



## **MASTER SERVICES AGREEMENT**

THE TERMS AND CONDITIONS CONTAINED HEREIN ("**AGREEMENT**") APPLY TO ALL USE OF THE SERVICES PROVIDED BY OMNIDIAN, INC. ("**PROVIDER**") TO YOU AND THE ORGANIZATION YOU REPRESENT (TOGETHER, "**CLIENT**") – AS MORE SPECIFICALLY SET FORTH IN SECTION 1 BELOW. TOGETHER, PROVIDER AND CLIENT WILL BE REFERRED TO HEREIN AS THE "**PARTIES**" (EACH A "**PARTY**"). BY ACCESSING OR USING THE SERVICES, CLIENT AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT WILL BE DEEMED EFFECTIVE ON THE DATE IT IS AGREED TO BY CLIENT IN A SYSTEM ENROLLMENT FORM (AS DEFINED IN SECTION 1.1 BELOW) ("**EFFECTIVE DATE**"). IN THE EVENT THERE IS A SEPARATELY NEGOTIATED AND EXECUTED MASTER SERVICES AGREEMENT BETWEEN PROVIDER AND CLIENT WITH RESPECT TO PROCUREMENT OF THE SERVICES, SUCH AGREEMENT SHALL CONTROL AND THIS AGREEMENT WILL NOT APPLY.

### **RECITALS**

WHEREAS, Provider has agreed to provide certain services for Projects owned or developed by Client and for Client to compensate Provider for such services and related costs as set forth herein;

WHEREAS, Client or one or more of Client's affiliated companies may, from time to time and in accordance with this Agreement, contract for Provider's services for a specific project in accordance with the terms of this Agreement; and

NOW, THEREFORE, the Parties hereby agree as follows:

### **1 SERVICES**

- 1.1 Provision of Services. Provider will use commercially reasonable efforts to provide Client with the services ("**Services**") set forth in each "**System Enrollment Form**". The System Enrollment Forms will be as executed by Provider and Client. A System Enrollment Form will be effective upon execution by Provider and Client or an applicable Project Representative. Each System Enrollment Form will be deemed to be a separate agreement between Provider and the Client or Project Representative (as applicable) - and incorporates all the terms and conditions of this Agreement. A Project Representative that executes a System Enrollment Form will be deemed the "Client" under this Agreement for purposes of such System Enrollment Form. In the event of any conflict between the terms of this Agreement and the terms of any System Enrollment Form, the terms of this Agreement shall govern.
- 1.2 Use of Subcontractors. Client acknowledges that Provider may provide any or all Services through subcontractors chosen by Provider. Provider is responsible for the performance of all its subcontractors who provide Services under this Agreement (as if performed by Provider).
- 1.3 Client Obligations. Client agrees it will provide Provider with all reasonably requested documentation in connection with the Services (such as, if applicable, site access protocols, site safety policies, and site host lease agreements).

### **2 FEES AND PAYMENT**

- 2.1 Fees. Each System Enrollment Form shall be priced according to the fees and costs set forth in Exhibit B to this Agreement (unless otherwise agreed between the Parties in writing). Unless otherwise provided in Exhibit B or a System Enrollment Form, Provider will invoice Client annually in advance for all fees (but fees for Auxiliary Services will be invoiced at the time the applicable services are completed, unless included in the Annual Plan Cost in the System Enrollment Form). Any dispute by Client to an invoice must be raised within thirty (30) days from receipt of invoice (or the invoice is deemed final).
- 2.2 Taxes. All amounts charged by Provider under this Agreement are exclusive of taxes, duties, or similar charges imposed by any government, and Client agrees to pay for any and all federal, state, or local sales, use, excise, privilege, or other taxes, duties or assessments, however designated or levied, relating to the amounts charged under this Agreement, exclusive of taxes based on Provider's net income.
- 2.3 Late Payments. Late payments will be subject to a finance charge of the lesser of 1.5% per thirty (30) day period and the greatest amount allowed by applicable law. In addition, Client will reimburse Provider for all costs of collection (including attorneys' fees).

### 3 TERM AND TERMINATION

- 3.1 **Term.** This Agreement will have an initial term commencing on the Effective Date and continue until the fifth (5<sup>th</sup>) anniversary of the Effective Date. Thereafter, this Agreement will automatically renew and continue for additional one (1) year terms (collectively, with the initial term, the “**Term**”), unless either Party, no later than ninety (90) days prior to the expiration of the then-current Term, provides written notice of non-renewal to the other Party. Each System Enrollment Form shall have its own term (set forth therein). Thereafter, each System Enrollment Form will automatically renew for consecutive periods of one year unless either Party, no later than thirty (30) days prior to the expiration of the then-current System Enrollment Form term, provides written notice of non-renewal to the other Party.
- 3.2 **Termination.**
- 3.2.1 **Termination for Cause.** Either party may terminate this Agreement if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days from receipt of written notice thereof (provided that such notice provides sufficient detail regarding the breach and states the intent to terminate). Notwithstanding the foregoing, if the breach cannot reasonably be cured within such period, and the breaching party commences to cure within such thirty (30) day period, then the non-breaching party shall not be entitled to terminate this Agreement pursuant to this Section 3.2.1 until such time as the earlier of (i) the breaching party ceases all its endeavors to cure, or (ii) the expiration of ninety (90) calendar days from the original breach notice referenced above. In addition, either party may terminate this Agreement on thirty (30) days written notice if the other party becomes judicially declared insolvent, enters bankruptcy, or fails to pay its general debts as they become due.
- 3.2.2 **Other Termination Rights.** Either Party may terminate this Agreement on five (5) days written notice if there are no System Enrollment Forms in effect. A System Enrollment Form may provide for additional termination rights.
- 3.2.3 **Fees on Termination.** In the event of any termination by Provider for Client’s uncured breach pursuant to Section 3.2.1 above, all fees for what would have otherwise been the full term (i.e., as if termination has not occurred) will be non-cancellable and non-refundable (and will become promptly due). In the event of any termination by Client for Provider’s breach pursuant to Section 3.2.1 above, Client shall pay Provider for all Services performed through the termination date. On any termination, other than for Client’s breach, Provider will use commercially reasonable efforts to cooperate with Client in winding down the Services and transitioning to an alternate service provider (assistance will be charged at Provider’s then-current rates).
- 3.2.4 **Effect of Termination.** In the event this Agreement expires due to non-renewal as set out in Section 3.1 above, it will remain in effect for all System Enrollment Forms then-in-effect. Termination of this Agreement between Provider and a Project Representative will automatically terminate all System Enrollment Forms between Provider and such Project Representative (but will not terminate this Agreement with respect to any other Project Companies). Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise.

### 4 INDEMNIFICATION

- 4.1 **Indemnification by Provider.** Provider shall indemnify, defend and hold harmless Client and its respective officers, employees, partners, Affiliates and agents, from and against all third party claims (and all resulting, to the extent payable to unaffiliated third parties: damages, liabilities, penalties, costs and expenses, including reasonable attorneys’ fees) to the extent arising out of: (i) the negligence, fraud or willful misconduct of Provider, its Affiliates or its Subcontractors in providing the Services; or (ii) any material breach by Provider (or its Subcontractors performing Provider’s obligations on its behalf) of this Agreement.
- 4.2 **Indemnification by Client.** Client shall indemnify, defend and hold harmless Provider and its Subcontractors, and its and their respective officers, employees, partners, Affiliates and agents, from third party claims to the extent arising out of Client’s: (i) negligence, fraud, or willful misconduct committed during (a) the initial construction of the Project at a Host Customer’s Site or (b) the maintenance of the Host Customer’s Site prior to the assignment of such Project to Provider, or (c) the course of this Agreement; or (ii) material breach of this Agreement.
- 4.3 **Procedures.** Each party’s (as “**Indemnitor**”) indemnity obligations are contingent on the other party (as “**Indemnitee**”) providing it with prompt written notice of all claims and threats thereof, sole control of all defense and settlement activities, and all reasonably requested assistance with respect thereto. The Indemnitor will not be responsible for any settlement it does not approve in writing.

### 5 FORCE MAJEURE

Except for payment obligations, neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, such as, but without limitation, a strike, blockade, war, act of terrorism, riot, natural disaster, pandemic, failure or

diminishment of telecommunications, or refusal of a license by a government agency ("Force Majeure Event"). In the event a party's performance pursuant to a System Enrollment Form is prevented for more than thirty (30) days due to a Force Majeure Event, the other party may terminate the specific System Enrollment Form on five (5) days written notice.

## 6 CONFIDENTIALITY

- 6.1 **Obligation of Confidentiality.** All business and/or technical information disclosed by one Party (as "***Disclosing Party***") to the other Party (as "***Receiving Party***") will be the Disclosing Party's confidential information if it is identified as confidential near the time of disclosure or is otherwise of a nature, or is disclosed in such a manner, that the Receiving Party should reasonably understand it to be confidential. For a period of five (5) years after termination of this Agreement, the Receiving Party will (i) hold all Confidential Information of the Disclosing Party in trust and confidence and avoid the unauthorized disclosure or release thereof to any other person or entity by using the same degree of care as the Receiving Party uses to avoid unauthorized use, disclosure, or dissemination of its own confidential information of a similar nature, but, in any event, not less than a reasonable degree of care, and (ii) not use such Confidential Information for any purpose except as expressly contemplated under this Agreement; provided that, to the extent Confidential Information constitutes a trade secret under applicable law, the Receiving Party agrees to protect such information for so long as it qualifies as a trade secret. Notwithstanding any other provision of this Agreement, the Receiving Party may disclose Confidential Information to those of the Receiving Party's employees and contractors having a need to know such Confidential Information, provided that the Receiving Party takes reasonable measures to ensure that such employees and contractors comply with the provisions of this Section VI. Each party shall be liable for all violations of this Section VI by its employees and contractors.
- 6.2 **Exclusions.** The obligations of the Receiving Party under this Section VI will not apply to information of the Disclosing Party that the Receiving Party can demonstrate (i) was in the possession of the Receiving Party at the time of disclosure without any restrictions as to confidentiality of such information, (ii) was generally available to the public at the time of disclosure or became generally available to the public after disclosure through no breach of this Agreement or other wrongful act by the Receiving Party, (iii) was rightfully received by the Receiving Party from a third party without restriction on disclosure, or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information. The Receiving Party may disclose Confidential Information to the extent required to comply with binding orders of governmental entities that have jurisdiction over it; provided that, to the extent legally permitted, the Receiving Party gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, discloses only such Confidential Information as is required by the governmental entity, and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information disclosed.
- 6.3 **Return or Destruction.** Upon the written request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party (or, at the Disclosing Party's request, destroy) all of its Confidential Information, including all copies thereof. On subsequent request, the Receiving Party will provide written certification it has complied with the foregoing.
- 6.4 **Equitable Relief.** The parties acknowledge and agree that any breach of the obligations of this Section VI may cause the non-breaching party irreparable harm for which an adequate remedy at law may not be available and that, therefore, the non-breaching party shall be entitled to seek injunctive relief, in addition to all other remedies available at law.

## 7 LIMITATIONS ON LIABILITY

EXCEPT AS SET FORTH BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY (I) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST REVENUE AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) AMOUNTS IN THE AGGREGATE IN EXCESS OF THE FEES PAID TO COMPANY HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES. IN ADDITION, PROVIDER WILL NOT BE LIABLE FOR THE COST OR PROCUREMENT OF SUBSTITUTE TECHNOLOGY OR SERVICES. THE ABOVE LIMITATIONS WILL NOT APPLY TO (A) CLAIMS ARISING OUT OF A PARTY'S INDEMNITY OBLIGATIONS HEREUNDER, FRAUD, GROSS NEGLIGENCE, OR WILFULL MISCONDUCT OR (B) LIMIT CLIENT'S PAYMENT OBLIGATIONS. CLIENT ACKNOWLEDGES THIS AGREEMENT IS NOT AN INSURANCE POLICY.

## 8 WARRANTIES; DISCLAIMER

- 8.1 **Representations and Warranties of Client.**
- 8.1.1 Client possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein.
- 8.1.2 Except as otherwise contemplated herein, no material consent or approvals are required in connection with the execution, delivery and performance by Client of this Agreement that have not been obtained.

- 8.1.3 The execution, delivery and performance by Client of this Agreement will not (i) violate any laws or regulations applicable to Client, (ii) result in any breach of, or constitute any default under, any contractual obligation of Client or (iii) result in, or require, the imposition of any Lien on any of the properties or revenues of Client.
- 8.2 Representations and Warranties of Provider.
- 8.2.1 Provider possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein.
- 8.2.2 Except as otherwise contemplated herein, no material consent or approvals are required in connection with the execution, delivery and performance by Provider of this Agreement that have not been obtained.
- 8.2.3 The execution, delivery and performance by Provider of this Agreement will not (i) violate any laws or regulations applicable to Provider, (ii) result in any breach of, or constitute any default under, any contractual obligation of Provider, or (iii) result in, or require, the imposition of any Lien on any of the properties or revenues of Provider.
- 8.2.4 All Services will be provided (i) in a professional and workmanlike manner and (ii) in material accordance with the requirements of this Agreement.
- 8.3 Disclaimer of Warranties. EXCEPT AS SET FORTH IN THIS SECTION 8, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITATING THE FOREGOING, PROVIDER DISCLAIMS THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE PROVIDER DOES NOT WARRANT AND ASSUMES NO LEGAL LIABILITY OR RESPONSIBILITY THAT THE SERVICES PROVIDED HEREUNDER WILL BE ERROR-FREE AND PROVIDER MAKES NO WARRANTY AS TO RESULTS THAT MAY BE OBTAINED FROM SERVICES PROVIDED HEREUNDER. Provider shall not be responsible for any breach of warranty to the extent caused by any (i) modifications, repairs or operations to a System undertaken by persons other than Provider or its Subcontractors; (ii) failure of the Client to respond to or cooperate as required by this Agreement in the event of a reasonable request by Provider, which is necessary for Provider to perform the Services or any other obligations under this Agreement; (iii) failure of remote detection by reason of monitoring communication or data availability or accuracy issues of a System, not attributable to Service Provider, or (iv) unavailability or disturbances in the public grid that prevent the System from generating, charging or storing electricity or feeding it into the public grid.

## 9 INSURANCE

Provider shall, at its sole cost and expense, and subject to the reasonable approval of Client, procure and maintain or cause to be procured and maintained during the Term insurance in the types and amounts listed in Exhibit A to this Agreement; provided that, if the same is not available at commercially reasonable rates and commercially reasonable terms, Provider may procure alternate types and amounts of insurance, subject to the written approval of Client (not to be unreasonably withheld).

## 10 GENERAL

- 10.1 Independent Contractors. The Parties acknowledge that Provider shall perform its obligations under this Agreement and act at all times as an independent contractor and nothing in this Agreement shall be interpreted or applied so as to make the relationship of any of the Parties that of partners, joint ventures or anything other than independent contractors, and the Parties expressly disclaim any intention to create a partnership, joint venture, association or other such relationship. Neither Party is granted any right (except as expressly provided herein) on behalf of the other Party to assume or create any obligation or responsibility binding such other Party. None of Provider's employees, Subcontractors or any such Subcontractor's employees shall be or shall be considered to be employees of Client. Provider shall be fully responsible for the payment of all wages, salaries, benefits and other compensation to its employees and all amounts due and owing to Subcontractors.
- 10.2 Notices. Any notice or communication required or permitted under this Agreement shall be in writing and shall be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail. In addition, any legal notices must also be delivered to the following email addresses set forth below (but, notwithstanding earlier receipt via email, legal notices will be deemed received when the physical notice is received as set forth in preceding sentence). Notices to Omnidian must be sent to 301 Union Street #21647, Seattle, WA 98111 Attn: Legal (with a follow-up email: [legal@omnidian.com](mailto:legal@omnidian.com); but email notice will not be deemed legally sufficient, even received prior to receipt of the physical mailing). Notices to Client may be sent to the physical address or email address provided by Client during the Services registration process, or such other address as provided by Client to Omnidian.
- 10.3 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.

- 10.4 Assignment. Neither party will assign this Agreement and or any System Enrollment Form without the written consent of the other party; provided that, either party may assign this Agreement or any System Enrollment Form to a successor to all or substantially all of its business or assets to which this Agreement or the applicable System Enrollment Form relates (provided that, the successor agrees in writing to be bound by this Agreement).
- 10.5 Mark Use. Client hereby agrees that, during the Term of this Agreement and in each instance with Client's prior written consent (email is sufficient), Provider may use Client's name and logo, in the form provided by Client, to identify Client as customer of Provider (such as on Provider's website and in marketing materials), provided that such use complies with any guidelines for trademark usage provided by Client to Provider from time to time.
- 10.6 Retention of Financial Records. Except as otherwise required by applicable laws or regulations, Provider shall keep books and records in accordance with generally accepted accounting principles with respect to the Services provided hereunder for a period of three (3) years after the applicable creation date of such books or records. The Client or its designated representative will have the right to inspect the books and records upon at least five (5) business day's prior written notice to Provider. If any such inspection or audit discloses that any overpayment or any underpayment has occurred, the amount thereof shall promptly be paid to the Party to whom it is owed by the other Party.
- 10.7 Ownership of Records. All materials and documents generated by Provider for Client as part of the Services (such as reports) ("Records"), shall be owned by Client. Output will not be used by Provider for any purpose other than in performance of the Services. Records will be returned to Client within thirty (30) days from termination of this Agreement (or earlier, if requested by Client). Notwithstanding the foregoing, Provider shall have the right to retain copies of any such information or documents submitted to the Client for legal and archival purposes; provided, that such information or documents shall be subject to the confidentiality obligations set forth herein.
- 10.8 No Liens or Encumbrances. Under this Agreement, Provider shall not, directly or indirectly create, incur, assume, or cause to be created any Liens on the Site other than Permitted Liens and shall also cause that no Subcontractor shall, create, incur, assume or cause to be created any Liens on the Site other than Permitted Liens.
- 10.9 Dispute Resolution. If any dispute arises on matters concerning this Agreement, either Party may initiate the dispute resolution procedures of this Section 10.9 by providing Notice to the other Party of the existence and nature of the dispute. Any dispute, controversy or claim between the Parties arising out of or relating to this Agreement or the breach termination or validity thereof (a "Dispute") shall be resolved pursuant to the procedures set forth below:
- 10.9.1 Either Party shall provide Notice to the other Party of the existence of the Dispute (the "Dispute Notice");
- 10.9.2 A Vice President (or equivalent) of each of the Parties, each with authority to negotiate and resolve the Dispute, shall endeavor to meet, either in person or by telephonic conference, within ten (10) business days after the receipt by a Party of the Dispute Notice, to seek to resolve the Dispute through mutual agreement; and
- 10.9.3 In the event the procedures referenced in Section 10.9.2. above do not result for any reason in resolution of the dispute within twenty (20) business days after receipt by a Party of the Dispute Notice, each Party, without further delay, shall have the right to submit the Dispute to final and binding arbitration in accordance with the following procedures:
- (a) The arbitration shall take place in San Francisco, California;
- (b) The arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules then in effect (the "Rules") (except to the extent modified herein). There shall be three (3) arbitrators: (A) claimant shall appoint an arbitrator in its demand for arbitration, (B) respondent shall appoint an arbitrator within twenty (20) days of receipt of a copy of the demand, and (C) within fifteen (15) days of the appointment of the second arbitrator, the two (2) arbitrators appointed by the Parties shall select a third arbitrator who shall serve as chair of the arbitral tribunal. Any arbitrator not timely appointed shall be appointed by the AAA using the listing ranking and striking procedures in the Rules, with each Party being given three (3) strikes. When acting as appointing authority under this Section 10.9, AAA shall endeavor to appoint as each arbitrator (including any chair) an attorney who has experience with and is knowledgeable regarding the engineering, procurement and construction industry; and
- (c) The fees and expenses of the arbitration panel and the AAA shall be borne equally by Provider and Client and each Party shall bear its own legal expenses.
- 10.9.4 If a claim cannot legal be arbitrated (as determined by AAA arbitrators), it will be subject to the exclusive jurisdiction of the state and federal courts in San Francisco, California.
- 10.10 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. It may only be amended or waived in a writing executed by both parties. If any provision of this Agreement shall be adjudged by an any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the

minimum extent necessary so that this Agreement shall otherwise remain in effect. This Agreement may be executed electronically.

## 11 DEFINITIONS

Terms not defined above shall have the following meanings:

- 11.1 **"Affiliate"** means any entity that controls, is controlled by, or is under common control with a Party hereto ("control" meaning by more than 50% ownership or voting control).
- 11.2 **"Agreement"** means this Master Services Agreement together with the schedules and exhibits attached hereto, as the same may be from time to time amended.
- 11.3 **"Auxiliary Services"** are defined as any services not included in annual the annual plan cost as defined in the System Enrollment Forms, duly authorized by Client in writing. Such Auxiliary Services shall be invoiced according to the pricing outlined on Exhibit B.
- 11.4 **"Governmental Authority"** shall mean any national, regional, province, town, city, or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.
- 11.5 **"Host Customer"** means a customer under a Host Customer Agreement.
- 11.6 **"Host Customer Agreement"** means a power purchase agreement, lease agreement, or energy services agreement between a Host Customer and Client under which the Client agrees to sell the energy generated by a Project to a Host Customer, lease a Project to a Host Customer, or sell energy services to a Host Customer.
- 11.7 **"Lien"** means any mortgage, attachment, claim, lien, charge (fixed or floating), pledge, option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing lien or security interest of any kind (including any retention arrangement) or any other encumbrance having similar effect, or any agreement to create any of the foregoing.
- 11.8 **"System Enrollment Form"** means an agreement signed with a Project Representative pursuant to a form(s) made available by Provider (including via one of its authorized channel partners).
- 11.9 **"Permitted Liens"** means (i) Liens of materialmen, mechanics, workers, repairmen or employees arising in the ordinary course of business; (ii) Liens imposed by any Governmental Authority for Taxes not yet due or being contested in good faith and by appropriate proceedings and in respect of which appropriate reserves have been established in accordance with GAAP; (iii) Liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance, social security or other similar program of a Governmental Authority; (iv) Liens arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which bonds or other security have been provided or are fully covered by insurance; and (v) encumbrances consisting of zoning restrictions, licenses, restrictions on use of property or minor imperfections in title which do not materially interfere with the operation of any Project as contemplated by this Agreement.
- 11.10 **"Project"** means a PV System and associated Project Documents and permits (government or regulatory approvals) owned or operated by Client that is contracted under a System Enrollment Form as may be modified, amended, supplemented or restated from time to time via mutual written consent.
- 11.11 **"Project Documents"** means applicable Host Customer Agreements, EPC contracts (agreements between Client and construction or installation contractors for the engineering, procurement, and construction of Systems), site lease agreements, interconnection agreements, Warranties, as-built drawings, single-line diagrams, and any other relevant documents provided by Client.
- 11.12 **"Project Representative"** means a company or special purpose vehicle affiliated with Client set up to own or operate Projects.
- 11.13 **"Site"** means the real property upon which a Project is located.
- 11.14 **"System"** means a photovoltaic (PV) system or a battery energy storage system (BESS).
- 11.15 **"Warranty"** means any 3<sup>rd</sup> party warranty provided for; (i.) products comprising a PV System, (ii.) products used to construct a PV system, (iii.) the installation and performance of a PV System.

## **EXHIBIT A**

### **INSURANCE**

During the term, Provider shall, at its sole cost and expense procure and maintain, or cause to be procured and maintained, the insurance coverages below with an insurance company or companies rated at least "A-" by A.M. Best Company.

#### **Workers' Compensation and Employers' Liability**

Provider shall obtain workers' compensation for all employees in accordance with applicable Law.

Provider shall obtain employers' liability insurance with limits of at least \$1,000,000 for injury or death occurring as a result of each accident.

#### **Business Auto**

Provider shall obtain comprehensive automobile liability insurance with bodily injury, death and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles hired or non-owned.

#### **Commercial General Liability**

Provider shall obtain comprehensive or commercial general liability insurance written on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including premises/operations, broad form property damage liability, blanket contractual liability encompassing the indemnity provisions of this Agreement, independent contractors, products and completed operations and personal injury. If coverage includes an aggregate limit, that limit should be at least \$2,000,000.

#### **Excess Umbrella Liability Insurance**

Provider shall obtain excess umbrella liability insurance with a single limit of at least \$2,000,000 per occurrence and in the aggregate, in excess of the limits of insurance provided above.

#### **Additional Insurance Provisions**

Such insurance shall include (1) provisions or endorsements naming Client and, upon request, the applicable third party owner as additional insured; (2) provisions that such insurance is primary insurance with respect to and that any other insurance maintained by Provider is excess and not contributory insurance with the insurance required hereunder; (3) provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior Notice to the Client. To the extent that the insurance policies cannot be endorsed to provide such notice, Provider is responsible for providing immediate notice to Client once it receives such notice from its insurance carrier. Provider shall provide Client with certificates of insurance upon written request evidencing the policies, provisions and endorsements listed above within ten (10) days after they have been obtained. In addition, upon written request, Provider shall provide Client with copies of the insurance policy declaration page and/or schedule of endorsements evidenced by such certificates. The insurance coverage described above in this section shall be primary and not excess or contributing with respect to any other coverage available to Provider or to its Affiliates and shall not be deemed to limit Provider's liability under this Agreement. Upon written request, Provider shall furnish Client evidence of insurance for its Subcontractors. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

**EXHIBIT B**  
**FEES**

1. **Fees.** For all Projects under this agreement covered by a System Enrollment Form, reference the fees in the System Enrollment Form, subject to the annual cost escalation in Section 3 of this Exhibit B.
2. **Pricing Notes & Exceptions:** Auxiliary Services such as module cleaning, aerial inspections, vegetation management, I-V curve tracing, and transformer maintenance, are available subject to Auxiliary Services Fees in paragraph 3. Sites without access and/or requiring special equipment may be subject to additional costs. For mixed projects, pricing defaults to the higher priced classification category (e.g., flat and pitched roof will be priced as pitched roof).
3. **Annual Plan Cost Escalation.** The annual plan cost for each System Enrollment Form shall automatically increase annually by the greater of 3.0% or the Employment Cost Index (ECI) for Total Compensation (not seasonally adjusted), private industry workers, all workers as published by the U.S. Bureau of Labor Statistics .
4. **Auxiliary Services Fees.** Client shall reimburse Provider for the documented actual costs, expenses (including equipment rental), fees and taxes (other than income taxes) incurred by Provider to perform Auxiliary Services (the “**Actual Costs**”) plus a management fee of 20% for each issue up to \$10,000, 15% for each issue \$10,001 to \$50,000, and 10% for each issue above \$50,000 (with a \$100 minimum), such Services duly authorized by Client in writing. Alternatively, for any individual System Enrollment Form, Omnidian and Client may mutually agree to set a fixed price per event or a fixed annual price for select Auxiliary Services.
5. **Exclusion of Wage Fees.** Unless otherwise agreed to by Omnidian in writing, fees charged by Omnidian exclude legally mandated wage requirements (such as pursuant to prevailing wage rules, union wage rules, or federal Davis-Bacon Act requirements).
6. **Rental Equipment Cost.** Unless otherwise agreed to by Omnidian in writing, fees charged by Omnidian exclude fees for special access equipment (such as boom lifts).