

## IBERCAL PROPRIETARY CLASS 2

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**EMEA ENGINEERING SERVICES AGREEMENT TERMS AND CONDITIONS – IBERCAL, S.L.U.****1. ENTIRE AGREEMENT**

The Engineering Services Agreement (the “Agreement”), these commercial terms and conditions, and all referenced specifications, attachments, appendices, and exhibits thereto, constitutes the complete binding agreement between Ibercal, S.L.U. (“Ibercal”) and Engineer (as identified on the face of the Agreement) relating to the Work hereunder, superseding all prior agreements or undertakings, and subject to change only through the issuance by Ibercal of a Change Notice executed by the Parties hereto.

**2. AGREEMENT ACCEPTANCE**

Any acknowledgment of the Agreement by the Engineer, or the commencement of performance of the Work, shall serve as Engineer’s acceptance of the Agreement.

All prior dealings and understandings, and any additional, different, or inconsistent terms or conditions referenced by Engineer in its bid, and/or in connection with its implementation of the Agreement, are hereby objected to and rejected by Ibercal. In the event of a conflict between the Agreement and any acknowledgement or other communication from the Engineer, this Agreement will govern. If Engineer does not reject the Agreement within seven (7) Days of receipt, it shall be deemed accepted by Engineer.

**3. AGREEMENT DOCUMENTS**

“Agreement Documents” include any documents specifically attached, identified and/or incorporated by reference into the Agreement, inclusive of all attachments, appendices and any other referenced documents.

**All deliverables shall be provided in the English language and all units of measure shall be in English units.**

**4. AGREEMENT INTERPRETATION AND DEFINITIONS**

Any questions concerning interpretation of the Agreement shall be submitted in writing to Ibercal for determination. Any costs and expenses arising from Engineer’s failure to do so shall be borne by Engineer.

All determinations and instructions of Ibercal will be final. In the event that such a determination is pending, Engineer shall proceed with the Work in accordance with the written instructions of Ibercal. It is hereby agreed that if Engineer fails to contest Ibercal’s determination or instructions within seven (7) Days of such determination and/or instruction, such failure shall constitute a waiver by Engineer of all its rights to further protest, judicial or otherwise.

**“Change Notice”** means a written amendment to the Agreement issued by Ibercal to revise or change the Work to be performed by Engineer.

**“Customer”** means Ibercal’s client that utilizes Engineer’s Work in its final, installed configuration for the intended application.

**“Day”** means a calendar day.

**“Disclosing Party”** means the Party disclosing Proprietary Information to the other Party.

**“Documentation”** means all tangible documentation, including calculations, drawings, studies, reports, evaluations, designs, records, forms, manuals, reviews, procedures, specifications and plans.

**“Engineer”** means the party performing Work under the Agreement, including its subcontractors, and their authorized representatives and assigns.

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**“Party” and “Parties”** means Ibercal and Engineer referred to individually and collectively, as applicable.

**“Purchase Order”** means the document issued by Ibercal to Engineer for the Work, inclusive of the cover page of the Purchase Order, these commercial terms and conditions, and all referenced specifications, attachments, appendices, and exhibits thereto, executed by the Parties.

**“Proprietary Information”** means the Agreement including these terms and conditions and any and all information, data, software, matter or thing of a secret, proprietary, confidential or private nature identified as confidential and/or proprietary information by the Disclosing Party, relating to the business of the Disclosing Party, including matters of a technical nature (such as know-how, processes, data and techniques), matters of a business nature (such as information about schedules, costs, profits, markets, sales, customers, the Parties’ contractual dealings with each other and the Work that is the subject-matter thereof), matters of a proprietary nature (such as information about patents, patent applications, copyrights, trade secrets and trademarks), other information of a similar nature, and any other information which has been derived from the foregoing information by the Receiving Party.

**“Quality Assurance Program”** means a written program covering Engineer’s processes and procedures as related to the Work to be performed under the Agreement.

**“Receiving Party”** means the Party receiving Proprietary Information from the other Party.

**“Site”** means Ibercal’s Customer’s facility or plant.

**“Third Party” or “Third Parties”** means a party or parties other than Ibercal and the Engineer.

**“Third-Party Claim”** means any claim, demand or cause of action of every kind and character made by a Third Party and all damages, liabilities, losses, penalties, costs and expenses (including attorneys’ fees) related thereto.

**“Work”** shall mean (i) all technical and/or professional services performed by Engineer, including but not limited to design, engineering and consulting services and any other services of any kind required by the Agreement and (ii) all associated deliverables and Documentation as applicable.

### 5. AUTHORITY AND COMMUNICATION

Engineer acknowledges that only a representative of the Global Supply Chain Solutions organization of Ibercal is authorized to enter into the Agreement on behalf of Ibercal.

All written communications must be directed to Ibercal’s Supply Chain authorized representative. Engineer is permitted to communicate with Ibercal’s engineering or quality assurance personnel on technical or quality matters only. Any commitments resulting from such communications shall not be binding on Ibercal and the Engineer, unless documented by Ibercal through the issuance of a Change Notice.

### 6. ORDER OF PRECEDENCE

In the event of conflict among the various documents of the Agreement, the conflict shall be resolved according to the priority identified below:

1. Ibercal’s Change Notices, with the most recent dated documents taking precedence over earlier documents
2. Ibercal’s Purchase Order
3. These Terms and Conditions
4. Ibercal’s Purchase Order Attachments and Schedules
5. All other documents to the Agreement

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Any amendment will have priority over the document it amends, and any amended document will have the same precedence as stated in this provision. The various documents constituting the contractual obligations between the Parties shall, insofar as is possible, be so interpreted as to be consistent with one another.

**7. SCOPE OF WORK**

The Work shall be performed in accordance with the schedule set forth in the Agreement and in accordance with Ibercal technical drawings, specifications and any other requirements that are applicable to the Work, as identified in the Agreement.

**8. COMPENSATION**

Engineer shall be paid in accordance with the pricing set forth in the Agreement.

For Work performed on a fixed price basis, "Agreement Price" shall mean the total compensation paid by Ibercal to Engineer for its performance of the Work.

For Work performed on a labor hour basis, "Agreement Pricing" shall mean the estimated total compensation to be paid by Ibercal to Engineer for its performance of the Work. Engineer shall not perform Work under the Agreement once the estimated total compensation amount is reached. Work shall only resume upon an adjustment in the Purchase Price pursuant to a Change Notice.

**9. TERMS OF PAYMENT**

The Engineer will submit invoices for the Work in accordance with the instructions and payment terms in the Agreement. Ibercal shall pay correct invoices by electronic fund transfer to Engineer's bank account.

Ibercal shall notify Engineer of a disputed or deficient invoice, or part thereof, within thirty (30) Days after receipt of such invoice along with evidence which reasonably documents the contractual basis of the dispute or deficiency. Upon notification by Ibercal of an invoice which is disputed or deficient in any respect, Engineer shall resubmit that invoice in proper form (the "Interim Replacement Invoice"). Ibercal shall pay the amount of the Interim Replacement Invoice that reflects the undisputed amount within sixty (60) Days after the date of Ibercal's receipt of the Interim Replacement Invoice.

When the deficient or disputed invoice is resolved, Engineer shall submit a corrected and final invoice (the "Final Replacement Invoice"); and Ibercal shall pay to Engineer any additional amount due Engineer, or Engineer shall refund to Ibercal any amount by which Engineer was overpaid, as applicable, on a net sixty (60) Day basis (after the date of Ibercal's receipt of Engineer's Final Replacement Invoice). Ibercal shall be entitled to withhold payment from Engineer for any amounts which Engineer may owe Ibercal pursuant to this Agreement or any other existing contract between the Parties, and shall have the right to offset those amounts from any payments due to Engineer.

**10. LIQUIDATED DAMAGES FOR DELAY**

If the Work or any part thereof is not delivered at the agreed time for delivery, Ibercal shall be entitled to liquidated damages from the date on which delivery should have taken place. The Work shall be deemed delivered when the Engineer has completed delivery of the Work in accordance with the agreed trade term, if applicable, and when the Engineer has also completed its other obligations under the Purchase Order or Agreement which shall be fulfilled before delivery. The liquidated damages shall be payable at a rate of 1.5 percent of the purchase

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price for each commenced week of delay. The liquidated damages shall not exceed 30 percent of the purchase price.

If the delay in delivery is such that Ibercal is entitled to maximum liquidated damages, or if it is clear from the circumstances that such delay will occur, and if the Work or any delayed part thereof is still not delivered, Ibercal may in writing demand delivery within a final reasonable period. If the Engineer does not deliver within such final period, then Ibercal may by notice in writing to the Engineer terminate the Agreement.

In addition to liquidated damages, Ibercal shall be entitled to compensation for the loss it suffers due to Engineer's delay to the extent the loss exceeds the maximum of liquidated damages Ibercal may claim under this Article.

**11. SCHEDULE REQUIREMENTS AND GUARANTEES**

The Engineer shall perform the Work in accordance with the required schedule delivery dates provided in the Agreement. The Parties agree that these performance and delivery schedules are a material requirement and that Ibercal relies on Engineer's timely performance of the Work.

Within thirty (30) days of the Agreement issue date, Engineer shall submit an initial progress report reflecting the status and planned schedule of all Work activities, in a format approved by Ibercal. Thereafter, Engineer will submit updated monthly progress reports to Ibercal. If at any time, the Engineer's completion or delivery of any portion of the Work falls behind schedule, Engineer shall develop a recovery plan to remedy the non-compliance. The Engineer will obtain Ibercal's approval of the recovery plan and implement the approved recovery plan at its cost, including without limitation, assigning additional manpower, working overtime and/or re-sequencing of Work activities. Ibercal's approval of the Recovery Plan will not relieve the Engineer of any of its obligations under the Agreement.

The Agreement shall not be deemed complete until all Work has been accepted by Ibercal. Ibercal may withhold final payment, pending the Engineer's fulfillment of this obligation.

**12. OWNERSHIP AND LICENSE RIGHTS**Ibercal Background Information.

- (a) "Ibercal Background Information" means all of Ibercal's Documentation, data, information, ideas, concepts, know-how, software, methods, procedures, processes, improvements, inventions and discoveries that either (i) are owned or controlled by Ibercal prior to the Effective Date and furnished to Engineer for purposes of the Work or (ii) are independently developed or obtained by Ibercal during the term of this Agreement and furnished to Engineer for purposes of the Work.
- (b) Ibercal shall retain all right, title and interest in and to Ibercal Background Information, including all intellectual property rights therein.
- (c) Ibercal grants to Engineer a license on a non-exclusive, nontransferable, nonsublicensable and royalty-free basis to use and modify the Ibercal Background Information solely for the purpose of providing the Work to Ibercal.
- (d) Ibercal shall own all right, title and interest in any and all modifications made by Engineer to Ibercal Background Information.

Engineer Background Information.

- (a) "Engineer Background Information" means all of Engineer's Documentation, data, information, ideas, concepts, know-how, software, methods, procedures, processes, improvements, inventions and discoveries that are owned or controlled by Engineer prior to the Effective Date and used by Engineer for purposes of the Work.

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- (b)** Engineer shall retain all right, title and interest in and to Engineer Background Information, including all intellectual property rights therein.
- (c)** Engineer grants to Ibercal and its Customer a license on an irrevocable, perpetual, non-exclusive, assignable, paid-up, royalty-free and worldwide basis to use, have used, copy, modify, have modified, create derivative works of, store electronically and sublicense Engineer Background Information to the extent necessary for the use of the Work and the Ibercal Foreground Information as may be required by Ibercal or its Customer.
- (d)** At Ibercal's reasonable request, Engineer shall provide Ibercal with remote electronic access to Engineer Background Information unless precluded by third-party license restrictions.

Foreground Information.

- (a)** "Foreground Information" means all Documentation, data, deliverables, information, ideas, concepts, know-how, software, methods, procedures, processes, results, improvements, inventions and discoveries that are made, conceived and/or first reduced to practice or use by or on behalf of Engineer arising under the Agreement.
- (b)** Ibercal shall own all right, title and interest in all Foreground Information, including all associated intellectual property rights therein (including copyright). Engineer shall transfer any and all right, title and interest in and to such Foreground Information to Ibercal to the extent required or necessary by Ibercal.
- (c)** For the term of the Agreement only, Ibercal grants to Engineer a license on a non-exclusive, nontransferable, nonsublicensable, royalty-free basis to use the Foreground Information solely for the purpose of providing the Work to Ibercal.
- (d)** Engineer shall provide Ibercal with the necessary assistance (and direct its employees to do the same) for Ibercal to file and prosecute patent applications in order to protect Foreground Information, including by making any assignments of ownership that may be required by Ibercal. Engineer shall clearly mark all Foreground Information to the extent possible with the notation "Ibercal Proprietary Class 2" unless otherwise directed by Ibercal.

Third-Party Information.

- (a)** "Third-Party Information" means any Documentation, data, information, ideas, concepts, know-how, software, methods, procedures, processes, improvements, inventions and discoveries provided by unaffiliated third parties that are used by Engineer in the performance of and incorporated into or necessary for the use of the Work.
- (b)** To the extent such Third-Party Information is included in any Work or necessary for the use of Engineer Background Information or Foreground Information, Engineer agrees that it has obtained for Ibercal and its Customer, to the extent reasonably possible, the right to use, have used, copy, modify, have modified, create derivative works of, store electronically and sublicense such Third-Party Information.
- (c)** Engineer represents that it holds a license to such Third-Party Information, and it is authorized under such license to sublicense the Third-Party Information as required herein.

**13. CHANGES**

Ibercal may, at any time, by written Change Notice, make a change to the Work, including but not limited to the following:

- (a) In the technical specifications (including drawings and other design documents);
- (b) In the method or manner of performance of the Work; or

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- (c) To the schedule date delivery requirements.

If any Change Notice hereunder causes an increase in the Engineer's cost of, or the time required for, the performance of the Work, Engineer shall be entitled to an adjustment. The Engineer must assert its right to an adjustment under this clause within ten (10) Days from receipt of Ibercal's written Change Notice, including the basis for its claim and substantiating documentation. To the extent that any Change Notice reduces the scope of the Work to be performed by Engineer, Ibercal shall be entitled to a credit for the portion of the Work affected by such Change Notice.

**14. WARRANTY**

Engineer warrants that all Work performed under the Agreement shall be of the highest professional quality, in accordance with all applicable laws, codes and standards, accepted industry practice, and all other applicable regulations. Engineer further warrants that the Work shall be complete, accurate, free of any defects and shall conform to the requirements of the Agreement. Any Work that fails to meet said warranty standards shall be re-performed or corrected by Engineer at its cost, on a schedule acceptable to Ibercal. The Engineer shall be liable for any and all losses incurred by Ibercal due to such failure.

Engineer further warrants that all Agreement deliverables shall be authentic, and as such, have not been obtained from falsified product sources (counterfeits); have not had their quality assurance records falsified; and do not contain any false markings as to class, type, grade or labeling as to qualification or acceptance by certifying organizations. Engineer shall promptly replace such Agreement deliverables and hold Ibercal and the Customer harmless from and against any and all liability, damage, loss, cost, or expense, including attorneys' fees, with respect thereto.

The warranty period with respect to the Work shall commence upon the completion of the Work and shall extend for a period of five (5) years ("Warranty Period").

After becoming aware of any Work that is defective or otherwise fails to conform to the Agreement, Ibercal shall provide Engineer prompt written notice of any such breach of the warranty. Upon receipt of such warranty notice, Engineer shall promptly conduct an investigation and provide Ibercal with a corrective action plan and schedule. Such corrective action plan and schedule shall be reviewed and approved (or rejected), by Ibercal in its sole and reasonable discretion. At Ibercal's direction, the Engineer either (a) shall re-perform, modify or adjust the Work as required to rectify any defect at no cost to Ibercal ("Warranty Work"); or (b) shall promptly reimburse Ibercal for all payments made for such defective Work.

If the Engineer fails to initiate or perform required Warranty Work within fifteen (15) Days of receiving Ibercal's notice of a warranty breach, or fails to respond to Ibercal's warranty breach notice, Ibercal shall be entitled (in addition to other contractual remedies available), to remedy the warranty breach by a third party at Engineer's sole cost.

After Engineer's correction of defective or nonconforming Work, the Warranty Period shall be either (a) one year after the completion of the Work necessary to correct the defect or nonconformity; or (b) the remainder of the Warranty Period as of the date on which the Engineer receives written notice of the defect or nonconformity, whichever is longer. In no event shall the Engineer be liable for breach of warranty for any defect resulting from Ibercal's specifications or designs or those of its suppliers or subcontractors other than the Engineer.

The Engineer further represents and warrants to Ibercal that:

- (a) The Engineer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has the requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in any jurisdiction in which the transaction of its business makes such qualification necessary.

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- (b) The Engineer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement by the Engineer has been duly authorized by any and all required third parties.
- (c) There are no approvals or consents of governmental authorities or other persons not yet obtained, the absence of which would materially impair the Engineer's ability to execute, deliver and perform its obligations under this Agreement.
- (d) Engineer certifies that it is properly licensed, equipped and organized to provide the Work required under the Agreement, that it has the proper stamps and registered engineers that can certify drawings and/or specifications in the jurisdiction where the Work shall be performed, delivered and utilized.
- (e) Engineer shall comply with all applicable laws, codes, rules, ordinances, regulations and standards, including those of the countries where the Work will be performed, delivered and/or incorporated.
- (f) While upon the premises of Ibercal or the Customer, Engineer shall comply with all applicable Site rules and policies.
- (g) Engineer shall cooperate with other entities or persons working on behalf of Ibercal, as requested by Ibercal.
- (h) Engineer shall comply at all times with the values, principles and standards set forth in Ibercal Supplier Code of Conduct, to be considered an integral part of the Agreement. Any breach of Ibercal Supplier Code of Conduct shall be considered a Engineer's default and will entitle Ibercal to take any suitable action for the best protection of its rights, including the termination of the Purchase Order pursuant to the Agreement.

**15. KEY PERSONNEL**

If applicable, key personnel specified in the Agreement are considered as essential to the Engineer's performance of the Work ("Key Personnel").

At least thirty (30) Days prior to removing, or replacing any of the Key Personnel, the Engineer must (a) notify Ibercal in writing; (b) submit justification (including proposed substitutions) in sufficient detail to permit Ibercal's evaluation; and (c) obtain Ibercal's written approval, which shall not be unreasonably withheld. The Engineer shall not divert or otherwise replace any Key Personnel without the written consent of Ibercal.

The Engineer shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitute personnel, and any additional information which may be requested by Ibercal. Proposed substitutes should have commensurate or comparable qualifications to those of the persons being replaced.

Ibercal will notify the Engineer within fifteen (15) Days after receipt of all required information of Ibercal's decision on the proposed substitutions.

Notwithstanding the foregoing, if the Engineer deems immediate removal or suspension of any member of its team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity, the Engineer may remove or suspend such person at once, and notify Ibercal of such action. If Ibercal determines that immediate removal or suspension of any member of the Engineer's management team or Key Personnel is necessary to maintain satisfactory performance and/or progress of the Work, Ibercal may direct the Engineer to make such removal or suspension at once, and the Engineer must comply.

The Agreement will be modified to reflect any approved changes of Key Personnel.

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Ibercal and the Customer shall have the right, at reasonable times and frequencies and during normal working hours, to inspect and review the Work being performed by the Engineer or its authorized subcontractors, pursuant to the Agreement.

**17. QUALITY ASSURANCE**

Engineer represents that it has established and implemented a Quality Assurance Program that addresses all the quality requirements for the Work. Engineer represents that the Quality Assurance Program meets Ibercal's compliance requirements and that if applicable, the requirements of the NRC related to quality control and quality assurance, including Title 10 of the Code of Federal Regulations, Part 50, Appendix B. Engineer shall, at its sole cost and expense, provide Ibercal with a copy of the quality assurance manuals applicable to the Work.

Ibercal shall have access to Engineer's facilities for the purpose of auditing Engineer's Quality Assurance Program and quality control records applicable to the Work. Engineer shall compensate Ibercal for its additional costs and expenses incurred as a result of non-compliance by Engineer with the Quality Assurance Program or inability to locate quality control records in a timely manner during the audit. Engineer shall retain the applicable quality control records in a form which minimizes the risk of their destruction or loss for the period of time specified in the applicable codes and standards. Engineer shall advise Ibercal prior to disposal of such records.

Ibercal shall, at its sole cost and expense, have access to Engineer's facilities where the Work is being performed for the purpose of quality assurance surveillance, the witnessing of the general performance of the Work and verifying the status of Work activities. Ibercal shall have the right to issue a stop-work order at any time Ibercal determines that the Work is not in compliance with the Quality Assurance Program or the requirements of the Agreement. Engineer shall compensate Ibercal for its additional costs and expenses incurred as a result of such non-compliance by Engineer, and Ibercal shall not be obligated to compensate Engineer for time, costs, damages or delays caused by such non-compliance nor shall such delays constitute grounds for any change or modification of the delivery schedule dates.

Ibercal shall have the right to establish, under the Agreement, a separate and independent inspection and testing program for the Work. Should Ibercal establish such a program, Engineer shall use its good faith efforts to cooperate in the performance of such program. Should it be determined, as a result of such program, that the Work does not conform to the requirements of the Agreement, the Parties shall mutually agree as to the method of correcting the nonconformance. Such program shall not in any way release Engineer from its obligations under the Agreement.

The obligations contained in this Article shall apply to Engineer's subcontractors, and Engineer must impose the same obligations on its subcontractors through its contracts or agreements with its subcontractors.

Ibercal shall be allowed access to Engineer's facilities to inspect workmanship, observe tests and inspections, expedite delivery, and obtain required information for the Work. Engineer shall use good faith efforts to obtain for Ibercal the same access rights at subcontractors' facilities.

Engineer shall respond to Ibercal in writing to all audit findings within a reasonable amount of time from the receipt of the audit report. Responses should include timelines and plans for closure of all corrective actions and commitments.

**18. INDEMNITY**

Engineer shall defend, indemnify and hold harmless Ibercal, its owner, and Ibercal's Customer, and its/their officers, agents, employees, successors and assigns from and against any and all Liens, liabilities, damages, costs, losses, claims, demands, actions, and expenses (including reasonable attorney fees) arising out of, resulting from, or relating to the Work, including but not limited to loss of use resulting therefrom, acts or omissions in violation of applicable laws, claims or fines by governmental authorities, or death of or injury to any person, or damage to any property.

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Engineer, at its sole expense, shall indemnify and defend, or settle with Ibercal's prior written approval, any action brought against Ibercal, its owner and/or its Customer, to the extent based on a claim that all or any of the Work or Engineer Background Information constitutes an infringement, misappropriation or other violation of any intellectual property right of any Third Party ("IP Claim"); provided (a) the Engineer is notified of such action within a reasonable time, (b) the Engineer has sole control of the defense and settlement of such IP Claim in such action, and (c) Ibercal provides the Engineer with reasonable assistance (at the Engineer's sole expense) in connection with such defense and settlement. Engineer shall pay all of the damages, liabilities, costs, losses and expenses (including any attorney's fees) incurred in connection with any such IP Claim against Ibercal and/or its Customer. In the event that the Work or Engineer Background Information is held to constitute an infringement or its use by Ibercal or the Customer is enjoined, the Engineer may, at Ibercal's sole option and at Engineer's sole expense, (a) procure for Ibercal and/or its Customer the right to continue using such Work or Engineer Background Information, (b) replace such Work or Engineer Background Information with non-infringing substitutions that meet all of the requirements of the Agreement or (c) modify such Work or Engineer Background Information such that it becomes non-infringing while still meeting all of the requirements of the Agreement; or, if the remedies set forth in (a) through (c) are not reasonably possible to obtain for the benefit of Ibercal or the Customer after the exercise of demonstrable good faith efforts by the Engineer, at Ibercal's option, the Engineer shall (iv) refund to Ibercal an equitable portion of the Purchase Price paid by Ibercal to the Engineer for such Work or Engineer Background Information upon return by Ibercal to the Engineer of the infringing Work or Engineer Background Information, plus any costs incurred by Ibercal due to the return of such Work or Engineer Background Information, which may include, but not be limited to, any costs charged to Ibercal by the Customer.

**19. INSURANCE**

**19.1** Engineer's Insurance Requirements. Engineer shall maintain insurance of the types and minimum amounts set forth below. Engineer shall ensure that all such insurance is maintained in full force and effect as specified herein from its commencement of performance of the scope under the Purchase Order or Agreement to the date of expiration of the Warranty Period hereunder.

**Type of Coverage****Minimum Amount of Coverage**

Workers' Compensation or equivalent Statutory Compensation (including Employers Liability) complying with the applicable Laws for Engineer's territory	As required by Law (Minimum statutory limit)
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Primary Commercial General Liability (CGL) insurance providing cover for premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract	Not less than 5,000,000 EUROS each occurrence, and 5,000,000 EUROS in the Aggregate
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Automobile Liability, including owned, hired, and non-owned automotive equipment used in connection with the insured operation	Bodily Injury and Property Damage Combined – 2,000,000 EUROS each occurrence
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Excess Liability Insurance following the form of the primary Commercial General Liability policy for the coverage required above. The Excess limits can also be used to satisfy the overall limit requirements for the above (CGL) policy	Overall limit to be not less than 10,000,000 EUROS each occurrence; 10,000,000 EUROS in the aggregate in total when in combination with primary and other Excess Liability policies
Professional Liability, if specified in the P.O, including coverage for professional negligent acts, errors or omissions.	10,000,000 EUROS each accident and in the aggregate per year
Cargo/Transit Insurance must be obtained on Materials to be transported.	In the amount of the value of the Materials, Delivery, FCA (domestic shipments) or DAP (international shipments) Incoterms 2010 unless specified otherwise in the P.O.) +10% CIF

**19.2 Provisions Applicable to All Coverages:**

- (a) All insurance required to be provided by Engineer hereunder shall be placed with insurers having an A.M. Best and Company rating level of A- or better, Class VII or better and authorized to do business in the territory where the Work is to be performed.
- (b) Maintenance of insurance shall not limit Engineer's liability for loss or damage in excess of policy limits or outside of policy coverage.
- (c) Prior to the Effective Date, Engineer shall furnish Ibercal one or more certificates of insurance for all insurance policies required to be provided under the Purchase Order or Agreement. The certificates shall list all required endorsements as set forth in Article 19.3 below. Such certificates shall provide that the insurer on each policy shall endeavor to give 30 Days' written notice to Ibercal prior to any material change or cancellation of the insurance. Engineer shall deliver to Ibercal a further certificate(s) of insurance for each subsequent renewal where coverage is required to be maintained within 5 Days of the renewal date. Each certificate furnished pursuant to this Article 19.2(c) shall state that it is being furnished in compliance with the requirements of the Purchase Order or Agreement and shall identify the Purchase Order by the number assigned to it by Ibercal, unless otherwise directed by Ibercal.
- (d) Neither a failure of Engineer to provide the required certificate of insurance nor Engineer's submission of a certificate of insurance not in conformance with the insurance requirements stated in this Article 19 relieves Engineer from the obligation to have in force the required insurance coverages and endorsements to the policies as set forth below.
- (e) No policy should have an excess or deductible which exceeds 250,000 EUROS (or equivalent) without prior discussion and agreement with Ibercal. Engineer is responsible for any excess or deductibles associated with its policies of insurance.
- (f) Any limits of coverage may be met by one or more policies.

**19.3 Policy Endorsements.**

## **EMEA ENGINEERING SERVICES AGREEMENT TERMS AND CONDITIONS - IBERCAL, S.L.U.**

- (a) Each liability insurance policy (including the Workers' Compensation and Employer's Liability policies) required to be provided by Engineer in Article 19.1 above shall contain or be endorsed to contain the following provision:

The insurer waives any right of subrogation against Ibercal and its subsidiaries and affiliates (including Ibercal Electric Company LLC and/or Ibercal Electric UK Holdings Ltd), as well as its members, officers, directors, employees, lenders, subcontractors and suppliers of any tier.

- (b) Each policy (except the Workers' Compensation, Employer's Liability, Property, Professional Liability, Open Cargo and/or Inland Transit Insurance policies) required to be provided by Engineer in Article 19.1 above shall also contain or be endorsed to contain the following provisions:
- (i) Ibercal, its subsidiaries and affiliates (including Ibercal Electric Company LLC and/or Ibercal Electric UK Holdings Ltd), as well as its members, officers, directors, employees, lenders, subcontractors and suppliers of any tier are covered as additional insured to the extent of Engineer's indemnity obligations under the Agreement.
  - (ii) All provisions of this policy, except the limits of liability, will operate in the same manner as if there were a separate policy covering each insured under each policy.
  - (iii) The insurer waives any and all right of recourse under this policy against the additional insured for the payment of premiums, additional premiums or assessments.
  - (iv) This policy shall be primary, or excess only with respect to the specified primary policy provided by the named insured(s) for such coverage, and not excess or contributing with respect to any other insurance maintained by or for the additional insured.

### **20. INDEPENDENT CONTRACTOR**

The Engineer is an independent contractor, with complete control of its personnel and subcontractors engaged in the performance of the Work. As between Ibercal and the Engineer, nothing herein shall be construed to create the relationship of employer and employee, partnership, principal or agent, or joint adventurer. None of the Engineer's employees is or shall be deemed to be an employee, agent, servant or representative of Ibercal.

The manner and method of implementing and completing the Work will be left to the Engineer's control and professional judgment. The Engineer shall perform the Work in compliance with this Agreement and in accordance with its own methods and shall have complete authority to direct and control its performance under this Agreement. The Engineer shall be fully responsible for the acts and omissions of its personnel and subcontractors performing the Work subject to the provisions of this Agreement and in accordance with the applicable provisions of law.

### **21. SOFTWARE**

The Engineer shall provide a list of all design software programs intended to be utilized during the performance of Work, such as engineering calculations and performance design. Said list shall include the name of the software, source of the software, revision date, and validation confirmation.

### **22. COMPLIANCE WITH LAWS**

The Engineer and its subcontractors assume full and complete responsibility for compliance with all applicable federal, state, local, and municipal laws, environmental law, safety and health laws, and the laws of the country where the Work is being performed and incorporated, inclusive of any subdivision thereof and any lawful regulatory

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body acting thereunder, as well as any amendments and changes to the aforementioned that may occur from time to time.

### **23. TERMINATION FOR CONVENIENCE**

Ibercal may, at any time, terminate the Agreement for Ibercal's convenience.

Upon receipt of written notice from Ibercal of such termination for Ibercal's convenience, the Engineer shall:

- (a) cease performance of Work as directed by Ibercal in the notice;
- (b) take actions necessary, or that Ibercal may direct, for the protection and preservation of the Work;
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and enter into no further agreements;
- (d) as directed by Ibercal, transfer title and deliver to Ibercal all Work, including Work in process, completed Work, and any deliverables acquired for the Work; and
- (e) Take any action that may be necessary, or that Ibercal may direct, for the protection and preservation of the Work related to the Agreement that is in the possession of the Engineer and in which Ibercal has or may acquire an interest.

After termination, the Engineer shall submit a final termination settlement proposal to Ibercal in the form prescribed by Ibercal. The Engineer shall submit the proposal promptly, but no later than sixty (60) Days from the effective date of termination. If the Engineer fails to submit the termination settlement proposal within this timeframe, Ibercal may determine, on the basis of information available, the amount, if any, due the Engineer as a result of the termination, and shall pay such amount to Engineer.

Subject to the above, the Engineer and Ibercal shall agree upon the whole or any part of the amount to be paid or remaining to be paid as a result of the termination. However, the agreed amount, shall not exceed the total Purchase Price as reduced by the amount of payments previously made.

### **24. TERMINATION FOR DEFAULT**

The Engineer shall be considered in default of its contractual obligation under this Agreement if it:

- (a) performs Work which fails to conform to the requirements of this Agreement;
- (b) fails to meet the Scope of Work schedule or fails to make progress so as to endanger performance of this Agreement;
- (c) abandons or refuses to proceed with any or all Work, including modifications directed pursuant to terms and conditions of the Agreement;
- (d) fails to provide, in the event that an order for relief in bankruptcy is entered with respect to the Engineer or the Engineer becomes insolvent or makes a general assignment for the benefit of creditors, adequate assurance of the Engineer's future performance in accordance with the terms and conditions of the Agreement; or
- (e) fails to fulfill any of the other material terms of this Agreement.

Upon the occurrence of any of the foregoing events of default, Ibercal shall notify the Engineer in writing of the nature of the default and of Ibercal's intention to terminate the Agreement for default.

When Ibercal terminates the Agreement for one of the reasons stated above, the Engineer shall not be entitled to receive further payment until the Work is finished, subject to Ibercal's rights set forth below.

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Upon termination for default, the Engineer shall:

- (a) immediately discontinue Work as specified in the notice and place no further contracts or subcontracts to the extent that they relate to the performance of Work terminated.
- (b) inventory, maintain and transfer title to Ibercal and deliver as directed by Ibercal completed or partially completed Work, as well as any such items furnished to the Engineer by Ibercal to perform the terminated Work;
- (c) promptly obtain cancellation upon terms satisfactory to Ibercal of all subcontracts, rentals, or any other agreements existing for performance of the terminated Work or assign those agreements to Ibercal as directed;
- (d) cooperate with Ibercal in the transfer of information and disposition of Work in progress so as to mitigate damages;
- (e) if applicable, demobilize from the Site in accordance with Ibercal's instructions; and
- (f) continue to perform in accordance with all of the terms and conditions of the Agreement such portion of Work that is not terminated.

Upon termination for default, Ibercal may seek any remedies that are available to it at law or in equity, including the right to obtain substitute performance for the Work. If the additional costs to Ibercal to complete the Work or have the Work completed by a substitute supplier exceeds the unpaid balance of the Purchase Price, the Engineer shall be liable to Ibercal for all costs in excess of the Purchase Price reasonably and necessarily incurred by Ibercal to complete such terminated Work as scheduled. Such costs shall include, but not be limited to, the cost of administration of any contracts awarded to Third Parties to achieve completion and damages for delay in completion, if any.

If after termination pursuant to this Article, it is determined that the Engineer was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Article above.

**25. SUSPENSION OF THE WORK**

Ibercal may, without cause, suspend, or delay the Work in whole or in part for such period of time as Ibercal may determine is required.

Ibercal shall continue to meet the payment obligations to the Engineer during any suspension, delay or interruption for Work completed or performed.

During any suspension, the Engineer shall promptly suspend its performance of the Work and shall take reasonable precautions to protect, store and secure the Work against loss or damage and to minimize the charges for the suspension.

The Engineer shall resume any suspended or delayed Work promptly following receipt of notice from Ibercal to do so.

**26. TAXES**

The Agreement Price shall not include sales or use taxes, VAT, or other indirect taxes imposed upon the sale or use of tangible personal property or services, and such taxes, if applicable, are to Ibercal's account. In the event Engineer is registered to collect applicable sales or use taxes, it shall do so as an addition to the Agreement Price, unless Ibercal furnishes a tax exemption certificate. All other taxes imposed prior to delivery of the Work are for the account of Engineer, including property and inventory taxes imposed with respect to goods for which title has passed to Ibercal pursuant to the Purchase Order or Agreement, including but not limited to, taxes that may be levied while such Goods are being stored by Engineer or otherwise in Engineer's custody.

**EMEA ENGINEERING SERVICES AGREEMENT TERMS AND CONDITIONS - IBERCAL, S.L.U.****27. PROPRIETARY (CONFIDENTIAL) INFORMATION**

Previous Agreements Superseded. The terms of this Article shall supersede any previous proprietary or confidentiality agreement executed by Ibercal and Engineer.

Purpose of Use. Proprietary Information shall be used by the Receiving Party exclusively in connection with the performance of its responsibilities relating to (a) the Work and (b) the Agreement.

Prevention of Unauthorized Disclosure. The Receiving Party shall employ all reasonable commercial efforts and precautions to maintain the Proprietary Information received under the Agreement in strict confidence and to prevent loss or unauthorized disclosure of the Proprietary Information.

Disclosure to Third Parties. Ibercal shall have the right to disclose Engineer's Proprietary Information to Ibercal's owner and to Ibercal's Customer, and their subsidiaries, for the purposes set forth in this Article or as otherwise provided in this Agreement. Otherwise, a Receiving Party shall disclose Proprietary Information only to its employees, or to the employees of Ibercal's owner or Customer if Ibercal is the Receiving Party, who (a) have a need to know solely for the purposes set forth herein and (b) are bound to protect the Proprietary Information from unauthorized use and disclosure under terms at least as restrictive as those contained herein. A Receiving Party shall not disclose Proprietary Information to any other person, firm or company without the prior written approval of the Disclosing Party.

Disclosure Required by Law or Order. If the Receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Proprietary Information, the Receiving Party shall provide the Disclosing Party with prompt written notice so it may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Article. If such protective order or other remedy is not obtained, or compliance with the provisions of this Article is waived, the Receiving Party shall disclose only the minimum amount of Proprietary Information that is legally required and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Proprietary Information so disclosed.

Exceptions. The above requirements shall not apply to any Proprietary Information that is:

- (a) at the time of disclosure generally known or readily available to the trade or public or becomes so known or readily available without fault of the Receiving Party;
- (b) lawfully obtained at any time from a Third Party legally entitled to possess the information and provide it to the Receiving Party, if the use or disclosure (as appropriate) is in accordance with the rights or permission lawfully granted to the Receiving Party by such Third Party;
- (c) disclosed in any issued patent, publication, or other source from and after the time it becomes generally available to the public; or
- (d) independently developed by the Receiving Party without the benefit of the Proprietary Information disclosed to the Receiving Party under the Agreement and substantiated by written evidence.

Marking the Proprietary Information. If Proprietary Information is made available in written, electronic or physical form, it shall be marked "proprietary", "confidential" or the like, and if disclosed orally, the disclosure shall be preceded by a verbal notification of its proprietary nature and be confirmed as Proprietary Information in writing within twenty-one (21) days after the oral disclosure thereof.

At any time during or after the term of this Agreement, at the Discloser's written request, the Recipient shall, at the Discloser's option, promptly return to the Discloser or destroy all Proprietary Information, including all Reproductions, except that Recipient may retain archival copies of Proprietary Information maintained in computer system backup files that are not readily available and archived copies of Proprietary Information that the Recipient is required to retain pursuant to applicable laws; however, the treatment and use of any retained Proprietary

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Information shall remain subject to the terms of this Agreement. If Proprietary Information is destroyed by the Recipient, the Recipient shall provide the Discloser written confirmation of such destruction.

**28. COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS**

The Parties agree not to disclose, transfer, export, or re-export, directly or indirectly, any and all Proprietary Information, Westinghouse Background Information, Engineer Background Information, Foreground Information, Third-Party Information, Westinghouse Furnished Property, Materials, Services or Work, or any portion thereof received from the other Party, or any direct products or technology resulting therefrom (collectively, "**Export Controlled Items**") to any country, natural person or entity except in accordance with applicable export control and sanctions laws, regulations, and restrictive measures of: (i) the United States (U.S.), including the U.S. Department of Energy export regulations of nuclear technology under 10 C.F.R. Part 810, the U.S. Nuclear Regulatory Commission export regulations under 10 C.F.R. Part 110, the U.S. Department of Commerce export regulations of commercial or dual use items under 15 C.F.R. 730 et seq., and the U.S. Department of Treasury's sanctions programs and sanctions lists; (ii) the European Union (E.U.), including EU 2021/821 and restrictive measures detailed in the E.U. Consolidated Financial Sanctions List; (iii) the United Kingdom (U.K.), and (iv) other applicable governments, hereinafter collectively referred to as "**Applicable Export Laws and Sanctions Laws**". To assure compliance with the Applicable Export Laws and Sanctions Laws the Engineer shall not disclose, transfer, export, or re-export, directly or indirectly, any Item it receives hereunder without the prior written permission of Westinghouse, which may be contingent on additional United States Government and other applicable government approvals.

Further, Engineer represents and warrants that:

- (a) Engineer has, and will maintain in effect, any permits, licenses, registrations or other governmental approvals, including export licenses, import clearance or other such approvals, as required to meet the Agreement delivery dates, and
- (b) Engineer shall provide to Westinghouse the export control classification number (for example the ECCN or ECN) as defined under the export control regulations of Engineer's country of nationality or country of origin of the **Export Controlled Items**, and Harmonized Tariff Code(s) ("**HTC**") to the first six digits, upon the earlier of the shipment date or upon request by Ibercal, and
- (c) Engineer will not use the Export Controlled Items in any activity prohibited by 15 C.F.R. Part 744, including without limitation nuclear, chemical, or biological weapons proliferation activities, and
- (d) Engineer will not disclose Export Controlled Items to any countries for which the governments of U.S., the E.U. and other applicable governments and international organizations maintain an embargo or to citizens or residents thereof if prohibited by such embargo, and
- (e) Engineer and its personnel (including its employees, contractors, officers, directors and principal owners): (i) do not appear in any published lists of natural persons and entities whose export or import privileges have been denied or restricted in any way, which are maintained by the governments of the U.S., E.U., or other applicable countries and international organizations, including the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury (**OFAC**); and (ii) are not a country, natural person, or entity with whom a U.S. person, or a natural person or entity subject to the jurisdiction of the U.S., E.U., U.K. or other applicable countries is otherwise prohibited from dealing with, as defined by the laws and regulations administered by OFAC, 31 C.F.R. Parts 500-598, or restrictive measures detailed in the Consolidated Financial Sanctions List (a "**Sanctions Target**"); and (iii) Engineer is not, directly or indirectly, owned or controlled by, or under common control with, or acting for the benefit of or on behalf of any Sanctions Target.

The Engineer shall fully comply with all such Applicable Export Laws and Sanctions Laws with regard to the Proprietary Information it receives hereunder and shall cooperate in good faith with the reasonable requests of

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Westinghouse made for purposes of its compliance with such Applicable Export Laws and Sanctions Laws. The Engineer will insert similar provisions in any agreement it has for the furnishing to third parties or its clients of any Export Controlled Items; provided, however, that the Engineer shall be solely responsible for its and such third parties' and clients' compliance with applicable requirements of Applicable Export Laws and Sanctions Laws. All claims, disputes, or other matters in question arising out of or relating in any way to the rights and obligations set forth in this Article with respect to Applicable Export Laws and Sanctions Laws of the United States shall be submitted exclusively to the United States District Court for the District of Columbia. This provision shall be specifically enforceable; and each party, hereby waiving personal service or process, irrevocably submits to and consents to the exclusive jurisdiction in the District of Columbia for purposes of any other party seeking or securing any legal and/or equitable relief hereunder.

Notwithstanding any other provisions in this Agreement, the obligations set forth in this Article shall be binding so long as the relevant Applicable Export Laws and Sanctions Laws are in effect.

**29. SAFETY CONSCIOUS WORK ENVIRONMENT (SCWE)**

Protected Activity. To the extent required by applicable law, Engineer and its personnel shall comply with the requirements of Section 211, "Employee Protection" of the Energy Reorganization Act of 1974, 42 U.S.C. §5851, as amended, and 10 C.F.R. §50.7, "Protection of Employees Who Provide Information" and 29 C.F.R. §24, which prohibit Nuclear Regulatory Commission (NRC) licensees or their contractors or subcontractors from discriminating against an employee for engaging in protected activities. Discrimination includes discharge, or other adverse or retaliatory action that relates to compensation, terms, conditions, and privileges of employment; and protected activities include raising nuclear safety or quality issues internally to licensee, contractor or subcontractor management or directly to the NRC.

Safety Conscious Work Environment. Ibercal is committed to safe operations, a strong nuclear safety culture and to maintaining a Safety Conscious Work Environment ("SCWE"). Engineer shall maintain an SCWE program at its facilities and shall follow Ibercal's or Ibercal customer's SCWE program for work at Ibercal customer's Site.

Notice of Engineer's Personnel Concerns. Engineer shall promptly (but in no event later than 5 working Days) notify Ibercal after any concern is received by the Engineer or brought to the Engineer's attention from Engineer's personnel (or former personnel) or the personnel (or former personnel) of its lower tier suppliers or subcontractors of: (i) an allegation in connection with the work of discrimination or retaliation because of engagement in protected activities; or (ii) notice of filing of a Section 211 complaint with the DOL; or (iii) notice of an investigation related to the filing of an allegation or Section 211 complaint by the NRC or the U.S. Occupational Safety and Health Administration (OSHA).

Further Information; Audit. It is the Engineer's responsibility to contact Ibercal to seek information, clarification, requirements or expectations for SCWE policies or programs. Ibercal and Ibercal's Customer shall have the right to audit the effectiveness of such programs not less than once every twelve (12) months during the term of the Agreement. If Ibercal determines through any such audit that there are deficiencies in the implementation and practice of the Engineer's SCWE program, the Engineer shall undertake appropriate corrective actions to Ibercal's reasonable approval.

Material Breach. Any breach of these provisions shall be deemed a material breach of the Agreement. In the event that NRC imposes a civil penalty against Ibercal, or Ibercal's Customer as a result of Engineer's breach of these provisions, such civil penalty may be considered by the Parties to be direct damages and not consequential, special or indirect damages under this Agreement.

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Flow-Down Requirement. Engineer shall include the foregoing provisions into each of its lower-tier suppliers or subcontractors for the performance of nuclear safety or quality work in connection with the Agreement, and Engineer shall be responsible for ensuring compliance by its lower-tier suppliers and Subcontractors.

### **30. ASSIGNMENT AND SUBCONTRACTING**

The Engineer shall not assign or transfer the Agreement in whole or in part, by operation of law, or otherwise, without the prior written consent of Ibercal. The Engineer shall not subcontract the performance of any of its obligations under this Agreement without the prior written consent of Ibercal. Subject to the foregoing, nothing shall relieve Engineer from any liability for the performance of any of Engineer's obligations under the Agreement.

### **31. GOVERNING LAW, DISPUTES AND VENUE**

This Agreement shall be governed by the laws of Spain without regard to its provisions for choice of laws or conflicts of laws and shall not be governed by the United Nations Convention for the International Sale of Goods.

Notwithstanding an action for injunction or other equitable remedy which may be sought from any court of competent jurisdiction, in the event of disputes arising from this Agreement or the Purchase Order or in connection with its execution, the Parties undertake to endeavor to settle these amicably.

If the Parties fail to come to a decision within thirty (30) days after the dispute has been submitted, such dispute shall be resolved by the courts and tribunals of Madrid, Spain.

### **32. NOTICES**

All notices, consents, communications, offers and approvals required or permitted to be given under the Agreement shall be in writing and shall be valid and sufficient if: (a) delivered in person or dispatched by certified mail (return receipt requested), (b) postage prepaid, in any post office in the United States or by any national overnight express mail services (return receipt requested), (c) delivered by facsimile provided that the sender has received electronic or voice confirmation of the recipients receipt of such transmission, or (d) delivered by electronic mail provided that the tracking option on such electronic mail is enabled to provide both a delivery receipt and a read receipt from the addressee (*i.e.*, the sender will receive a return acknowledgement that the electronic mail has been received and read by the addressee); and in each case sent to Ibercal and the Engineer at their respective addresses identified in Appendix 2. Routine correspondence shall be sent to the authorized Ibercal Supply Chain representative and to the Engineer's designated representative, as also identified in the Agreement.

Either Party hereto shall have the right to change any representative or address it may have given to the other Party by giving such other Party due notice in writing of such change.

### **33. PUBLICITY**

The Engineer shall not, except with the express prior written consent of Ibercal, in any manner advertise or publish or release for publication any statement or information mentioning Ibercal or the fact that the Engineer has furnished or contracted to furnish to Ibercal the Work required by this Agreement.

### **34. NO WAIVER**

The failure of either Party to enforce at any time any of the provisions of this Agreement shall not be construed as a waiver of such provision, nor in any way affect the validity of this Agreement or the right of either Party to enforce each and every provision.

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If any provision of this Agreement or the application of the Agreement to any person or circumstance, is found by a court of competent jurisdiction to be illegal, invalid, or otherwise unenforceable, such provision shall be fully severable. Every remaining provision of this Agreement shall be valid and binding to the fullest extent permitted by law, and the Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Agreement.

**36. AGREEMENT VALIDITY**

This Agreement shall expire upon completion by the Parties of their respective obligations specified herein unless sooner terminated pursuant to the provisions of the Agreement.

**37. JOBSITE SAFETY REQUIREMENTS AND CONDITIONS**

The Engineer and its subcontractors shall conduct all operations so as to provide maximum safety while on Ibercal's and/or Customer's premises, and shall comply and cooperate in enforcing the safety provisions and directives prescribed by Ibercal or the Customer.

Engineer shall have full responsibility for the conduct of all its agents, employees, subcontractors and representatives and shall employ and cause to be employed, and shall retain and permit to be retained in employment at the jobsite, as applicable, only such employees as will be orderly and will in all respects cooperate and work in harmony with other employees of Ibercal and the Customer .

**38. ACCOUNTING OF RECORDS AND AUDIT RIGHTS**

During the term of this Agreement, the Engineer shall maintain books and records of accounts of its expenses and charges in accordance with generally accepted accounting principles and practices ("GAAP").

Ibercal shall have reasonable access during normal working hours to Engineer's books or records, and all supporting documents thereto, insofar as such access is pertinent to support Engineer's costs and charges related to any Work performed under the Agreement. Engineer must ensure that the financial records and procedures adhere to GAAP and principles.

**39. LIEN WAIVERS AND RELEASE OF CLAIMS**

Engineer for itself and its subcontractors and employees, hereby expressly waives the right to file any lien or claim against the premises or property of Ibercal and/or the Customer. Engineer will submit a full, non-contingent waiver of lien, duly executed, for all Work performed with each invoice.

Ibercal, in its sole discretion, may withhold final approval of the Work and payment until Engineer furnishes an affidavit setting forth the extent to which final payment or settlement has been made of all bills and claims of whatever kind or nature in any manner arising out of the Agreement, including full details as to any such bills and claims remaining unpaid or unsettled, and Ibercal shall have the right to retain from any payment then due to Engineer, so long as any of said bills or claims remain unpaid or unsettled and outstanding, a sum that shall provide for the payment of the same and Ibercal may pay any such bills or claims pro tanto in full satisfaction and discharge of any like amount due to the Engineer. Prior to final payment and as a condition precedent thereto, the Engineer shall furnish unconditional release, in form and substance satisfactory to Ibercal, of any and all claims of the Engineer against Ibercal arising under the Agreement.

**40. ANTI-BRIBERY/KICKBACK AND ANTI-CORRUPTION LAWS**

Engineer represents, warrants and covenants that neither it nor any of its officers, directors, employees, agents, representatives or Subcontractors on its behalf will either make or promise to make any gift or payment of money or anything of value, directly or indirectly, to any other person for the corrupt purpose of inducing such other person

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to misuse his or her position or to influence any act or decision to obtain, retain or direct business in connection with the Agreement. If requested by Ibercal, Engineer shall provide certifications of compliance with said requirement. Any violation of this Article shall give Ibercal the right to terminate the Agreement.

**41. COMPLIANCE WITH ANTI-BOYCOTT, UNFAIR COMPETITION AND ANTITRUST LAWS**

Engineer represents, warrants and covenants that its officers, directors, employees, agents, and representatives, as well as all subcontractors, agents or other approved third parties, comply with all applicable laws and regulations designed or intended to prohibit, restrict or regulate actions affecting or restraining trade, supporting monopolization, price fixing, or lessening competition, or any similar law or regulation of the U.S., the U.K., the E.U. and any other relevant country, including but not limited to the Sherman Act, the Clayton Act, the Federal Trade Commission Act, the U.K.'s Competition Act of 1998 and Enterprise Act of 2002, Article 101 and 102 of the E.U.'s Treaty on the Functioning of the European Union. Further, Engineer and its officers, directors, employees, agents, and representatives shall not, either directly or indirectly, engage in any activity that provides an unfair competitive advantage, engage in an illegal boycott, or participate in any unfair trade practices or boycotts.

**42. PROCESSING OF PERSONAL DATA**

Each Party is a separate and independent data controller and shall be separately responsible and liable for any processing of personal data performed by the Party pursuant to the Agreement. Neither Party shall be construed as a data processor in relation to the other Party. Each Party shall be solely and independently responsible for compliance with their respective obligations under the applicable data protection laws (including without limitation the so-called "GDPR", meaning the General Data Protection Regulation (EU) No. 2016/679, the relevant implementation laws and the applicable UK laws), including, inter alia, the obligations regarding information to Data Subject, Data Subjects rights, data security and cross-border transfers of personal data. Each Party acknowledges that the processing of personal data of its employees, owner, as well as any subcontractor, and their affiliates by the other Party is necessary for the purposes of performing the scope of work required under this Agreement, and for complying with the related legal requirements and obligations, including accounting and tax reporting obligations, as well as managing the contractual and business relationship between the Parties. To contact Ibercal for any question concerning personal data the following contact details shall be used: [dataprivacy@ibercal.com](mailto:dataprivacy@ibercal.com)

**43. BACKCHARGES**

Ibercal shall give Engineer written notice of any purported breach which may occur during Engineer's performance of the Work, specifying in reasonable detail the circumstances of such breach. Engineer shall, within seven (7) Days of receipt of such notice, submit for Ibercal's approval, a plan to remedy the breach at Engineer's sole cost and within the shortest practicable time consistent with the breach to be remedied.

Engineer hereby agrees that if it fails to begin to implement the necessary corrective actions, , or through its actions or words, refuses to respond to Ibercal's request to correct the purported breach, Ibercal, in its sole discretion, shall notify Engineer in writing that Ibercal will undertake or cause others to undertake the necessary corrective actions at Engineer's sole cost and expense, through the issuance of a backcharge to Engineer's account, including all costs incurred by Ibercal, its Customer or by any Third Party, in performing , completing, or correcting the Work .

The cost of the backcharge work will include, but may not be limited to:

- (a) Labor: at actual cost including payroll burdens;
- (b) Materials: at actual cost, delivered to the Site; and freight at actual cost;
- (c) Construction equipment: at actual rental cost, or at Ibercal's equipment rental rates, as applicable;
- (d) All taxes, levies, duties, and assessments attributable to the backcharge work; and
- (e) A mark-up of thirty percent (30%) applied to items (a) through (d) above for Ibercal's indirect costs, supervision, and administration.

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Ibercal will furnish Engineer with a written cost estimate for the performance of same and will request Engineer's written agreement prior to proceeding. However, if after a reasonable period of time, Engineer and Ibercal fail to agree, if an urgent situation arises, or if such delay will create a negative impact on Ibercal's schedule with its Customer, Engineer hereby agrees that Ibercal may proceed with necessary corrective action without Engineer's written agreement.

As backcharge tasks are accomplished, Ibercal will invoice Engineer. The invoice will identify the specific task completed and will provide reasonable backup information. If the total cost exceeds or is expected to exceed the estimate provided by Ibercal to Engineer, Ibercal will notify the Engineer as soon as practical so that Engineer is made aware of the adjustment prior to issuance of the invoice.

Ibercal shall invoice Engineer or offset the cost of the backcharge work against any remaining Purchase Order balance due Engineer. To the extent such backcharge sums exceed the remaining Purchase Order payment amounts due to Engineer, Ibercal shall invoice Engineer for the backcharge work and payment will be due forty-five (45) Days from the invoice date.

Ibercal's performance of backcharge work will not relieve the Engineer of its remaining responsibilities and obligations under the Purchase Order or Agreement.

**44. SURVIVAL**

Notwithstanding the expiration or termination of the Agreement for any reason whatsoever, the Parties agree that the provisions of Article 6 – Order of Precedence; Article 9 – Terms of Payment; Article 12 – Ownership and License Rights; Article 13 – Changes; Article 14 – Warranty; Article 17 – Quality Assurance; Article 18– Indemnity; Article 19 – Insurance; Article 26 – Taxes; Article 27 – Proprietary (Confidential) Information; Article 28 – Compliance with Export Control Laws and Regulations; Article 29 – Safety Conscious Work Environment; Article 31 – Governing Law, Disputes and Venue; Article 42– Processing of Personal Data; and this Article 44 – Survival, and any other terms and conditions of the Agreement that by their context or by law are intended to survive or which are expressly stated to survive shall survive or limit the liability of Ibercal shall survive termination, cancellation or expiration of the Agreement.