



## **PERFORMANCE SERVICES AGREEMENT**

### **For New System ("Agreement")**

#### **I. WHAT THIS AGREEMENT COVERS**

- A. Parties to This Agreement.** The terms "System Owner," "Owner," "you," and "your" mean the System Owner identified on Page 1 of this Agreement and any applicable assignee. The terms "Omnicidian," "we," "us," and "our" refer to the entity designated under 'Legal Name' in Omnicidian's Information on Page 1 of this Agreement. The term "Party" refers to either you or us, and the term "Parties" refers to both you and us.
- B. Covered Property.** This Agreement covers only the System described on, and at the System Address identified on, Page 1 of this Agreement. **This Agreement does not cover any other solar photovoltaic system(s) or energy storage system(s) you may own, regardless of whether you purchased such system(s) together with or separately from the System.**
- C. Agreement Valid Only in Select Jurisdictions.** Omnicidian offers its Performance Services package only in the jurisdictions listed in the "State-Specific Amendments" section of this Agreement (Section VII), unless the jurisdiction is identified as "Not Yet Available." **This Agreement is void if the System is located in a jurisdiction that (a) is not listed in the "State-Specific Amendments" section of this Agreement or (b) is identified as "Not Yet Available" in the State-Specific Amendments section of this Agreement.**

#### **II. WHAT SERVICES THIS AGREEMENT PROVIDES**

**Omnicidian's responsibilities under this Agreement are limited to providing 1) monitoring services, 2) services to repair or replace the System in response to Performance Shortfalls resulting from wear and tear, deterioration, or inherent defect, and 3) performance guarantees, as specified and limited in the following paragraphs.**

- A. Changes to the System.** The terms of this Agreement are specific to and dependent on the description of the System in the System Information section on Page 1 of this Agreement. Sometimes changes are made to the System design before or after the Start Date. For example, your Contractor might not be able to install the System as described on Page 1 of this Agreement due to the conditions at the Premises. The following provides the procedures for addressing any change in the System other than a change to the Data Access Fee. Changes to the Data Access Fee are addressed in Section II.D of this Agreement.
1. If the System differs, in any way, from how it is described in the "System Information" section on Page 1 of this Agreement before the Start Date of this Agreement, you agree that Omnicidian will have the right (a) to continue this Agreement unchanged, (b) to terminate this Agreement and refund the One-Time Activation Cost plus Prepaid Subscription Cost and any Unused Data Access Fees (to the extent already paid by You) identified on Page 1 of this Agreement or (c) to modify this Agreement to reflect the changes to the System, to alter the Prepaid and/or Monthly Subscription Cost of this Agreement and, if necessary, to adjust the Guaranteed Year 1 Annual Energy.
  2. If the System differs, in any way, from how it is described in the "System Information" section on Page 1 of this Agreement after the Start Date of this Agreement, you agree that Omnicidian will have the option (a) to continue this Agreement unchanged, (b) to terminate this Agreement pursuant to Section III.E of this Agreement and issue a refund pursuant to Section III.J or (c) to modify this Agreement to reflect the changes to the System, to alter the Prepaid and/or Monthly Subscription Cost of this Agreement and, if necessary, to adjust the Guaranteed Year 1 Annual Energy. To determine the correct course of action, Omnicidian may recommend an additional Performance Verification Test. If Omnicidian recommends such test, it will provide you a quote for the additional cost of such test, not to exceed the cost of the One Time Activation Fee identified on Page 1 of this Agreement. If you agree to pay for the costs of such test, Omnicidian will issue an invoice or bill for such costs after performance of the additional Performance Verification Test. Payment shall be made directly to Omnicidian by credit card or electronic funds transfer (ACH) within thirty (30) days of any invoice or bill. If you decline the cost of the Performance Verification Test, Omnicidian will retain the right, at its sole discretion, (a) to continue this Agreement unchanged, (b) terminate this Agreement pursuant to Section III.E of this Agreement and issue a refund pursuant to Section III.J or (c) to modify this Agreement to reflect the changes to the System, to alter the Prepaid and/or Monthly Subscription Cost of this Agreement and, if necessary, to adjust the Guaranteed Year 1 Annual Energy. If Omnicidian elects to terminate this Agreement after conducting the additional Performance Verification Test, then Omnicidian will refund you the price of the additional Performance Verification Test in addition to any refund pursuant to Section III.J.
  3. If Omnicidian issues modifications to the Agreement, Omnicidian will provide you with the modified Agreement, in written or electronic form, along with an explanation of the reasons for the modification. You will have thirty (30) days from the time the modified Agreement is sent to reject the modified Agreement. If you do not provide Omnicidian with written notice of your decision to reject the modifications to the Agreement within thirty (30) days, the modifications to the Agreement will

be deemed accepted and you will have agreed to be bound by the terms thereof. If you provide Omnidian with written notice of your decision to reject the modifications to the Agreement within thirty (30) days, this Agreement will be deemed terminated pursuant to Section III.E of this Agreement and you will receive a refund in the amount described in Section III.J. In order to reject the modified Agreement, you must provide written notice of your decision to Omnidian at the office address or e-mail address identified on Page 1 of this Agreement.

- B. Service Requests and System Performance Inquiries.** If you have questions about the System's performance or believe that services provided under this Agreement are required to the System, you can submit a "System Performance Inquiry" by contacting Omnidian at the e-mail or toll-free telephone number identified on Page 1 of this Agreement under the heading Omnidian's Information. Omnidian's hours of operation are from 9:00 a.m. and 5:00 p.m. Pacific Time Monday through Friday. If you have a question outside of Omnidian's hours of operation, you may leave a message at the e-mail address or telephone number identified on Page 1 of this Agreement. If Omnidian determines in response to a System Performance Inquiry that a Performance Shortfall exists, that services to repair or replace the System are necessary to remediate the Performance Shortfall, and that such services are covered by the terms of this Agreement, Omnidian will initiate services to repair or replace the System as provided for in Paragraphs E. through G. and Paragraph L. of this Section.
- C. Monitoring.** Omnidian will monitor the System and determine how it is performing relative to the Expected Energy for the System. In addition to information available to you on Omnidian's web site, at least once a quarter, Omnidian will notify you via e-mail of the System's performance. As a condition of this Agreement, you must permit Omnidian to monitor the System to determine how it is performing relative to the Weather Adjusted Performance Expectations for the System. If you refuse to permit Omnidian to monitor this System or fail to restore monitoring connectivity when requested by Omnidian, Omnidian may terminate this Agreement pursuant to Section III.D of this Agreement, and refund you any amounts required under Section III.J of this Agreement. If Omnidian determines while monitoring the System that the System has a Performance Shortfall covered by the terms of this Agreement, Omnidian will initiate services to repair or replace the System as provided for in Paragraphs E. through G. and Paragraph L. of this Section.
- D. System Communications.** **You bear sole responsibility for ensuring that the System remains connected to the internet in accordance with Omnidian's Communication Requirements and that the System's monitoring data is conveyed to Omnidian as required by this Agreement.**
1. Your Contractor must activate the System and provide Omnidian and Omnidian's monitoring software with access to the System's monitoring data. If your Contractor is unable to establish communication between Omnidian, Omnidian's monitoring software, and the System, Omnidian may terminate this Agreement and refund any payments made by you toward the One-Time Activation Cost identified on Page 1 of this Agreement and any Prepaid Subscription Costs paid by you.
  2. If during the coverage period of this Agreement, the System fails to comply with Omnidian's Communication Requirements, Omnidian may terminate this Agreement pursuant to Section III.D of this Agreement and refund you any amounts required under Section III.J of this Agreement. Omnidian shall have no obligation to monitor or perform services during any period in which the System fails to comply with Omnidian's Communication Requirements. For the performance guarantee (and the possibility of any credit) to be available in a Guaranteed Year, the System must comply with Omnidian's Communication Requirements throughout that Guaranteed Year and maintain an internet connection so that the monitoring hardware can transmit information about the System's energy generation at least once during the thirty (30) day period after the end of that Guaranteed Year.
  3. You are responsible for any data access fees charged to Omnidian by your Inverter Manufacturer for Omnidian to access data concerning the System's performance. The amount currently charged by your Inverter Manufacturer, if any, is identified as the "Data Access Fee" in the System Information section on Page 1 of this Agreement. You agree to pay your portion of the Prepaid Data Access Fee identified on Page 1 of this Agreement by the System Installation Date. If your Inverter Manufacturer changes its Data Access Fee at any point during or before the prepaid Term, the Prepaid Data Access Fee will automatically be increased or decreased to reflect the change, and Omnidian will issue an invoice or bill for any additional Prepaid Data Access Fee due or refund you any amounts paid in excess of the adjusted Prepaid Data Access Fee. **You also agree to cover the costs of any Data Access Fees charged to Omnidian for access to data after expiration of the Prepaid Term, during the Initial Term and for any renewal terms. Payment for such Data Access Fees shall be made pursuant to the procedure set forth in Section IV.B of this Agreement.**
- E. Services.** If Omnidian determines that the System has a Performance Shortfall covered by the terms of this Agreement, Omnidian will initiate services by diagnosing the cause of the Performance Shortfall. Once Omnidian diagnoses the issue, Omnidian will contact you to schedule and coordinate a field services visit if we determine that field services are required to remediate the Performance Shortfall. You are responsible for ensuring that the System is accessible to Approved Field Services Technicians and for removing any hazards from the Premises that could endanger Approved Field Services Technicians. Refurbished, reconditioned, or non-original parts may be used to remediate the cause of a Performance Shortfall. Unless otherwise specified or excluded in this Agreement, Omnidian will bear the cost of services to repair the System and the cost of incidental parts necessary to repair the

System up to the Limit identified on Page 1 of this Agreement, except Omnidian will never bear the cost of parts necessary to repair or replace a module, inverter, or monitoring system. Omnidian will bear the cost of services necessary to repair a module, inverter, or monitoring system only if a warrantor agrees to pay for the cost of parts necessary to repair or replace the module, inverter, or monitoring system under its warranty. **Omnidian retains the right to offer you cash payment in lieu of repair or replacement services in the amount of the reasonable, retail cost to repair or replace the System in accordance with the terms of this Agreement.**

- F. Timing of Services.** Omnidian will initiate its services by performing repair diagnostics within forty-eight (48) hours of Omnidian's determination that the System has a Performance Shortfall. Omnidian will then make reasonable efforts to dispatch an Approved Field Services Technician to the Premises within two (2) weeks of the time that we determine that there is a Performance Shortfall if we determine that field services are required to remediate the Performance Shortfall. All field services will be performed during regular working hours (9:00 a.m. and 5:00 p.m. local time Monday through Friday). Under most circumstances an issue with the System causing a Performance Shortfall will not impair your ability to obtain electricity from your electric power provider over the electric grid. If, however, emergency repairs to the System must be performed outside of Omnidian's normal operating hours in order to maintain access to electric power over the electric grid, then Omnidian will reimburse you for the reasonable cost of such emergency repairs, but only to the extent that they would otherwise be covered by this Agreement and you notify Omnidian of the issue requiring the emergency repairs as soon as possible. To obtain reimbursement you must send 1) a description of the work required sufficient to confirm the necessity of emergency repairs, 2) photographs of any physical damages, 3) a copy of the invoice or bill for the repair and 4) proof of payment (such as receipt or copy of a check) to either the e-mail address or address identified in the "Omnidian's Information" box on Page 1 of this Agreement, with either the e-mail or letter referencing your contract number and specifically requesting reimbursement. To the extent information required to request reimbursement is not immediately available, you must still notify Omnidian of the issue requiring the emergency repairs as soon as possible. Omnidian will reimburse you for any covered repairs via check sent to your last known address contained in our records within a reasonable time after confirmation that reimbursement is warranted.
- G. Approved Field Services Technicians.** Only Approved Field Services Technicians may perform the field services provided for under this Agreement. Omnidian is not responsible or liable in any manner for the acts, errors, or omissions of any third-party contractors, technicians, or individuals independently retained by you to perform any work, including but not limited to repairs, alterations, or maintenance, on the System.
- H. Performance Guarantee.** The monitoring and repair/replacement services provided under this Agreement will result in optimal performance of your System on a weather-adjusted basis, and will enable your System to generate at least the minimum guaranteed kWh energy as specified in Section VI.G. of this Agreement in each Guarantee Year. If Omnidian fails to provide monitoring and repair/replacement services as necessitated by wear and tear, deterioration, or inherent defect as described in this Agreement to enable the System to meet the minimum guaranteed kWh energy, Omnidian will compensate you for its failure based upon the following:
- 1. Guaranteed Annual Energy.** If maintained as provided in this Agreement, the System will generate a certain minimum amount of kWh in each Guaranteed Year based on the formula stated in the Definition of "Guaranteed Annual Energy" in Section VI.J. of this Agreement if properly monitored and maintained as provided under this Agreement. The Guaranteed Annual Energy decreases each year by the Degradation Rate.
  - 2. Difference in Energy.** Upon the commencement of this Performance Guarantee on the Start Date, Omnidian will establish an Omnidian Performance Guarantee Account for you for the purposes of tracking your credits and debits as calculated under this Agreement due to a Difference in Energy at the end of each Guaranteed Year. On the Start Date, your Omnidian Performance Guarantee Account will reflect a balance in the amount of \$0.00. At the end of each Guaranteed Year, we will calculate the Difference in Energy. If there is a Negative Difference in Energy as a result of Omnidian's failure to provide the monitoring and repair or replacement services under this Agreement, we will credit your Omnidian Performance Guarantee Account with an amount equal to the Negative Difference in Energy multiplied by the Rate per kWh identified on Page 1 of this Agreement. If there is a Positive Difference in Energy, we will evaluate whether the System also performed above 105% of the Guaranteed Annual Energy. If there is a Positive Difference in Energy and the System performed above 105% of the Guaranteed Annual Energy, we will debit your Omnidian Performance Guarantee Account with an amount equal to the difference between the Actual Energy and 105% of the Guaranteed Annual Energy multiplied by the Rate per kWh identified on Page 1 of this Agreement.
  - 3. Account Settlement.** Commencing with the end of the Guaranteed Year 1, Omnidian will begin paying credits owed to you from your Omnidian Performance Guarantee Account on an annual basis after the end of each Guaranteed Year. After the payment of these credits, your Omnidian Performance Guarantee Account will be reset to \$0.00. If the balance of your Omnidian Performance Guarantee Account results in a debit owed to us, you will not be required to make any payment to us, but the balance of the debits will be applied against any future credits.

- 4. Effect of Cancellation or Default of This Agreement on Performance Guarantee.** You are only entitled to collect on the Performance Guarantee for a Guaranteed Year if this Agreement remains in full force and effect at the end of such Guaranteed Year. If you cancel this Agreement for any reason or you are in default entitling Omnidian to cancel or terminate this Agreement before the completion of a Guaranteed Year then you forfeit all Performance Guarantee rights for the Guaranteed Year in progress that you would have had if you continued with the Agreement through the end of that Guaranteed Year.
- I. Contingency for Lost Data.** For hardware, communication, or other failure of Omnidian's monitoring system affecting Omnidian's ability to retrieve the Actual Energy from the System's monitoring system, Omnidian will make commercially reasonable efforts to resolve the failure in a timely manner and the Difference in Energy shall be adjusted to compensate for such lost data during such period of failure. Omnidian will utilize commercially reasonable methods to estimate the missing kWh based on the Expected Energy attributable to such period and such estimate shall be included in the calculation of Difference in Energy for such period. If no such information is reasonably accessible, Omnidian shall make the adjustment based on the Weather Adjusted Performance Expectation attributable to such period. **This section states Omnidian's sole liability, and your exclusive remedy, for any Difference in Energy arising from any equipment failure or lost data relating to the System's monitoring system.**
- J. Performance Verification Test.** We will make commercially reasonable efforts to complete the Performance Verification Test within the first thirty (30) days after we begin receiving data. If the System is unable to pass the Performance Verification Test, Omnidian will work with your Contractor to remedy any performance or installation deficiencies that might keep the System from passing. In the event of a performance or installation deficiency, Omnidian may increase the time period to complete the Performance Verification Test. If the System is unable to pass the Performance Verification Test within sixty (60) days after we begin receiving data and after Omnidian has worked in good faith with your Contractor to remedy any deficiencies that might keep the System from passing, this failure will be deemed a Change to the System pursuant to Section II.A of this Agreement and the procedures specified therein will apply.
- K. Conditions.** This Performance Guarantee is subject to the following conditions: (a) you promptly remediating any Performance Shortfall that Omnidian is not obligated to remediate under the terms of this Agreement, (b) no material change since contract inception in the extent to which buildings, structures, or flora overshadow or otherwise block the access of the System to sunlight, (c) the System not becoming excessively soiled, (d) you meeting Omnidian Communication Requirements and the requirements for System Communications described in Section II.D. of this Agreement (which enables you to qualify for the Performance Guarantee), (e) a warrantor paying the costs for parts necessary to repair or replace any module, inverter, or monitoring system that is causing a Performance Shortfall, (f) you paying the costs for parts and labor necessary to repair or replace any module, inverter, or monitoring system that is causing a Performance Shortfall and that is not covered by a manufacturer warranty or third-party warranty, (g) you promptly remediating the Performance Shortfall in the event that Omnidian elects to pay you cash in lieu of repair or replacement services, as provided for in Section II.E. of this Agreement; and (h) neither you nor any other external actor interfering with the operation of the System.
- L. Exclusions.** Omnidian's responsibilities under this Agreement are limited to the services and guarantees expressly provided for in this Section. Omnidian's responsibilities and liability shall further be limited as follows:
- 1. Limit of Liability for Services and Performance Guarantee.** In no event shall Omnidian's liability under this Agreement exceed the Limit identified on Page 1 of this Agreement regardless of the number of Performance Shortfalls. Once Omnidian's aggregate payments for services to the System, incidental parts necessary for such services, and for payments under the Performance Guarantee reach the Limit identified on Page 1 of this Agreement, Omnidian shall have no further obligation to perform any services on the System, to bear the cost of services or incidental parts necessary to repair the System, or to compensate you under the terms of the Performance Guarantee.
  - 2. Omnidian shall never be responsible for the fees, costs, and expenses:**
    - a. to repair or replace any module, inverter, or monitoring system that is not covered by a manufacturer warranty or third-party warranty, including, but not limited to, the failure of any module, inverter, or monitoring system that would be covered by a warranty provided by a manufacturer or other third-party except that such manufacturer or other third-party is no longer able to perform its obligations under that warranty or because of expiration of the warranty term; or
    - b. incurred as a result of a product recall by any manufacturer or dealer.
  - 3. Omnidian shall not be responsible for the costs to repair or replace the System or any component parts that are underperforming, damaged, destroyed, or inoperable because of any of the following:**
    - a. someone other than Omnidian or its Approved Field Services Technicians removes, re-installs, repairs, or performs any work, alterations, or maintenance on or to the System or any of its component parts (cleaning is not considered maintenance for this purpose);

- b. a power or voltage surge caused by someone other than Omnidian or its Approved Field Services Technicians, including a grid supply voltage outside of the standard range specified by the local utility or the System specifications or as a result of a local power outage or curtailment;
  - c. an external force or actor other than Omnidian or its Approved Field Services Technicians, including, but not limited to, Force Majeure Events, damage caused by wildlife, the negligent or intentional misuse or abuse of the System, criminal or fraudulent acts of any person, the theft or disappearance of the System or component part, ionizing radiations or contamination, and radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - d. destruction or damage to the Premises or other property that prevents the operation of the System;
  - e. a change in usage of the Premises or any buildings at or near such Premises that affects the amount of sunlight to which the System is exposed without the prior written approval of Omnidian; or
  - f. the Owner prevents Omnidian or its Approved Field Services Technicians from accessing the System within a reasonable period of time to remediate a Performance Shortfall.
4. Omnidian shall not be responsible for performing services to remediate a Performance Shortfall under the following circumstances:
- a. destruction or damage to the Premises or other property prevents the operation of the System;
  - b. there is a change in usage of the Premises or any buildings at or near such Premises that affects the amount of sunlight to which the System is exposed without the prior written approval of Omnidian;
  - c. the Owner prevents Omnidian or its Approved Field Services Technicians from accessing the System within a reasonable period of time to remediate a Performance Shortfall;
  - d. the System is prevented from operating by you, a local utility or public utilities commission, or a financial institution;
  - e. there are any Force Majeure Events affecting the performance of the System or any component parts; or
  - f. it would be unsafe or unreasonable for Omnidian or its Approved Field Services Technicians to perform services.
5. **Shading and Soiling.** You bear sole responsibility for ensuring that the System remains free of overshadowing or other blocked access to sunlight from shading and soiling. In no circumstance shall Omnidian be obligated to perform services to remediate a Performance Shortfall caused by shading or soiling that reduces performance of the System by five (5) percent or more. In addition, you agree to obtain written approval from Omnidian prior to changing the usage of the Premises or any buildings or structures at or near the Premises that affect the amount of sunlight to which the System is exposed. If you do not comply with these requirements, our performance under the Performance Guarantee will be excused until such conditions are corrected.
6. **Damage to Premises.** Omnidian bears no responsibility or liability for destruction of or damage to the Premises or other property at the Premises caused by an external force or actor other than Omnidian or its Approved Field Services Technicians, including but not limited to damage to the Premises caused during the installation of the System or its component parts or resulting from the presence or operation of the System or its component parts.

### III. DURATION OF THIS AGREEMENT

- A. Coverage Period: PrePaid Term; Automatic Monthly Renewal and Optional Renewal After Initial Term.** Unless earlier cancelled or terminated pursuant to the terms of this Agreement and subject to payment of the One-Time Activation Cost and Prepaid Subscription Cost as required under Section IV.B of this Agreement and Omnidian receiving all necessary System information and monitoring access pursuant to Section II.C-D of this Agreement, coverage provided under this Agreement commences on the Start Date and continues until expiration of the Prepaid Term. Upon expiration of the Prepaid Term, this Agreement converts to a monthly subscription plan that automatically renews each month and for which you shall be obligated to pay the Monthly Subscription Cost and Monthly Data Access Fee set forth on Page 1 of this Agreement in advance of each month. Unless earlier cancelled or terminated pursuant to the terms of this Agreement, this Agreement shall continue as a monthly subscription plan after the Prepaid Term until the Initial Term date identified on Page 1 of this Agreement on which date this Agreement shall automatically terminate. Omnidian may offer to renew this Agreement upon expiration of the Initial Term, subject to stated modifications of its terms, including, but not limited to, the Monthly Subscription Cost. If Omnidian wishes to extend this Agreement past the Initial Term, it will send you a written addendum ("Addendum") stating any modifications to the Monthly Subscription Cost and any other terms of this Agreement at least sixty (60) days before the Initial Term date. This Agreement will only be extended if you acknowledge your acceptance of the Addendum before the Initial Term date by electronically executing the Addendum through the means provided by Omnidian. Upon receipt of your acceptance of the Addendum, this Agreement as modified by the Addendum (the "Modified Agreement") will continue as a monthly subscription plan unless and until cancelled or terminated pursuant to the terms

of the Modified Agreement. If Omnidian wishes to further modify the Modified Agreement, it will send you further written addendums setting forth such modifications at least sixty (60) days before the proposed effective date of those modifications. If you do not accept the proposed modifications, this Agreement and any Modified Agreements will be deemed terminated at the end of the last month before the proposed effective date of the modifications.

- B. Right of Return; Cancellation by You Before Services Provided – Installation Period.** If no services have been performed under this Agreement, you may cancel this Agreement within twenty (20) days of receipt of this fully executed Agreement by providing written notice of cancellation to Omnidian at the office address or e-mail address identified on Page 1 of this Agreement. Omnidian must receive actual notice, in writing, within the specified time period for cancellation to be effective. If this Agreement is cancelled by you within this time period, we will provide you with a refund of the One-Time Activation Cost and Prepaid Subscription Cost identified on Page 1 of this Agreement, if already paid by you, within thirty (30) days of receiving actual notice, in writing, of your cancellation. If your Contractor is unable to install the System as described on Page 1 of this Agreement, you may cancel this Agreement at any time up until a year after the date of this Agreement provided that Omnidian has not performed any monitoring services under this Agreement and we will refund you the One-Time Activation Cost and Prepaid Subscription Cost identified on Page 1 of this Agreement, if already paid by you, within thirty (30) days of receiving actual notice, in writing, of your cancellation.
- C. Cancellation by You After Installation Period.** In addition, after Omnidian begins providing services under this Agreement, you may cancel this Agreement at any time by providing written notice of cancellation to Omnidian at the office address or email address identified on Page 1 of this Agreement, in which case this Agreement will terminate effective at the end of the month in which Omnidian receives your written notice of cancellation. Omnidian must receive actual notice, in writing, for your cancellation to be effective.
- D. Cancellation by Omnidian.** This Agreement is noncancellable by Omnidian during the Prepaid Term for which it was issued and for any month for which Monthly Subscription Costs and Monthly Data Access Fees have been paid, except for nonpayment of the Prepaid Subscription Cost, Prepaid Data Access Fee, Monthly Subscription Cost, Monthly Data Access Fee or fraud or misrepresentation of facts material to the issuance of this Agreement. Omnidian may cancel this Agreement at any time with written notice for nonpayment of the Prepaid Subscription Cost, Prepaid Data Access Fee, Monthly Subscription Cost, Monthly Data Access Fee or fraud or misrepresentation of facts material to the issuance of this Agreement. Written notice of the effective date of the cancellation and the reason for cancellation will be mailed to you at your last known address contained in our records. Cancellation will be deemed effective as of the last day of the contract month following the contract month in which Omnidian provides notice of cancellation unless the reason for the cancellation is fraud or misrepresentation, nonpayment by you, or a substantial breach of duties by you relating to the System.
- E. Termination Due to Changes to the System.** Omnidian may, at its sole discretion, terminate this Agreement If the System differs, in any way, from how it is described in the “System Information” section on Page 1 of this Agreement after the Start Date of this Agreement.
- F. Termination Upon Sale or Transfer of Premises.** If you sell or otherwise transfer ownership of the Premises, you may elect to (a) assign your rights under this Agreement, in accordance with the terms and conditions of Section V.E. of this Agreement, or (b) terminate this Agreement.
- G. Termination Upon Substantial Impairment of the System By External Force or Actor.** Either Party may terminate this Agreement upon written proof of substantial impairment of the System caused by an external force or actor resulting in a condition not covered by this Agreement. The System shall be deemed substantially impaired if the cost for repairing or replacing the System exceeds seventy-five (75) percent of the actual value of the System. The termination shall become effective as of the date on which the written notice and proof of substantial impairment of the System is sent.
- H. Termination Due to Premises Being Declared Uninhabitable.** Either Party may terminate this Agreement upon written notice to the other if local authorities declare the Premises uninhabitable and proof of such declaration is provided to us. The termination shall become effective as of the date on which the written notice and proof of declaration of uninhabitability is sent.
- I. Termination Due to Data Access Fee Increase.** If during the coverage period of this Agreement your Inverter Manufacturer increases the Data Access Fee, Omnidian will provide you notice of such increase within a reasonable time after it learns of such increase. You will have thirty (30) days from the time such notice is sent to cancel this Agreement via written notice. If you do not provide Omnidian with written notice of your decision to cancel the Agreement within thirty (30) days, this Agreement shall remain in effect and you will continue to be obligated to make all payments under this Agreement, including payment for the increased Data Access Fee, unless and until this Agreement terminates or is cancelled pursuant to another sub-section of Section III of this Agreement. In order to cancel the Agreement pursuant to this Section, you must provide written notice of your decision to Omnidian at the office address or e-mail address identified on Page 1 of this Agreement.
- J. Refund as Result of Cancellation or Termination.** If you cancel this Agreement pursuant to Section III.C.: (1) before the expiration of the Prepaid Term, you shall be entitled solely to a refund of any Unused Data Access Fees, or (2) after the expiration of the Prepaid Term, you shall not be entitled to a refund and shall be obligated to pay the entire Monthly Subscription Cost for the month

in which the cancellation or termination was effective, but not for any month thereafter, and Omnidian shall refund you any Unused Data Access Fees. If this Agreement is cancelled or terminated for any of the reasons identified in Sections III.D. through III.I: (1) before the expiration of the Prepaid Term, you shall be entitled to a refund of any Unused Data Access Fees and a prorated share of any unearned Prepaid Subscription Cost paid by you (calculated based on the ratio of months remaining under this Agreement as against the Prepaid Term), or (2) after the expiration of the Prepaid Term, you shall not be entitled to a refund and shall be obligated to pay the entire Monthly Subscription Cost for the month in which the cancellation or termination was effective, but not for any month thereafter, and Omnidian shall refund you any Unused Data Access Fees. If you are entitled to a refund under this Section, then we shall make payment of that refund within sixty (60) days of the notice of termination or cancellation.

#### IV. YOUR DUTIES

- A. Representations and Warranties.** By entering into this Agreement, you make the following representations and warranties:
1. you are eighteen (18) years of age or older;
  2. you have authority to enter into this Agreement with respect to the System, including the authority to grant Omnidian access to the System as required by this Agreement;
  3. the description of the System set forth on Page 1 of this Agreement is true and accurate in all respects; and
  4. the System is in good working condition as of the Start Date.
- B. Payment Obligation.** You agree to pay your share of the One-Time Activation Cost, Prepaid Subscription Cost, and Prepaid Data Access Fee identified on Page 1 of this Agreement by the System Installation Date. You further agree to (1) pay a Monthly Subscription Cost identified on Page 1 of this Agreement upon the expiration of the Prepaid Term, with payment due in advance on the first day of each month in which this Agreement continues in effect until cancelled or terminated pursuant to the terms of this Agreement and (2) cover the costs of any Data Access Fees charged to Omnidian after expiration of the Prepaid Term pursuant to Section II.D of this Agreement. If Page 1 of this agreement indicates that 'Price Varies With Capacity' and, after completion of installation, the System's Max Rated Capacity differs from the capacity reflected on Page 1, then the Total Price Over Initial Term as described on Page 1 of the Agreement will automatically be increased or decreased to reflect the change in Watts of Max Rated Capacity and all other amounts listed on Page 1 as a component of Total Price Over Initial Term will also adjust proportionally, unless they are already expressed as percentages. Upon expiration of the Prepaid Term, Omnidian shall invoice you for Monthly Subscription Costs and Monthly Data Access Fees on a monthly basis. Payment shall be made directly to Omnidian by credit card or electronic funds transfer (ACH). Failure to make Monthly Subscription Cost or Monthly Data Access Fee payments will result in the suspension or termination of service. **You will not be responsible for payment of a deductible with respect to any services or costs that Omnidian is obligated to incur or pay under the terms of this Agreement.** However, You agree to pay any additional bills issued by Omnidian for any *optional* services that you elect to have performed by Omnidian that are not covered by the terms of this Agreement.
- C. Fraud and Misrepresentation.** You agree not to make a materially incorrect, false, fraudulent, negligent, incomplete, misleading, or deceptive representation, through act or omission. If you make a materially incorrect, false, fraudulent, negligent, incomplete, misleading, or deceptive representation, through act or omission, then Omnidian may cancel this Agreement pursuant to the terms of Section III.D. of this Agreement.
- D. Warranty Claim Submission and Assignment of Rights to Collect on Warranty Payment.** You agree to cooperate with us to take all steps required to submit a claim and to recover under any and all applicable manufacturer warranty(ies) or third-party warranty(ies) covering the System or any component part that requires service. Omnidian will not bear the cost of the parts necessary to repair or replace any module, inverter, or monitoring system unless it is covered by a warranty and you actually recover under such warranty. Omnidian may offer to repair or replace the System or component part prior to you actually recovering under an applicable warranty. In the event that Omnidian repairs or replaces the System or component part prior to you receiving a reimbursement or payment under a warranty, you agree to assign to Omnidian all rights to any warranty reimbursement or payment for any replacement parts or services performed by Omnidian on the System or component part. If you authorize Omnidian to repair or replace a module, inverter, or monitoring system prior to your warrantor confirming that such module, inverter, or monitoring system will be covered under the applicable warranty, you agree to pay the costs for the parts necessary to repair or replace such module, inverter, or monitoring system if the warrantor subsequently determines that the module, inverter, or monitoring system is not covered under the warranty.
- E. Installation of Monitoring Hardware.** You agree to permit Omnidian to install any and all hardware necessary for Omnidian to monitor the System in accordance with the terms of this Agreement.
- F. Consent to Use of Monitoring and Performance Data.** You agree that Omnidian may use the data and information it collects concerning the System, its performance, and its maintenance history for purposes other than providing monitoring or field services to you, including, but not limited to, generating performance statistics and performing case studies. You further agree that

Omnidian may share this data and information with other businesses involved in the sale, purchase, or maintenance of the System, such as your Contractor and lender.

- G. Connection to the Internet and Access to Data.** You bear sole responsibility for ensuring that the System remains connected to the internet in accordance with Omnidian's Communication Requirements. If you are unable after reasonable efforts to ensure that the System complies with Omnidian's Communication Requirements, you shall promptly notify Omnidian of this issue in writing or by telephone.
- H. Responsibility to Prevent Damages, System Interference.** You shall take reasonable steps to protect the System from damage. You shall not interfere with the operation of the System, and you shall take reasonable steps to prevent external forces or actors from interfering with the operation of the System. You shall comply with the requirements of the owner's manual for the System. You shall, upon discovery of damage to the System or any component part, promptly notify Omnidian and prevent further damage to the System or component part(s) where feasible.
- I. Responsibility to Provide Safe Access to System.** You shall bear the sole responsibility for ensuring that the System is accessible to Omnidian and its Approved Field Services Technicians and for removing any hazards from the property that could endanger Approved Field Services Technicians during field services.
- J. Shading and Soiling.** You bear sole responsibility for ensuring that the System remains free of overshadowing or other blocked access to sunlight from shading and soiling.
- K. Default; Default Remedies.** You shall be in default if you (a) engage in fraud or misrepresentation; (b) fail to make any payment due under this Agreement within the period designated for such payment; (c) violate any of the terms and conditions of this Agreement; or (d) violate the representations and warranties made in Section IV.A. of this Agreement. Omnidian may elect to cancel this Agreement due to your default, pursuant to the terms of Section III.D. of this Agreement. If your default is due to nonpayment of a bill, Omnidian may, in the alternative, elect to suspend service under this Agreement until any amount due is paid in full. You agree to pay all court costs and other collection costs, including reasonable attorney fees, actually incurred relating to your default.
- L. Nonpayment for the System.** You agree and understand that if you financed your purchase of the System and fail to make necessary payments to your lender for the System as required by your finance agreement, your lender might exercise its right to deactivate or repossess the System. **In the event that the System is deactivated or removed by or at the direction of your lender, you agree that Omnidian's obligations under this Agreement shall be suspended until the System is reactivated.** Omnidian shall retain the right, at its option, to continue to perform services to repair or replace the System while the System is deactivated. You further authorize Omnidian, at the direction of your lender, to deactivate the System until all necessary payments are made as required by your finance agreement with your lender.

## **V. GENERAL TERMS**

- A. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to conflict of law principles as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies.
- B. Entire Agreement.** This Agreement reflects the entire agreement with respect to the matters set forth in this Agreement and supersedes any prior agreements, commitments, drafts, communication, discussions, and understandings whether oral or written with respect to this Agreement.
- C. Further Assurances.** The Parties agree to do such further acts and things and execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm the agreements contained in this Agreement in the matter contemplated by this Agreement.
- D. Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement or the validity or effectiveness of such provision in any other jurisdiction.
- E. Assignment.** Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. In the event that you elect to assign this Agreement and Omnidian consents to that assignment, you agree to pay Omnidian a reasonable administrative fee not to exceed \$200.00 as a condition of the assignment of the Agreement.
- F. Refund Paid to Lender.** You agree and understand that if Omnidian is required to refund all, or some, of the One-Time Activation Cost or Prepaid Subscription Cost and your payment of these amounts was financed through a lender, then Omnidian will make the



refund payment directly to your lender. Your lender will be responsible to repay you any refund amount above your outstanding debt to your lender.

**G. Not an Insurance Policy.** This Agreement is not an insurance policy.

**H. Omnidian's obligation under the terms of this Agreement are backed by the full faith and credit of Omnidian.**

**I. Limitation of Liability.** IN NO EVENT SHALL OMNIDIAN BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES WHETHER IN CONTRACT OR IN TORT FOR INJURY TO PERSON OR PROPERTY RESULTING FROM ANY ACTIONS UNDERTAKEN PURSUANT TO THIS AGREEMENT OR THE FAILURE OF THE SYSTEM OR ANY PARTS OF THE SYSTEM. The sole and exclusive remedy against Omnidian or its agents, employees, officers or affiliates for any damage to the System or its component part(s) arising from Omnidian's services, equipment, or work shall be the lesser of (a) the actual damages incurred by you because of the damage to the System or component part(s) or (b) the fair market replacement value of the damaged System or the damaged component part(s). With respect to the Performance Guarantee, the sole and exclusive remedy against Omnidian for any breach by us of our obligations under the Performance Guarantee shall be the lesser of (a) the amount of the credit payment to which you would be entitled under Section II.H. and Section II.L.1. (Limit of Liability) of this Agreement, (b) the actual damages incurred by you, or (c) the Subscription Costs paid by you.

**J. Arbitration.** Any dispute arising out of or relating to this Agreement, including the breach, termination, or validity of any part of this Agreement, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration (the "Rules") by a sole arbitrator. In the event of any conflict between the Rules and this Agreement, this Agreement shall apply. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. **THE PARTIES EACH EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL AND ANY OTHER CIVIL COURT PROCEEDING AND AGREE THAT THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON THE PARTIES.** The Parties further agree that:

1. Either Party may initiate arbitration by sending a demand for arbitration to the other by certified mail, return receipt requested at the address for the other Party set forth on Page 1 of this Agreement.
2. The Parties shall each nominate three candidates for sole arbitrator within thirty (30) days of the date of receipt of the demand for arbitration. Nominations shall be sent by certified mail, return receipt requested at the address for the other Party set forth on Page 1 of this Agreement, unless otherwise agreed by the Parties. Arbitrator candidates must be either a retired judge of any federal or state court in the forum in which the arbitration takes place, admitted as a neutral by the International Institute for Conflict Prevention & Resolution, listed on the American Arbitration Association National Roster of arbitrators and mediators, or approved as a neutral by JAMS. Within five (5) business days of receipt of the nominations of arbitrators, each Party shall strike two candidates from the other's nominations and the sole arbitrator shall be selected from the remaining two (2) candidates by drawing lots. If either Party fails to perform any of these steps for selecting the arbitrator within the time period provided and the other Party has timely complied with these steps to the extent possible in view of the other's failure, then the complying Party may select the arbitrator from the nominated candidates.
3. The arbitrator shall be relieved of all judicial formalities. The arbitrator shall have the authority to determine the enforceability of this Agreement to arbitrate as well as whether a claim is arbitrable. The arbitrator shall apply the law of the State of California.
4. The place of the arbitration shall be in San Francisco, California, but either Party may attend the arbitration telephonically or by video conference. If it is determined that this forum selection provision is unenforceable, then the Parties agree to arbitrate in the capital city of the jurisdiction of the state listed in the System Address identified on Page 1 of this Agreement.
5. It is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within one hundred and twenty (120) days from the date the arbitrator is appointed. The arbitrator may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award.
6. The arbitrator shall have no authority to award punitive, consequential, special, or indirect damages. The arbitrator shall not be entitled to issue injunctive or other equitable relief. **THE PARTIES EXPRESSLY WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES OR TO SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF.**
7. Unless such costs are specifically awarded as damages by the arbitrator, each Party shall bear its own costs with respect to the arbitration and the Parties shall equally share any fees charged by the arbitrator and any administrative costs associated with the arbitration and jointly incurred by and with the agreement of both Parties.
8. Any court action to enforce this arbitration provision or otherwise arising out of or relating to this Agreement shall be brought in and can only be maintained in a court of competent jurisdiction within the State of California except that either Party may seek to enforce an arbitration award in any appropriate jurisdiction that has jurisdiction over the Parties or their assets subject to an action to enforce a judgment.

- K. **SMALL CLAIMS AND CLASS ACTIONS.** Notwithstanding Section J, “Arbitration,” a Party may: (a) file and prosecute an action in small claims court, and pursue any appeals of a judgment rendered by that court as provided under California law; (b) become a plaintiff in a putative class action and participate as a class member of a certified class action against a Party.

## VI. DEFINITIONS

- A. **“Actual Energy”** means the total number of kWh generated by the System in a given time period, as measured by the monitoring hardware and as communicated to us by you in accordance with Section II.D. of this Agreement.
- B. **“Approved Field Services Technician”** means a contractor, technician, or individual specifically approved and retained by Omnidian to perform work on the System or any component parts. Approved Field Services Technicians are not employees of Omnidian but, instead, are independent contractors approved and retained by Omnidian to perform field services.
- C. **“Communication Requirements”** means the following actions you must take to ensure that the System is able to communicate via the internet with Omnidian and its monitoring software: (a) establish communication with us and our monitoring software via your internet connection and (b) maintain the internet connection so that the monitoring hardware does not fail to transmit information about the System’s electricity generation for more than two (2) consecutive weeks. If the System is not compatible with Omnidian’s monitoring software, it is not compliant with Omnidian’s Communication Requirements.
- D. **“Contractor”** means the person or entity identified on Page 1 of this Agreement.
- E. **“Data Access Fee”** means the amount charged to Omnidian by your Inverter Manufacturer for Omnidian to obtain access to data concerning the System’s performance. Your current Data Access Fee is identified on page 1 of this Agreement in the box labeled “Data Access Fee.”
- F. **“Degradation Rate”** means the number identified on Page 1 in the box labeled “Degradation Rate.”
- G. **“Difference in Energy”** means either a Positive Difference in Energy or a Negative Difference in Energy, as applicable and defined in this Section.
- H. **“Expected Energy”** means the kWh that Omnidian projects that the System will generate in a given time period based on Omnidian’s internal energy generation standards. These standards consider, among other things, the System’s specifications and local weather conditions, which Omnidian monitors using weather feed and satellite-based irradiance data.
- I. **“Force Majeure Event”** means any event, condition, or circumstance beyond the Parties’ control and not caused by a Party or our Approved Field Services Technicians’ fault or negligence. Included among such events would be failure or interruption of production of electricity by the System due to: an act of god; hostilities or warlike operations (whether declared or undeclared); civil war; rebellion; revolution; civil commotion assuming the proportions of or amounting to an uprising; military or usurped power; acts of terrorism; invasion; acts of foreign enemies; sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather conditions or actions of the elements (including abnormal lack of or abnormally inadequate sunshine); hurricane; flood; lightning; wind; drought; hail; volcanic eruptions; meteorite strike; sand; dirt; the binding order of any governmental authority; changes in any applicable law relating specifically to the design, construction, installation, interconnection, or operation of the System or any of its component parts which is implemented after the Start Date that materially and adversely affects the ability of Omnidian to perform its obligations; unavailability of electricity from the utility grid, equipment, supplies, or products; and failure of equipment not utilized by us or under our control (not including the System—that is, defective or faulty components of the System are not a Force Majeure Event).
- J. **“Guaranteed Annual Energy”** means the amount of electricity Omnidian guarantees that the System will generate in a given Guaranteed Year. The Guaranteed Annual Energy for Guaranteed Year 1 is the amount identified on Page 1 of this Agreement in the box labeled “Guaranteed Year 1 Annual Energy.” The Guaranteed Annual Energy for each successive year is calculated using the following formula, where  $GE_1$  = the Guaranteed Annual Energy for Guaranteed Year 1, DR = the Degradation Rate, and  $y$  = the Guaranteed Year in question:

$$\text{Guaranteed Year Y Annual Energy} = GE_1 \times (1 - DR)^{(y - 1)}$$

In this way, the Guaranteed Annual Energy decreases each year by the Degradation Rate. The Degradation Rate applicable to the System is identified on Page 1 of this Agreement.

- K. **“Guaranteed Year”** is each successive annual period beginning at the Start Date.
- L. **“Initial Term”** means the Initial Term of the Agreement, as measured by number of months, as identified on Page 1 of this Agreement in the box labeled “Initial Term.”
- M. **“kWh”** means kilowatt hours of electric energy.

- N. **"Monthly Data Access Fee"** means the Data Access Fee calculated to apply on a monthly basis. Your current Monthly Data Access Fee is identified on Page 1 of this Agreement in the box labeled "Monthly Data Access Fee."
- O. **"Monthly Subscription Cost"** means that amount identified on Page 1 of this Agreement in the box labeled "Monthly Subscription Cost." Monthly Subscription Cost does not include any other costs or charges identified on Page 1 of this Agreement, including but not limited to sales tax.
- P. **"Negative Difference in Energy"** means the difference between the Actual Energy and the Guaranteed Annual Energy during a given Guaranteed Year, if the Actual Energy is less than the Guaranteed Annual Energy range.
- Q. **"Omnidian Performance Guarantee Account"** means the internal account Omnidian will establish so that we can monitor and track the credits owed to you or debits incurred by you due to Differences in Energy during Guaranteed Years.
- R. **"Performance Shortfall"** refers to a situation in which the Actual Energy generated by the System is less than eighty (80) percent of the Expected Energy for the System for more than one successive calendar month. The determination that a Performance Shortfall has occurred rests within the reasonable discretion of Omnidian.
- S. **"Performance Verification Test"** means the test that we perform for the System. This test allows us to determine if the System is generating kWh in accordance with the Expected Energy for the System. This test helps us to verify that the System was installed correctly and that we have the correct specifications for the System. We cannot provide a performance guarantee for the System until we verify that the System can pass this test.
- T. **"Positive Difference in Energy"** means the difference between the Actual Energy and the Guaranteed Annual Energy during a given Guaranteed Year, if the Actual Energy is more than the Guaranteed Annual Energy.
- U. **"Premises"** and **"System Address"** mean the address of the System identified on Page 1 of this Agreement in the box labeled "System Information."
- V. **"Prepaid Data Access Fee"** means the amount identified on Page 1 of this Agreement in the box labeled "Prepaid Data Access Fee."
- W. **"Prepaid Subscription Cost"** means that amount identified on Page 1 of this Agreement in the box labeled "Prepaid Subscription Cost." "Prepaid Subscription Cost" does not include any other price identified on Page 1 of this Agreement including but not limited to sales tax.
- X. **"Prepaid Term"** means the time period identified on Page 1 of this Agreement in the box labeled "Prepaid Term."
- Y. **"Rate per kWh"** means the figure Omnidian will use to calculate the amount that must be credited or debited to your Omnidian Performance Guarantee Account based on a Negative Difference in Energy or a Positive Difference in Energy in a Guaranteed Year.
- Z. **"Start Date"** means the date on which Omnidian determines that the System is in full compliance with the Communication Requirements and is able to complete the Performance Verification Test. Once the System is compliant with these requirements, Omnidian will provide you with a notice of the Start Date of this Agreement. The Start Date is the date on which services under this Agreement will commence.
- AA. **"Subscription Costs"** means the Prepaid Subscription Costs and Monthly Subscription Costs.
- BB. **"System"** means the residential solar photovoltaic system identified on Page 1 of this Agreement in the box labeled "System Information."
- CC. **"System Installation Date"** means the date upon which installation of the System begins.
- DD. **"Unused Data Access Fees"** means any amounts paid by you for Data Access Fees which Omnidian has not paid to your Inverter Manufacturer and will not owe your Inverter Manufacturer upon termination of this Agreement.

## VII. STATE-SPECIFIC AMENDMENTS

This Agreement is amended by one of the following state-specific amendments. The applicable amendment is determined by the state identified in the System Address.

### A. CALIFORNIA

1. This agreement constitutes a "home protect contract," as defined by Cal. Ins. Code § 12740.

### B. NEW YORK

1. This Agreement constitutes a "service contract," as defined by N.Y. Ins. Law Article 79, § 7902(k).
2. **Refund as Result of Cancellation or Termination.** Section III.J. of this Agreement is amended to include the following: A ten (10) percent penalty per month will be added to a refund owed as a result of cancellation pursuant to the terms of Section III.B. but that is not paid or credited within thirty (30) days of return of this Agreement to Omnidian.