisory authorities.

14.3 The Supplier shall not engage sub-processors of the Personal Data in relation to the performance of its obligations under this Contract without ES-KO’s prior approval.

14.4 The Supplier shall not process the Personal Data in any country outside the United Kingdom without ES-KO’s prior written consent and provided that:

14.4.1 the supplier has ensured that there are appropriate safeguards in relation to the transfer and processing in accordance with the GDPR Article 46 and as determined by ES-KO;

14.4.2 the Data Subject has enforceable rights and effective legal remedies;

14.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

14.4.4 the Supplier complies with ES-KO’s reasonable instructions.

14.5 The Supplier acknowledges that ES-KO is under certain record keeping obligations under the Data Protection Legislation, and agrees to provide ES-KO with all reasonable assistance and information required by ES-KO to satisfy such record keeping obligations.

14.6 In this clause 14, “Data Subject”, “Personal Data” and “process” and shall each have the meanings given in the applicable Data Protection Legislation.

15 ANTI-BRIBERY AND ANTI-CORRUPTION

15.1 The Supplier shall:

15.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

15.1.3 comply with ES-KO’s Ethics, Anti-bribery and Anti-corruption Policies and/or relevant industry code on anti-bribery (where applicable), in each case as ES-KO or the relevant industry body may update them from time to time (Relevant Policies);

15.1.4 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 15.1.2, and will enforce them where appropriate;

15.1.5 promptly report to ES-KO any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;

15.1.6 within 1 month of the Commencement Date, and annually thereafter, certify to ES-KO in writing signed by an officer of the Supplier, compliance with this Edition 2019
15.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 15 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to ES-KO for any breach by such persons of any of the Relevant Terms.

15.3 Breach of this clause 15 shall be deemed a material breach under clause 17.

15.4 For the purpose of this clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 15 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

16 COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

16.1 In performing its obligations under the Contract, the Supplier shall:

16.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

16.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, or of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

16.1.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 16;

16.1.4 notify ES-KO as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract;

16.1.5 maintain a complete set of records to trace the supply chain of all Goods and Services provided to ES-KO in connection with this Contract; and permit ES-KO and its third party representatives to inspect the Supplier’s premises, records, and to meet the Supplier’s personnel to audit the Supplier’s compliance with its obligations under this clause 16.

16.2 The Supplier represents and warrants that on the Commencement Date it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

16.3 ES-KO may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 16.

17 TERMINATION

17.1 Without affecting any other right or remedy available to it, ES-KO may terminate the Contract:

17.1.1 with immediate effect by giving written notice to the Supplier if:

17.1.1.1 there is a change of control of the Supplier; or

17.1.2 the Supplier’s financial position deteriorates to such an extent that in ES-KO’s opinion the Supplier’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

17.1.3 the Supplier commits a breach of clause 3.1.5 or clause 5.3.8,

17.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

17.2.1 the other party commits a material breach of any term of the Contract which breach is irreparable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;

17.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructurings), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or

17.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

18 CONSEQUENCES OF TERMINATION

18.1 On termination of the Contract, the Supplier shall immediately deliver to ES-KO all Deliverables whether or not then complete, and return all ES-KO Materials. If the Supplier fails to do so, then ES-KO may enter the Supplier’s premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

18.2 Termination of the Contract shall not affect the parties’ rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

18.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

19 DISPUTE RESOLUTION

19.1 If any dispute arises out of or in connection with this Contract (or its validity, construction, performance or enforceability) (“Dispute”), the senior representatives of the parties with authority to settle the Dispute shall, within 5 Business Days of a written request from one party to the other (“Dispute Notice”), meet in good faith with a view to resolving the Dispute.

19.2 If the Dispute is not resolved at that meeting, the Head of Procurement (in the case of ES-KO) and the Chief Executive Officer or Managing Director (in the case of the Supplier) shall, within 20 Business Days of the meeting of the senior representatives of the parties pursuant to clause 19.1 meet in good faith with a view to resolving the Dispute.

19.3 Until the parties have completed the steps referred to in clauses 19.1 and/or 19.2 Error! Reference source not found. and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief.

19.4 For the avoidance of doubt, all negotiations will be undertaken without prejudice to the rights of the parties in future proceedings.
19.5 Insofar as the Services provided by the Supplier under this Contract are subject to Part II of the Housing Grants, Construction and Regeneration Act 1996 then, notwithstanding any other clause in this Contract, if a dispute or difference arises under this Contract then either party may at any time refer the dispute or difference to adjudication and the Scheme shall apply. For the purpose of the Scheme, the adjudicator shall be the Adjudicator.

20 GENERAL

20.1 Assignment and other dealings.

20.1.1 ES-KO may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

20.1.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of ES-KO.

20.1.3 Where ES-KO grants its consent to the Supplier appointing a subcontractor, the Supplier shall not be relieved of any obligation or duty attributable to him under the Contract (including these Conditions) and the Supplier shall remain responsible for all acts and omissions of its personnel and its sub-contractors (and those employed by its sub-contractors) as if they were its own.

20.2 Force Majeure. Unless otherwise provided in the Purchase Order, neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control, including without limitation to the extent that these are beyond such control industrial disputes, nuclear accident, war or terrorist activity, riot, civil commotion, malicious damage, accident, failure of technical facilities, fire, flood or storm but excluding default of suppliers or sub-contractors (unless such defaults are due to force majeure). If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate the Contract by giving 14 days’ written notice to the affected party.

20.3 Notices.

20.3.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or by email with acknowledgement of receipt at the address specified in the Purchase Order;

20.3.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

20.3.3 This clause 20.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

20.4 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 20.4 shall not affect the validity and enforceability of the rest of the Contract.

20.5 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.6 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

20.7 Entire agreement. The Contract constitutes the entire agreement between the parties and, except to the extent inconsistent with a separate agreement signed by the parties that expressly applies to the subject matter of this Contract, this Contract supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.8 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

20.9 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

20.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

20.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.