**Annotated Power Purchase Agreement**

Tioga Energy is committed to helping our customers better understand our SurePath℠ Solar Power Purchase Agreeement (PPA). As part of that committment, we have created this online version of our PPA, complete with annotations, links to defined terms, and an enhanced glossary, as well as a link to download an editable version of the PPA in template form. The SurePath℠ Solar PPA was developed and refined in consultation with some of the nation’s leading institutional tax equity investors, as well as numerous corporate, non-profit, and government sector customers. The SurePath℠ Solar PPA is a living document, evolving over time to reflect growing experience and changing stakeholder requirements and market conditions. As you read through the PPA, we invite you to provide us your comments, questions, and suggestions, and we encourage you to return often to view updates to this section of Tioga Energy's website.

We welcome your comments, questions, and suggestions for improving our SurePath℠ Solar Power Purchase Agreement. To send us your feedback, click on the Feedback tab on the left side of the page.

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1. [ENERGY PURCHASE RATES](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Energy Purchase Rates**: This exhibit sets forth the rates that the customer will pay for electricity generated by the Projectalt. This exhibit is referenced in Section 6(a) of the PPA. The rates for a particular project are determined based on the cost of developing, procuring, installing, operating, and financing the Projectalt, the amount of energy the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. is expected to produce over its lifetime, and the value of any incentives and Environmental Attributesalt"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes or the Applicable Solar Program. available for or generated by the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. .

1. [EARLY TERMINATION AMOUNTS](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Early Termination Amounts**: Early Termination Amountalt"Early Termination Amount" means an amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, or Tax Attributes. are specified in the table in this exhibit and are referred to in Section 9(a) (purchase option during the term of the PPA) and Section 20(b) (remedies following default). Termination amounts reflect the amount necessary to be paid to Tioga and its Financing Partyalt in order for them to receive the same benefit they would receive were the contract continued for its full term. These benefits include REC sales, tax benefits and other incentives in addition to amounts paid for electricity under the PPA. Termination amounts typically decrease significantly after year 6 because tax credits utilized in financing are not subject to recapture if the Projectalt is sold after year 6.

1. [DESCRIPTION OF SITE](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Description of Site**: This exhibit identifies the real property owned by the customer and is referenced in the definition of “Sitealt” in the Glossary of Terms. The exhibit will typically include a map and a legal description of the property. It is necessary to have this information so that filings can be made to show the interest of Tioga and the Financing Partyalt"Financing Party" means a Project Lessor or Lender. in the Projectalt.

1. [DESCRIPTION OF PREMISES](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Description of Premises**: This exhibit shows where the Project will be located on the Sitealt and access and interconnection routes for the Projectalt. It is referenced in Section 3 of the PPA and in the definition of “Premises” in the Glossary of Terms. The exhibit will typically consist of drawings and maps identifying the features of the Projectalt in relation to existing buildings and boundaries of the Sitealt.

1. [DESCRIPTION OF PROJECT](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Description of Project**: This exhibit sets out basic designs of the solar electric system, including information on the system’s generation capacity, building footprint, and equipment. It will typically consist of design drawings and equipment descriptions.

1. [INSURANCE REQUIREMENTS](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Insurance Requirements**: This exhibit sets out minimum levels of insurance required to be maintained by Tioga and the customer and is referenced in Section 12 of the PPA.

1. [NOTICE OF GRANT OF INTEREST IN REALTY](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Notice of Grant of Interest in Realty**: This exhibit sets out a form which Tioga may file to document its interest in the Projectalt. When filed, this document notifies third parties with an interest in the customer’s property of Tioga’s interest in the Projectalt.

1. [APPLICABLE SOLAR PROGRAM](http://www.tiogaenergy.com/annotated-ppa-index.php)

**Applicable Solar Program**: This exhibit identifies a particular governmental or utility program providing incentives for the Projectalt. It is referenced in the definition of “Applicable Solar Program” in the Glossary of Terms. Past examples of such a program are the California Solar Initiative. This exhibit may also set out specific requirements of such a program which are necessary to comply with in order to obtain the benefits of the program.

[**Intro & Section 1**](http://www.tiogaenergy.com/annotated-ppa-section-1.php)

[**Intro**](http://www.tiogaenergy.com/annotated-ppa-section-1.php)

This Power Purchase Agreement (“Agreement”) is entered into as of [\_\_\_\_\_\_\_] [\_], 2011, by and between Tioga Solar [\_\_\_\_\_\_\_] LLC, a [\_\_\_\_\_\_\_] limited liability company, and [Hostalt], a Delaware corporation.

WHEREAS, [Hostalt] is the [lessee/owner] of the property located at [\_\_\_\_\_\_\_\_], and desires to make a portion of such property available to Tioga Solar [\_\_\_\_\_\_\_] LLC for the construction, operation and maintenance of a solar powered electric generating project, and to purchase from Provideralt the electric energy produced by the project.

WHEREAS, Tioga Solar [\_\_\_\_\_\_\_], LLC desires to develop, design, construct, own and operate the project located on Host'salt property, and sell to Hostalt the electric energy produced by the project.

NOW, THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Partiesalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. agree as follows.

[The Power Purchase Agreement is between the customer and a limited liability company which is a subsidiary of Tioga Energy, Inc. Having a special purpose entity own and operate the solar project enables the use of structured financing, which is the most efficient financing for the solar project and provides the lowest cost of electricity. References to Tioga in the comments to the PPA mean the limited liability company owned by Tioga organized for a particular project. The name of the company will be completed with words or numbers to distinguish it from other companies.]

The Power Purchase Agreement is between the customer and a limited liability company which is a subsidiary of Tioga Energy, Inc. Having a special purpose entity own and operate the solar project enables the use of structured financing, which is the most efficient financing for the solar project and provides the lowest cost of electricity. References to Tioga in the comments to the PPA mean the limited liability company owned by Tioga organized for a particular project. The name of the company will be completed with words or numbers to distinguish it from other companies.

Close »

**Section 1 - Definitions**

Certain capitalized terms used in this Agreement have the meanings set forth in the attached [GLOSSARY OF TERMS](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php).

**Section 2**

**TERM**

[**(a) Term.**](http://www.tiogaenergy.com/annotated-ppa-section-2.php)

This Agreementalt shall consist of an Initial Periodalt and an Operations Periodalt. As used herein, "Termalt" shall mean all of the Initial Periodalt"Initial Period" has the meaning provided in Section 2. and the Operations Periodalt, unless the Provideralt or Hostalt terminates the Agreementalt prior to the end of the Initial Periodalt pursuant to the terms of this Agreementalt.

[(2a) There are two distinct timeframes within the contract term: an Initial Periodalt (for project development and construction) and an Operations Periodalt (for project operations).

Use of the two periods recognizes that the Partiesalt will have different responsibilities during the development and operation periods.]

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Use of the two periods recognizes that the Partiesalt will have different responsibilities during the development and operation periods.

Close »

[**(b) Initial Period.**](http://www.tiogaenergy.com/annotated-ppa-section-2.php)

The Initial Periodalt will begin on the date set forth above and will terminate on the earlier of (i) the Commercial Operation Datealt or (ii) the date the Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. is terminated pursuant to the provisions of Section 4(b) or 4(d).

[(2b) The Initial Periodalt"Initial Period" has the meaning provided in Section 2. starts after the PPA contract has been signed, and ends once the system is fully operational. Section 4 of the PPA sets out the activities that Tioga will perform during the Initial Periodalt.]

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[**(c) Operations Period.**](http://www.tiogaenergy.com/annotated-ppa-section-2.php)

If applicable, the Operations Periodalt will commence on the Commercial Operation Datealt"Commercial Operation Date" means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility. and will terminate at 11:59 p.m. on the last day of the month in which the [\_\_\_\_\_\_\_\_\_] anniversary of the Commercial Operation Datealt occurs.

[(2c) The Operations Periodalt"Operations Period" has the meaning provided in Section 2. starts once the system is fully operational and terminates at a time agreed by the Partiesalt, typically 15 or 20 years later.]

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[**(d) Extensions.**](http://www.tiogaenergy.com/annotated-ppa-section-2.php)

Twenty-four months prior to the end of the Operations Periodalt"Operations Period" has the meaning provided in Section 2., the Partiesalt will meet to discuss the extension of this Agreementalt on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Partiesalt may agree. Neither Partyalt shall be obligated to agree to an extension of this Agreementalt.

[(2d) The Parties will meet to discuss extensions of the PPA term prior to its expiration.

As the end of the contract term is approaching, depending on the circumstances, Tioga and the host may need to complete additional negotiations, seek additional financing, or plan for the decommissioning of the solar electric system. Because these activities may take a considerable amount of time, this provision is intended to enable a smooth transition at the end of the Operations Periodalt"Operations Period" has the meaning provided in Section 2..]

**Section 3**

**ACCESS RIGHTS**

[**(a) Access Specifications.**](http://www.tiogaenergy.com/annotated-ppa-section-3.php)

Hostalt hereby grants Provideralt and its designees (including Installeralt, persons responsible for implementing the Applicable Solar Programalt"Applicable Solar Program" means the program indicated on Exhibit H., and Financing Partyalt) access to the Premisesalt, for the Termalt, at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing and removing the Projectalt, and any other purpose set forth in this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof., and otherwise in accordance with the provisions of this Agreementalt. Access Rightsalt with respect to the Sitealt include without limitation:

[(3a) The PPA gives Tioga a license to access and utilize the customer’s site to the extent necessary to build and operate a successful solar electric power Projectalt.

In addition to physical access to the site and space for construction activities, Tioga will need access to water, electric service and communications to enable the successful construction and operation of the solar electric system. In lieu of requiring a separate site-license Agreementalt like many other PPA and construction contracts, Tioga has chosen to include these provisions within the PPA Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. to simplify the contract process. In some cases though, a separate lease may be required]»

1. Vehicular & Pedestrian Access. Reasonable vehicular and pedestrian access across the Sitealt to the Premisesalt as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing and removing the Projectalt. In exercising such access Provideralt shall reasonably attempt to minimize any disruption to activities occurring on the Sitealt.
2. Transmission Lines & Communication Cables. The right to locate transmission lines and communications cables across the Sitealt"Site" means the real property described on Exhibit C attached hereto, which properties include the Premises. as designated on Exhibit D. The location of any such transmission lines and communications cables outside the areas designated on Exhibit D shall be subject to Hostalt’s approval and shall be at locations that minimize any disruption to Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns.’s activities occurring on the Sitealt.
3. Storage. Adequate storage space on the Sitealt convenient to the Premisesalt for materials and tools used during construction, installation, and maintenance of the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. . Provideralt shall be responsible for providing shelter and security for stored items during construction and installation.
4. Utilities. Water, drainage, electrical, and ethernet connections on the Premisesalt for use by Provideralt in installing, operating and maintaining the Projectalt.

[**(b) Easement Rights.**](http://www.tiogaenergy.com/annotated-ppa-section-3.php)

Upon request by Provideralt, the Partiesalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. shall execute and record with the appropriate Land Registryalt easements and other instruments documenting the Access Rightsalt granted by Hostalt to Provideralt in this Agreementalt, and which shall be in form and substance indicated on Exhibit G or other form agreed by the Partiesalt. The cost of preparation and recording shall be borne by the Provideralt.

[(3b) If necessary, the customer will create an easement on its property allowing Tioga to access the solar electric system. An easement is a right to use someone else’s property without taking ownership of the property. Easements are commonly used for creating a pathway across a property.]

[**(c) Remote Monitoring.**](http://www.tiogaenergy.com/annotated-ppa-section-3.php)

Hostalt will provide an internet portal or equivalent access by means of which Provideralt will communicate data from the revenue grade performance monitoring system. Provideralt will be responsible for connecting monitoring equipment for the Projectalt to the internet so that it is possible for Provideralt and Hostalt to remotely monitor the Projectalt.

[(3c) Tioga will install monitoring equipment owned by Tioga to monitor the performance of the solar electric system remotely. The monitoring equipment requires an internet connection, but the monitoring data does not need to route through the customer’s firewall and/or an internal server.]

**Section 4 - Part 1**

**PLANNING, INSTALLATION AND OPERATION OF PROJECT**

[**(a) Site Assessment and Planning.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-1.php)

During the Initial Periodalt, Provideralt shall have the right, at its own expense, to assess the suitability of the Premisesalt for the Projectalt and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Projectalt will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Projectalt; to arrange interconnections with the Local Electric Utilityalt; to make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Projectalt under the Applicable Solar Programalt; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Projectalt; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Projectalt.

[(4a) During the Initial Periodalt Tioga will continue site assessment and planning activities begun during the negotiation of the PPA. These activities are intended to confirm that the project meets the minimum requirements for successful financing, construction and operation of the solar electric system. Tioga has the right to apply for the permits necessary to receive approval to build the solar electric system.]

[**(b) Termination of Development Activities.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-1.php)

At any time during the Initial Periodalt, Provideralt shall have the right to cease development of the Projectalt on the Premisesalt, for any reason, in its sole discretion. If Provideralt gives Hostalt notice of such determination, this Agreementalt shall terminate effective as of the delivery of such notice without any further liability of the Partiesalt to each other, provided that (i) Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall remove any equipment or materials which Provideralt has placed on the Sitealt; (ii) Provideralt shall restore any portions of the Sitealt disturbed by Provideralt to its pre-existing condition; (iii) the Partiesalt shall not be released from any payment or other obligations arising under this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreementalt.

[(4b) Tioga has the right to stop the development of the solar electric system at any time during the Initial Periodalt if it determines that it will not be able to complete development and installation of the Projectalt. Tioga needs this right because signing the PPA is an essential but not the final step in development of the Projectalt. If Tioga exercises this right, it will restore the host site to its original condition and both parties will continue to honor the confidentiality (section 14), indemnity (section 15), and dispute resolution (section 23) provisions in this PPA.

During the Initial Periodalt, there are two primary reasons why Tioga might choose to cease development of the Projectalt: (1) previously unknown site conditions are discovered and (2) failure to secure Projectalt financing.

(1) Sitealt conditions that could cause development cessation include discovery of hazardous materials (e.g. asbestos under a roof) or hidden structural problems, often which cannot be identified from available drawings and are not discovered until actual site engineering work commences. If these site conditions are such that the cost to remediate them would render the Projectalt uneconomical, Tioga would cease development.

(2) Tioga has master financing agreements in place with several financing partners and performs preliminary due diligence on a potential customer’s financial standing (credit and audited financial statement review) prior to entering into PPA contract negotiations. However, **formal credit review and approval on the part of Tioga’s structured financing partners for any given Projectalt is very expensive, and does not commence until AFTER a PPA is executed.** Once this process commences, a Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. can be rejected for financing due to a variety of factors, including customer credit, financier risk profile or external conditions such as changes in incentive programs or disruption in financial markets. If Tioga is unable to secure financing from any of its financing sources for a given Projectalt, Tioga may cease Projectalt development and terminate the PPA] »

[**(c) Commencement of Construction, Modification of Design.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-1.php)

At any time during the Initial Periodalt, upon at least ten (10) Business Days notice to Hostalt, Provideralt shall have the right to commence installing the Projectalt on the Premisesalt.

1. As of the date hereof, Provideralt anticipates that the Projectalt shall consist of the components and shall have the designs set forth in Exhibit E attached hereto.
2. Notwithstanding subsection (i) above, Provideralt has the right to modify the design of the Projectalt, including the selection of the components in the Projectalt, as Provideralt, in its sole discretion, may determine, provided, however, that such changes shall not result in the Projectalt exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, without Hostalt’s approval.

[(4c) Tioga can start building the solar electric system at any time, with 10 or more business days’ notification, during the Initial Periodalt. Tioga has the right to modify the type of system components (e.g. use a different brand of photovoltaic panel) and the system’s design without the customer’s approval, provided these changes do not result in material modifications such as a modification to the system’s electricity generation capacity, spatial footprint, location within the customer’s property, or height of the system. The customer can suggest alternate equipment, though it must be approved by Tioga. During the Initial Periodalt, Tioga is finalizing contracts with financing and construction partners. Once construction commences, engineering and permitting begins. Procurement of equipment (photovoltaic panels, inverters, mounting, etc.) typically does not begin until this work is complete, which can be many months after the execution of the PPA. At that point, it may be necessary for Tioga to modify the system components due to changes in equipment availability, cost, and suitability to local requirements (e.g. permitting or grid interconnection requirements).]

[**(d) Construction Commencement Deadline.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-1.php)

If within 365 days following the date of this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. (not including any days in which a Force Majeure Eventalt existed), Provideralt has not commenced the installation of the Projectalt on the Premisesalt"Premises" means the portions of the Site described on Exhibit D., Hostalt may terminate this Agreementalt by delivering notice to Provideralt of its intention to terminate this Agreementalt, and the Provideralt shall terminate twenty-one (21) days after Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s receipt of such notice; provided, that if Provideralt commences installation of the Projectalt within such twenty-one (21) day period, this Agreementalt shall not terminate. Upon any termination in accordance with this Section 4(d) neither Partyalt shall have any further liability to the other with respect to the Facility, provided that (i) Provideralt shall remove any equipment or materials that Provideralt has placed on the Sitealt; (ii) Provideralt shall restore any portions of the Sitealt disturbed by Provideralt to their condition prior to the commencement of construction; (iii) the Partiesalt shall not be released from any payment or other obligations arising under this Agreementalt prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreementalt.

[(4d) If Tioga hasn’t started construction within 1 year of signing the PPA, the customer can terminate the PPA. If Tioga has not started construction within 12 months of the PPA contract’s execution, it is typically because Tioga has not yet finalized the financing needed to build and operate the system. This provision gives the customer the right to terminate the agreement if there is not sufficient progress for an extended period of time]»

[**(e) Contractors.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-1.php)

Provideralt shall use licensed contractors to perform the work of installing, operating, and maintaining the Projectalt. Provideralt intends to use Installeralt to perform such work, but may use other contractors, for all or a portion of such work, subject to the reasonable approval of Hostalt. Provideralt shall advise Hostalt of the Installeralt prior to commencement of the work on the Sitealt. Provideralt shall be responsible for the conduct of Installeralt and its subcontractors, and Hostalt shall have no contractual relationship with Installeralt or its subcontractors in connection with the work on the Projectalt. Provideralt shall ensure that Installeralt maintains insurance applicable to the Installeralt’s activities that satisfy the requirements in Exhibit F.

[(4e) Tioga does not build the solar electric system itself, but will hire licensed and qualified contractors. Tioga will oversee the contractor's work and is responsible for their actions. “Installeralt” refers to the contractor responsible for the system installation, however Tioga may also use other contractors to perform other tasks. The customer does not have a contractual relationship with the Installeralt to reinforce Tioga’s sole ownership of the solar electric system, which is required for Tioga to receive the incentives needed to achieve the expected Projectalt economics.]

**Section 4 - Part 2**

[**(f) Status Reports.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-2.php)

Provideralt shall give Hostalt regular updates, on a reasonable schedule requested by Hostalt, on the progress of installation of the Projectalt and shall notify Hostalt of when Provideralt will commence testing of the Projectalt. Hostalt shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Provideralt and Installeralt"Installer" means the person designated by Provider to install the Project on the Premises.. After Provideralt has determined, in its reasonable judgment, that the Projectalt meets the requirements of the Local Electric Utilityalt, has been installed in accordance with all Applicable Lawalt"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.s, and is capable of producing electricity on a continuous basis, Provideralt shall notify Hostalt that installation of the Projectalt is complete and shall specify the Commercial Operation Datealt"Commercial Operation Date" means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility. for the Projectalt, which may be immediately upon delivery of such notice to Hostalt. All electricity produced by the Projectalt prior to the Commercial Operation Datealt shall be delivered to Hostalt and Hostalt shall pay for such electricity at the rate applicable to the first Operations Yearalt�Operations Year� means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date. but in no event greater than the rate otherwise payable by Hostalt to the Electric Service Provideralt"Electric Service Provider" means any person, including the Local Electric Utility, authorized by the State of [\_\_\_\_\_] to provide electric energy and related services to retail users of electricity in the area in which the Site is located. .

[(4f) Tioga will provide the customer with regular status reports and will inform the customer of the Commercial Operation Datealt"Commercial Operation Date" means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility. when achieved.]

[**(g) Standard of Operation.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-2.php)

Provideralt shall design, obtain permits, install, operate, and maintain the Projectalt so as to keep it in good condition and repair, in compliance with all Applicable Lawalts and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provideralt’s sole expense. Except for emergency situations or unplanned outages, Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Hostalt and Hostalt’s employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provideralt shall, and shall cause its contractors to, keep the Sitealt reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Hostalt for conduct of business on the Sitealt"Site" means the real property described on Exhibit C attached hereto, which properties include the Premises..

[(4g) Tioga will design, and obtain permits for the solar electric system and will install and operate the system in accordance with legal requirements. Tioga will use reasonable efforts to install, operate, and maintain the solar electric system in a way that minimizes interferences with customer’s activities at the site. Certain customers, such as schools, have specific requirements for contractors and other persons to observe. These can be added to the PPA]

[**(h) Hazardous Materials.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-2.php)

Provideralt and Installeralt are not responsible for any Hazardous Materialsalt encountered at the Sitealt except to the extent introduced by Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.. Upon encountering any Hazardous Materialsalt, Provideralt and Installeralt will stop work in the affected area and duly notify Hostalt and, if required by Applicable Lawalt, any Governmental Authorityalt"Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government. with jurisdiction over the Sitealt. Upon receiving notice of the presence of suspected Hazardous Materialsalt at the Sitealt, Hostalt shall take all measures required by Applicable Lawalt"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity. to address the Hazardous Materialsalt discovered at the Sitealt. Hostalt may opt to remediate the Sitealt so that the Projectalt may be installed on the Sitealt, or determine that it is not economically justifiable or is otherwise impractical to remediate the Sitealt, in which case Hostalt and Provideralt may agree upon a different location for the Projectalt whereupon such replacement location shall be the Sitealt for purposes of this Agreementalt. Provideralt and Installeralt shall be obligated to resume work at the affected area(s) of the Sitealt only after Hostalt notifies Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. and Installeralt"Installer" means the person designated by Provider to install the Project on the Premises. that Hostalt has complied with all Applicable Lawalts, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Lawalt and (ii) all necessary approvals have been obtained from any Governmental Authorityalt"Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government. having jurisdiction over the Projectalt or the Sitealt. Hostalt shall reimburse Provideralt for all additional costs incurred by Provideralt or Installeralt in the installation of the Projectalt resulting from the presence of and/or the remediation of Hazardous Materialsalt, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Hostalt is not responsible for any Hazardous Materialsalt introduced to the Sitealt by Provideralt or Installeralt, nor is Hostalt required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical.

[(4h) If hazardous materials are discovered at the site, the customer will either remove hazardous materials that interfere with the installation of the Tioga solar electric system, or provide an alternative location free of hazardous materials where the solar electric system can be installed. Construction will resume once the hazardous materials condition has been addressed. Tioga will be reimbursed by the customer for all costs associated with the presence of and/or remediation of the hazardous materials, including increased installation costs.]

[**(i) Site Security.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-2.php)

Hostalt will provide security for the Projectalt to the extent of its normal security procedures, practices, and policies that apply to all Hostalt Premisesalt, including the Projectalt. Hostalt will advise Provideralt immediately upon observing any damage to the Projectalt. Upon request by Provideralt, such as Provideralt receiving data indicating irregularities or interruptions in the operation of the Projectalt, Hostalt shall, as quickly as reasonably practicable, send a person to observe the condition of the Projectalt and report back to Provideralt on such observations.

[(4i) The customer will include the Tioga solar electric system in normal site security activities and assist Tioga through observation of project condition from time to time.]

[**(j) System Shut Down.**](http://www.tiogaenergy.com/annotated-ppa-section-4-part-2.php)

Provideralt may shut down the Projectalt at any time in order to perform required emergency repairs to the Projectalt. At other times, Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall give Hostalt notice of the shutdown as may be reasonable in the circumstances. Provideralt shall not have any obligation to reimburse Hostalt for costs of purchasing electricity that would have been produced by the Projectalt but for such shutdown. Provideralt shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provideralt, except as may be required in accordance with prudent electric industry safety practices in the event of equipment malfunction.

[(4j) Tioga may shut down the solar electric system to perform repairs and will do so in a way that minimizes the lost electricity value to customer. Tioga will not reimburse the customer for lost savings as a result of shutdowns, as these are periodically necessary and normal in the course of operating the solar electric system.]

**(k) Applicable Solar Program Requirements.**

Exhibit H identifies certain requirements of the Applicable Solar Program. The Parties shall comply with the obligations identified in Exhibit H or subsequently adopted by the Applicable Solar Program. In the event of any inconsistency between the obligations of the Parties under this Agreement or any of the requirements of the Applicable Solar Program, the more stringent obligation shall govern, and if such cannot be determined, the requirements of the Applicable Solar Program shall govern

**Section 5**

**SALE OF ELECTRIC ENERGY**

[**(a) Sale of Electricity.**](http://www.tiogaenergy.com/annotated-ppa-section-5.php)

Throughout the Operations Periodalt"Operations Period" has the meaning provided in Section 2., subject to the terms and conditions of this Agreementalt, Provideralt shall sell to Hostalt and Hostalt shall buy from Provideralt all electric energy produced by the Projectalt, whether or not Hostalt is able to use all such electric energy. The Point of Deliveryalt of the electric energy shall be as indicated in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to Hostalt at the Point of Deliveryalt.

[(5a) The customer agrees to buy all of the electricity produced by the Tioga solar electric system. Tioga needs the assurance that the electricity produced by the project will be purchased at the agreed price. In most situations, the customer can deliver any unused electricity to the utility and get net metering credit from the utility (see Section 7b) which further increases the benefits of the project to the customer.]»

[**(b) Delivery of Electricity.**](http://www.tiogaenergy.com/annotated-ppa-section-5.php)

The electric energy from the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. shall be delivered from Provideralt to Hostalt at the specifications set forth in Exhibit E and otherwise in compliance with all requirements of the Local Electric Utilityalt.

[(5b) Solar electricity shall be delivered at the physical location identified in the drawings in Exhibit E, and in compliance with utility requirements.]

[**(c) Limits on Obligation to Deliver.**](http://www.tiogaenergy.com/annotated-ppa-section-5.php)

Provideralt does not warrant or guarantee the amount of electric energy to be produced by the limits on Projectalt for any hourly, daily, monthly, annual or other period. Provideralt is not a utility or public service company and does not assume any obligations of a utility or public service company to supply Host'salt electric requirements. Provideralt is not subject to rate review by governmental authorities.

[(5c) Tioga does not guarantee how much electricity will be produced by the project. While Tioga can predict solar electricity generation over time with some degree of confidence (e.g. expected average annual generation over a 20 year period), from month to month or year to year, the generation of the system is variable and highly dependent on the weather. Tioga also does not assure that all electric needs of the customer will be supplied. The customer remains connected to the regulated electric utility which continues to have the obligation to meet customer’s electric supply needs.]

[**(d) Meter Testing.**](http://www.tiogaenergy.com/annotated-ppa-section-5.php)

Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall install one or more meter(s) at the Projectalt, as Provideralt deems appropriate, to measure the output of the Projectalt at the Point of Deliveryalt. Provideralt shall install an Interval Data Recorder (IDR) with industry standard telemetry at the Projectalt. Provideralt shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two year period. Hostalt shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Hostalt deems necessary, except if, after such testing, the meter is shown to be in error in Provideralt’s favor by more than 2%, Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall pay for the cost of such test and shall make corresponding adjustments to the records of the amount of electrical energy provided by the Projectalt delivered based on the period that is half-way in between the date of this testing and the last testing date of the meter. If there is an error of less than or equal to 2% no billing adjustments will be made. In the event there is an error of greater than 2%, Provideralt shall adjust the next invoice to be provided to Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. under Section 6(b) hereof, to either charge the Hostalt additional amounts for energy produced over the stated meter amount during the applicable period at the applicable rate or provide Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. a credit against future billing for energy produced under the stated meter amount during the applicable period, provided, however, that any deficiencies or credits not theretofore applied or satisfied at the expiration or earlier termination of the Operations Periodalt shall be settled in cash.

[(5d) Industry-standard meters will be installed and tested at least every two years or on request. Past bills will be adjusted if meters are off by more than 2%. Tioga’s meter testing policy is consistent with a typical electric utility’s meter policies.]

# Section 6

**PAYMENT AND BILLING**

[**(a) Rates.**](http://www.tiogaenergy.com/annotated-ppa-section-6.php)

Hostalt shall pay Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. for electricity produced by the Projectalt at the rates set forth in Exhibit A attached hereto.

[(6a) The customer will pay Tioga for electricity after the Commercial Operations Date. Rates are specified in Exhibit A.]

[**(b) Billing.**](http://www.tiogaenergy.com/annotated-ppa-section-6.php)

Hostalt shall pay for the electricity produced by the Projectalt monthly in arrears. Promptly after the end of each calendar month, Provideralt shall provide Hostalt with an invoice setting forth the quantity of electricity produced by the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.

[(6b) The customer will be billed monthly for the electricity produced in the prior month.]

[**(c) Invoice Delivery.**](http://www.tiogaenergy.com/annotated-ppa-section-6.php)

Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

[(6c) Written invoices may be delivered in a variety of ways. Specific procedures can be included in the PPA.]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[**(d) Payment.**](http://www.tiogaenergy.com/annotated-ppa-section-6.php)

Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by electronic funds transfer to an account designated by Provideralt in the invoice or in a written notice delivered to Hostalt. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed by applicable law.

[(6d) The customer will submit payment for each invoice within 30 days. Payment can be made either by electronic funds transfer or by check. Unpaid amounts will accrue 1% interest per month.]

[**(e) Disputed Invoices.**](http://www.tiogaenergy.com/annotated-ppa-section-6.php)

If Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. objects to all or a portion of an invoice, Hostalt shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Hostalt does not object prior to the date payment of any invoice is due, Hostalt shall be obligated to pay the full amount of such invoices but Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6(e), survive the expiration or termination of this Agreementalt.

[(6e) If customer disputes an invoice, the customer will pay the undisputed amount and will act to promptly resolve the dispute. Disputealts must be raised within eighteen months of receipt of invoice.]

**Section 7 - Part 1**

**SUPPLEMENTAL POWER, NET METERING AND RECS**

[**(a) Back-up and Supplemental Electricity.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-1.php)

Except as otherwise provided herein, throughout the Termalt"Term" shall have the meaning provided in Section 2 hereof., Hostalt shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Projectalt and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utilityalt or other Electric Service Provideralt. Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall have no obligation to obtain or pay for such supplemental or back-up electricity.

[(7a) The customer is responsible for obtaining electricity beyond what it gets from the Tioga solar electric system. As discussed above, Tioga is not a public service company. The customer remains connected to the local electric utility and receives its electric needs not supplied by Tioga from the utility. Tioga is not responsible for charges imposed by the utility on the customer]

[**(b) Net Metering & Utility Credits.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-1.php)

At any time that electric production from the Projectalt is greater than Hostalt’s requirements at such time, Hostalt shall nevertheless pay Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. for all of the electricity produced by the Projectalt (other than as provided in Section 13(e) of this Agreementalt) at the rates and in the manner provided in this Agreementalt. Hostalt may make arrangements with the Local Electric Utilityalt so that power in excess of Hostalt’s requirements may be delivered to the Local Electric Utilityalt through the Point of Deliveryalt"Point of Delivery" means the connection between the solar electric system and the host site�s electrical system. and Hostalt shall receive any credits or payments from the Local Electric Utilityalt may be available under net metering or similar programs. If Applicable Lawalt or the practice of the Local Electric Utilityalt restricts the ability of the Hostalt to deliver electricity produced by the Projectalt to the Local Electric Utilityalt, then the Partiesalt shall agree on alternate arrangements to enable Hostalt, insofar as possible, to receive benefits from the Local Electric Utilityalt comparable to those available under net metering programs, provided that the economic benefits to Provideralt remain as provided in this Section 7(b).

[(7b) If the Tioga solar electric system produces electricity in excess of the customer’s needs, the customer is still required to pay for all electricity generated at the agreed upon rates. The customer is entitled to net metering or other utility credits. Net metering programs are managed by the customer’s electric utility and provide electricity credit to the customer for electricity generated by the Tioga solar electric system that is in excess of the customer’s needs at that time.]

[**(c) Interconnection.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-1.php)

Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall be responsible for arranging the interconnection of the Projectalt with Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns.’s Local Electric Utilityalt in a manner which includes bi-directional or “net metering”.

[(7c) Tioga is responsible for arranging interconnection with the customer’s electric utility. Interconnection refers to connecting Tioga’s solar electric system to the electricity grid so that it can supply electricity to the customer and interact with the grid.]

[**(d) Applicable Solar Program Incentives.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-1.php)

Except as provided in Section 7(b), Provideralt shall receive all payments available under any Applicable Solar Programalt"Applicable Solar Program" means the program indicated on Exhibit H.. Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. shall provide reasonable assistance to Provideralt in preparing all applications and other documents necessary for Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to receive such payments, including designating Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. as the customer for purposes of the Applicable Solar Programalt or assigning payments from the Applicable Solar Programalt to Provideralt. If Hostalt receives any payments under the Applicable Solar Programalt"Applicable Solar Program" means the program indicated on Exhibit H. or other programs in respect of the Projectalt, it shall promptly pay them over to Provideralt. Hostalt’s obligation to make any payments to Provideralt under this paragraph (d) is limited to any payments actually received by Hostalt.

[(7d) Tioga, not the customer, receives payments under incentive programs except that the customer receives net metering or utility credits in the event that production of the solar electric system exceeds the customers electricity requirements. Receiving these incentive payments enables Tioga to offer attractive electricity rates to its customers.]

[**(e) Ownership of Tax Attributes.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-1.php)

Provideralt (and/or Financing Partyalt"Financing Party" means a Project Lessor or Lender.) shall be the owner of any Tax Attributesalt that may arise as a result of the operation of the Projectalt and shall be entitled to transfer such Tax Attributesalt to any person. Hostalt shall provide reasonable assistance to Provideralt in preparing all documents necessary for Provideralt to receive such Tax Attributesalt, and if Hostalt is deemed to be the owner of any such Tax Attributesalt, Hostalt shall assign the same (or the proceeds thereof) to Provideralt. If Hostalt receives any payments in respect of such Tax Attributesalt, it shall promptly pay them over to Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns..

[(7e) Tioga, not the customer, receives all tax benefits available with respect to the installation and operation of the Projectalt. Under certain financing structures the Financing Partyalt will receive the tax benefits. Utilizing these tax benefits enables Tioga to offer attractive solar electricity rates to its customers.]

## ([f) Environmental Attributes.](http://www.tiogaenergy.com/annotated-ppa-section-7-part-2.php)

Provideralt (and/or Financing Partyalt"Financing Party" means a Project Lessor or Lender.) shall be the owner of any Environmental Attributesalt which may arise as a result of the operation of the Projectalt and shall be entitled to transfer such Environmental Attributesalt"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes or the Applicable Solar Program. to any person. Hostalt shall provide reasonable assistance to Provideralt in preparing all documents necessary for Provideralt to receive such Environmental Attributesalt, and if Hostalt is deemed to be the owner of any such Environmental Attributesalt"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes or the Applicable Solar Program., Hostalt shall assign the same (or the proceeds thereof) to Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.. If Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. receives any payments in respect of such Environmental Attributesalt, it shall promptly pay them over to Provideralt.

[(7f) Tioga, not the customer, receives all Environmental Attributesalt"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes or the Applicable Solar Program. such as Renewable Energy Certificatealt"Renewable Energy Certificate" or "REC" means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project. resulting from the operation of the solar electric system. These attributes may be in addition to direct solar incentive program payments. Receiving these Environmental Attributesalt enables Tioga to offer attractive solar electricity rates to its customers.]

[**(g) Capacity & Ancillary Services.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-2.php)

Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Projectalt. Hostalt shall provide reasonable assistance to Provideralt in preparing all documents necessary for Provideralt to receive such payments, and if Hostalt is deemed to be the owner or provider of such capacity or services, Hostalt shall assign the same to Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.. If Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. receives any payments in respect of capacity or such services it shall promptly pay them over to Provideralt.

[(7g) If there are additional benefits in the future associated with the production of electricity, Tioga, as owner of the system, is entitled to these benefits. Capacity payments are payments for the installation of facilities which generate electricity. Ancillary services are capabilities of generating units which improve the reliability of electric service. At present, solar facilities are not entitled to such payments, but Tioga, as owner of the system, will be entitled to such payments when available]

[**(h) No Resale of Electricity.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-2.php)

Except as contemplated by the provisions of Section 7(b), the electricity purchased by Hostalt from Provideralt under this Agreementalt shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Provideralt, which approval shall not be unreasonably withheld, and Hostalt shall not take any action which would cause Hostalt or Provideralt to become a utility or public service company.

[(7h) The customer may not sell the electricity to anyone other than the utility. Resale of electricity to someone other than the utility is subject to additional regulations in most states.]

[**(i) Provider Is Not A Utility.**](http://www.tiogaenergy.com/annotated-ppa-section-7-part-2.php)

Neither Partyalt shall assert that Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s obligations or performance under this Agreementalt.

[(7i) The customer may not claim that Tioga is an electric utility. The prices are set in the contract and the customer cannot seek to change them by seeking government review]

**Section 8**

**PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES**

[**(a) Permits.**](http://www.tiogaenergy.com/annotated-ppa-section-8.php)

Provideralt shall pay for and obtain all approvals from governmental entities necessary for the construction and operation of the Projectalt, including land use permits, building permits, demolition and waste disposal permits and approval.

[(8a) Tioga will obtain and pay for all necessary government permits and approvals.]

[**(b) System Ownership.**](http://www.tiogaenergy.com/annotated-ppa-section-8.php)

Except as provided in Section 9, Provideralt or Financing Partyalt shall be the legal and beneficial owner of the Projectalt at all times. The Projectalt is personal property and shall not attach to or be deemed a part of, or fixture to, the Sitealt. The Projectalt shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Hostalt covenants that it will place all persons having an interest in or lien upon the real property comprising the Premisesalt, on notice of the ownership of the Projectalt and the legal status or classification of the Projectalt as personal property. Hostalt and/or Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall make any necessary filings to disclaim the Projectalt as a fixture of its respective Premisesalt"Premises" means the portions of the Site described on Exhibit D. and Sitealt in the appropriate Land Registryalt to place all interested parties on notice of the ownership of the Projectalt by Provideralt.

[(8b) Tioga will own the solar electric system. The system is personal property of Tioga and not an attachment to the real property of the customer. The customer will notify all holders of liens on its property that the Projectalt will be built on the property and belongs to Tioga. These provisions are included to help ensure that the Projectalt is not subject to liens against the customer’s property.]

[**(c) Liens.**](http://www.tiogaenergy.com/annotated-ppa-section-8.php)

To the extent permitted by Applicable Lawalt, each Partyalt shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics’, labor or materialman’s lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as “Liens” and each, individually, a “Lien”) on or with respect to the interests of the other in the Sitealt, the Premisesalt, and the Projectalt, and in the Access Rightsalt granted hereunder. Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall, to the extent allowed under Applicable Lawalt, have Installeralt and its subcontractors execute lien waivers with respect to any mechanic's or materialman's lien against Hostalt’s interest in the Sitealt. If permitted under Applicable Lawalt, Hostalt will post notices of non-responsibility to notify Installeralt"Installer" means the person designated by Provider to install the Project on the Premises. and others that Hostalt is not responsible for work performed on the Projectalt. Each Partyalt shall promptly notify the other of the imposition of a Lien on the property interests of the other Partyalt, and shall promptly discharge such lien, provided however, that a Partyalt may seek to contest the amount or validity of any Lien affecting the property of the other Partyalt, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Partyalt establishes for the benefit of the other Partyalt a deposit, letter of credit, or other security acceptable to the other Partyalt to indemnify the other Partyalt against any Lossalt which could reasonably be expected to arise if such Lien is not removed or discharged.

[(8c) Neither party will cause a lien, mortgage, or other security interest on the other party’s property. Each party will take steps to make sure that inappropriate liens are not filed by third parties and to remove any liens which may be filed.]

[**(d) Non Disturbance Agreements.**](http://www.tiogaenergy.com/annotated-ppa-section-8.php)

Hostalt shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreementalt from its lenders, landlord, tenants, and any other persons with interests in the Sitealt. If there is any mortgage or fixture filing against the Premisesalt which could reasonably be construed as prospectively attaching to the Projectalt, Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. shall promptly upon request of Provideralt, provide an acknowledgement and consent from such lienholder, in form and substance reasonably acceptable to Financing Partyalt"Financing Party" means a Project Lessor or Lender., stating that the ownership of the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. remains in Provideralt and further acknowledging that the Projectalt is personal property of Provideralt and agreeing not to disturb the rights of Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. in the Projectalt and under this Agreementalt. If Hostalt is the fee owner of the Premisesalt, Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. consents to the filing of a disclaimer of the Projectalt as a fixture of the Premisesalt in the Land Registryalt. If Hostalt is not the fee owner, Hostalt will obtain such consent from such owner of the Premisesalt. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Hostalt’s expense, in the appropriate Land Registryalt. Hostalt may in the future mortgage, pledge, and grant security interests in all or a portion of the Sitealt and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreementalt, the Projectalt, the Access Rightsalt granted hereunder, and the priority of Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s (and/or Financing Partyalt’s) rights in the Projectalt and the Access Rightsalt"Access Rights" means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project..

[(8d)If there is an existing lien, mortgage, or other encumbrance on the customer’s property at the time of the solar electric system’s installation, customer will make sure that the holders of these encumbrances do not include the Tioga solar electric system into their claims of rights to the customer’s property. This explicit clarification that the Projectalt is not subject to any liens against the customer is required for financing the Project]alt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agree

**Section 9**

**PURCHASE OPTIONS; REMOVAL AT END OF TERM**

[**(a) Early Purchase Options.**](http://www.tiogaenergy.com/annotated-ppa-section-9.php)

On the seventh (7th), tenth (10th) and fifteenth (15th) anniversary of the Commercial Operation Datealt, provided no Hostalt Event of Default has occurred and is continuing, the Hostalt shall have the option to purchase the Projectalt from Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. at a price which will be the greater of (i) the Fair Market Valuealt of the Projectalt at such anniversary date or (ii) the Early Termination Amountalt, plus, if applicable, repayment or recapture of Applicable Solar Programalt"Applicable Solar Program" means the program indicated on Exhibit H. or other governmental payments occasioned by the exercise of such option. If Hostalt desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Provideralt of its election to exercise the option, and on or before ninety (90) days after such anniversary date shall pay the purchase price to Provideralt by electronic transfer in immediately available funds to an account designated by Provideralt. At any time following receipt of the notice from Hostalt, but no later than thirty (30) days after the date Hostalt gives notice of its election to exercise the option, Provideralt may notify Hostalt if it believes the Fair Market Valuealt"Fair Market Value" means the price that would be paid in an arm�s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation. of the Projectalt exceeds the Early Termination Amountalt, and, in the same notice, Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall provide Hostalt an appraisal of the Fair Market Valuealt. If Hostalt agrees with the appraisal of the Fair Market Valuealt it shall pay such sum to Provideralt. If Hostalt disagrees with the appraisal’s estimate of the Fair Market Valuealt of the Projectalt, Hostalt may request that the Partiesalt meet to discuss the appraisal. If the Partiesalt cannot agree within ten (10) days of the Hostalt’s receipt of the appraisal of the Fair Market Valuealt, the Partiesalt will be deemed to enter into a Disputealt for purposes of Section 23(a) and shall follow the procedures in Section 23(c) for resolution of the Disputealt. Notwithstanding the foregoing, in the event that Provideralt enters into a sale/leaseback transaction in connection with funding the installation of the Projectalt, the process of determining the Fair Market Valuealt of the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. in this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Valuealt of the Projectalt and shall be undertaken consistently with the terms of such transaction so that the process for determining Fair Market Valuealt"Fair Market Value" means the price that would be paid in an arm�s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation. under this Agreementalt shall be the same as provided in the agreements for such sale/leaseback transaction.

[(9a) The customer has the option to purchase the solar electric system on the 7th, 10th, and 15th anniversary of the commercial operation dates at the greater of fair market value or the Termination Amounts specified in Exhibit B. Fair market value is determined at the time that the purchase option is exercised. Ensuring that the system is not purchased for less than fair market value and limiting the number of instances when the customer can buy the system help to ensure that the project will qualify for tax benefits. These restrictions are needed to ensure that the PPA is not interpreted by the IRS as an installment purchase agreement, which would nullify the financing partners’ eligibility for tax benefits.]

[**(b) End of Term Purchase Option.**](http://www.tiogaenergy.com/annotated-ppa-section-9.php)

Hostalt shall have the right to purchase the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. from Provideralt at the expiration of the Operations Periodalt at the then Fair Market Valuealt"Fair Market Value" means the price that would be paid in an arm�s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation. of the Projectalt. No earlier than twelve months prior to the expiration of such Operations Periodalt"Operations Period" has the meaning provided in Section 2. and no later than nine (9) months prior to the expiration of the Operations Periodalt, Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. shall notify Provideralt of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provideralt shall give Hostalt its appraisal of the Fair Market Valuealt of the Projectalt at the end of the Termalt. Hostalt may, but is not obligated to, accept such appraisal. If Hostalt does not accept such appraisal within ten (10) days of receiving the appraisal from Provideralt, the Partiesalt shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Hostalt’s receipt of the appraisal from Provideralt, the Partiesalt will be deemed to enter into a dispute for purposes of Section 23(a) and shall follow the procedures in Section 23 for resolution of the dispute. Notwithstanding the foregoing, in the event that Provideralt enters into a sale/leaseback transaction in connection with funding the installation of the Projectalt, the process of determining the Fair Market Valuealt of the Projectalt in this Agreementalt shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Valuealt"Fair Market Value" means the price that would be paid in an arm�s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation. of the Projectalt and shall be undertaken consistently with the terms of such transaction so that the process for determining Fair Market Valuealt under this Agreementalt shall be the same as provided in the agreements for such sale/leaseback transaction.

[(9b) At the expiration of the Operations Periodalt"Operations Period" has the meaning provided in Section 2. the customer has the right to purchase the system at the fair market value at that time.]

[**(c) Transfer of Ownership.**](http://www.tiogaenergy.com/annotated-ppa-section-9.php)

Upon Hostalt’s notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Provideralt shall prepare and deliver to Hostalt a set of records on the operation and maintenance history of the Projectalt, including a summary of known defects. Upon payment of the purchase price, Provideralt shall deliver, or cause to be delivered, to Hostalt a bill of sale conveying the Projectalt to Hostalt. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provideralt. Provideralt shall use all reasonable efforts to transfer any remaining manufacturer’s warranties on the Projectalt, or portions thereof, to Hostalt.

[(9c) If the customer buys the system, Tioga will provide operation and maintenance records, identify any known problems with the system, and convey the system to the customer with a bill of sale upon receipt of payment. Tioga will only provide a warranty of title with respect to the Projectalt, but will work to transfer any manufacturers’ warranties to customer.]

[**(d) Operation & Maintenance After Sale.**](http://www.tiogaenergy.com/annotated-ppa-section-9.php)

Prior to the effective date of Hostalt’s purchase of the Projectalt under Section 9(a) or 9(b), Hostalt and Provideralt shall discuss entering into an operation and maintenance agreement under which Provideralt shall perform all or a portion of the operation and maintenance requirements of the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. following Hostalt’s purchase of the Projectalt. However, neither Partyalt shall be under an obligation to enter into such an agreement.

[(9d) If the customer purchases the system, the parties will discuss Tioga continuing operation and maintenance after purchase by customer.]

[**(e) Decommissioning.**](http://www.tiogaenergy.com/annotated-ppa-section-9.php)

If Hostalt does not exercise the option set forth in Section 9(b) above, then Provideralt, at its expense, shall promptly decommission and remove the Projectalt following the expiration of the Operations Periodalt"Operations Period" has the meaning provided in Section 2.. Provideralt shall not be obligated, however, to remove any support structures for the Projectalt which are affixed to Hostalt’s structures or any below grade structures, including foundations and conduits, or any roads. Hostalt grants Provideralt and its representatives reasonable vehicular and pedestrian access across the Sitealt to the Premisesalt for purposes of decommissioning the Projectalt. In exercising such access and performing the decommissioning, Provideralt shall reasonably attempt to minimize any disruption to activities occurring on the Sitealt. Hostalt will provide Provideralt adequate storage space on the Sitealt convenient to the Premisesalt for materials and tools used during decommissioning. Provideralt shall be responsible for providing shelter and security for stored items during de-commissioning and removal. Hostalt further agrees that its normal security measures, practices, and policies which apply to its own Premisesalt shall also apply to the Projectalt. During decommissioning, Provideralt will comply with all Applicable Lawalts.

[(9e) If the agreement is not extended and the customer does not purchase the solar electric system, then Tioga, at its expense, will remove the system when the agreement terminates.]

**(f) No Survival of Purchase Option.**

The options for Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. to purchase the Projectalt under Sections 9(a) and 9(b) shall not survive the termination of this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof..

**Section 10**

**SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE**

[**(a) Host Requested Shutdown.**](http://www.tiogaenergy.com/annotated-ppa-section-10.php)

Hostalt from time to time may request Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to temporarily stop operation of the Projectalt for a period no longer than thirty (30) days, such request to be reasonably related to Hostalt’s activities in maintaining and improving the Sitealt. During any such shutdown period (but not including periods of Force Majeure), Hostalt will pay Provideralt an amount equal to the sum of (i) payments that Hostalt would have made to Provideralt hereunder for electric energy that would have been produced by the Projectalt during the period of the shutdown; (ii) revenues that Provideralt would have received with respect to the Projectalt under the Applicable Solar Programalt"Applicable Solar Program" means the program indicated on Exhibit H. and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown; and (iii) revenues from Environmental Attributesalt"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes or the Applicable Solar Program. and Tax Attributesalt that Provideralt would have received with respect to electric energy that would have been produced by the Projectalt during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operations Yearalt, on estimated levels of production and, after the first Operations Yearalt, based on the actual operation of the Projectalt during the same period in the previous Operations Yearalt, unless Provideralt and Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. mutually agree to an alternative methodology.

[(10a) If the customer asks Tioga to temporarily shut down the system (i.e. for building maintenance), the customer must pay Tioga for electricity sales and incentive payments that Tioga would have received had the system been operating. Shutdown of operation is limited to a 30 day period.

*Rationale:* In order for Tioga to offer the lowest possible electricity rate, the company plans for 24x7x365 system operation for the duration of this contract; the cost of site-related system interruption outside of Tioga’s control will be borne by the customer.]

[**(b) Provider Safety Shutdown.**](http://www.tiogaenergy.com/annotated-ppa-section-10.php)

In addition to the right of Provideralt to shut down the Projectalt for maintenance as provided in Section 4(j), Provideralt may shutdown the Projectalt if Provideralt, in the exercise of reasonable judgment, believes Sitealt conditions or activities of persons on a Sitealt, which are not under the control of Provideralt, whether or not under the control of Hostalt, may interfere with the safe operation of the Projectalt. Provideralt shall give Hostalt notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provideralt and Hostalt shall cooperate and coordinate their respective efforts to restore Sitealt conditions so as to not interfere with the safe operation of the Projectalt and to reduce, to the greatest extent practicable, the duration of the shutdown. In the event of such a shutdown, Hostalt shall be deemed to have acted under Section 10(a) to shut down the Projectalt, and shall pay Provideralt the amounts described in Section 10(a) with respect to the period of the shutdown, except that Hostalt shall not be required to pay such amounts relative to any time period prior to Provideralt’s notice of the shutdown or during any Force Majeure Eventalt. If a shutdown pursuant to this Section 10(b) continues for one hundred and eighty (180) days or longer, Provideralt may terminate this Agreementalt and require Hostalt to pay the Early Termination Amountalt.

[(10b) If Tioga determines that the system should be shut down for safety reasons associated with the site or site activities outside of Tioga’s control, the customer must pay Tioga for electricity sales and incentive payments that Tioga would have received had the system been operating.

*Rationale:* In order for Tioga to offer the lowest possible electricity rate, the company plans for 24x7x365 system operation for the duration of this contract; the customer is responsible for site conditions and activities at the site, so the cost of site-related system interruption outside of Tioga’s control will be borne by the customer.

*Example:* Maintenance activities in close proximity to the solar array (e.g. tree trimming or brush clearing) may introduce the risk of falling or flying debris or other objects that could damage the solar system and create an electrical hazard. In such circumstances, Tioga may elect to shut down the system for safety reasons, and could require customer to pay for lost revenue.]

[**(c) Project Relocation.**](http://www.tiogaenergy.com/annotated-ppa-section-10.php)

Hostalt may request to move the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. to another location on the Sitealt or to another site owned by Hostalt, but any such relocation shall be subject to the approval of Provideralt and Financing Partyalt"Financing Party" means a Project Lessor or Lender. in each of their sole discretion. In connection with such relocation, Hostalt shall execute an amendment to this Agreementalt reflecting the new location of the Projectalt but otherwise continuing all the terms and conditions of this Agreementalt for the remaining term of this Agreementalt. Hostalt shall also provide any consents or releases required by Provideralt in connection with the new location. Hostalt shall pay all costs associated with the removal and relocation of the Projectalt, including installation and testing costs and interconnection costs. In addition, during the Relocation Eventalt, Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. will pay Provideralt an amount equal to the sum of (i) payments that Hostalt would have made to Provideralt hereunder for electric energy that would have been produced by the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. following the Relocation Eventalt; (ii) revenues that Provideralt would have received with respect to the Projectalt under the Applicable Solar Programalt and any other assistance program with respect to electric energy that would have been produced following the Relocation Eventalt; and (iii) revenues from Environmental Attributesalt and Tax Attributesalt that Provideralt would have received with respect to electric energy that would have been produced by the Projectalt following the Relocation Eventalt. Determination of the amount of energy that would have been produced following the Relocation Eventalt"Relocation Event" means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion. shall be based, during the first Operations Yearalt, on the estimated levels of production and, after the first Operations Yearalt, based on actual operation of the Projectalt in the same period in the previous Operations Yearalt, unless Provideralt and Hostalt mutually agree to an alternative methodology.

[(10c) The customer may request that Tioga relocate the solar electric system to a different location as long as the customer pays for all associated costs and lost revenues.]

[**(d) Premises Shutdown; Interconnection Deactivated.**](http://www.tiogaenergy.com/annotated-ppa-section-10.php)

In the event Premisesalt are closed as a result of an event that is not (i) a Force Majeure Eventalt or (ii) caused by or related to any unexcused action or inaction of Provideralt, Hostalt shall nevertheless continue to pay Provideralt for all electricity produced by the Projectalt on the Premisesalt and delivered to the Point of Deliveryalt. If an interconnection with the Local Electric Utilityalt becomes deactivated for reasons that are not (i) a Force Majeure Eventalt or (ii) caused by or related to any unexcused action or inaction of Provideralt such that the Projectalt is no longer able to produce electricity or transfer electricity to its respective Premisesalt or to the Local Electric Utilityalt, Hostalt will pay Provideralt an amount equal to the sum of (A) payments that Hostalt would have made to Provideralt hereunder for electric energy that would have been produced by the Projectalt following such closure; (B) revenues that Provideralt would have received with respect to the Projectalt under the Applicable Solar Programalt and any other assistance program with respect to electric energy that would have been produced following such closure; and (C) revenues from Environmental Attributesalt"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes or the Applicable Solar Program. that Provideralt would have received with respect to electric energy that would have been produced by the Projectalt following such closure. Determination of the amount of energy that would have been produced following such closure shall be based, during the first Operations Yearalt, on the estimated levels of production and, after the first Operations Yearalt, based on actual operation of the Projectalt in the same period in the previous Operations Yearalt, unless Provideralt and Hostalt mutually agree to an alternative methodology. If a shutdown pursuant to this Section 10(d) continues for one hundred and eighty (180) days or longer, Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. may terminate this Agreementalt and require Hostalt to pay the Early Termination Amountalt.

[(10d) Even if the customer shuts down its business and no longer needs electricity, it will continue to pay for all electricity that the Tioga solar electric system generates for the remaining term of the PPA. If the customer’s utility service gets disconnected, and Tioga is not able to transmit electricity to the grid, the customer has to pay for the electricity that would have otherwise been generated and the incentives that Tioga would have otherwise received. Rationale: In order for Tioga to offer the lowest possible electricity rate, the company plans for 24x7x365 system operation for the duration of this contract; the cost of site-related system interruption outside of Tioga’s control will be borne by the customer.]

[**(e) Sale of Site.**](http://www.tiogaenergy.com/annotated-ppa-section-10.php)

In the event Hostalt transfers (by sale, lease, or otherwise) all ora a portion of its interest in the Sitealt, Hostalt shall remain primarily liable to Provideralt for the performance of the obligations of Hostalt hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provideralt and Financing Partyalt in their sole discretion and executes agreements assuming this Agreementalt in form and substance satisfactory to Provideralt and Financing Partyalt"Financing Party" means a Project Lessor or Lender. in their sole discretion, Hostalt may be released from further obligations under this Agreementalt.

[(10e) If the customer sells the site where the Projectalt is located, the customer will continue to pay Tioga for electricity generated by the Projectalt unless the new site owner is acceptable to Tioga and the financing party, in their sole discretion, and takes over the PPA].

**Section 11**

**TAXES**

[**(a) Income Taxes.**](http://www.tiogaenergy.com/annotated-ppa-section-11.php)

Provideralt shall be responsible for any and all income taxes associated with payments from Hostalt to Provideralt for electric energy from the Projectalt. Provideralt (and/or Financing Partyalt), as owner of the Projectalt, shall be entitled to all Tax Attributesalt with respect to the Projectalt.

[(11a) Tioga pays income taxes on payments received for electricity. Tioga is entitled to all tax benefits associated with the system. Utilization of the tax benefits is essential for the financing of the project.]

[**(b) Sales Taxes.**](http://www.tiogaenergy.com/annotated-ppa-section-11.php)

Hostalt shall be responsible for all taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authorityalt on the sale of electric energy by Provideralt to Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns.. Hostalt shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provideralt for any and all such taxes assessed against and paid by Provideralt.

[(11b) The customer pays sales taxes on its purchase of electricity from Tioga, just as the customer currently pays sales tax on its purchase of electricity from its local electric utility.]

[**(c) Property Taxes.**](http://www.tiogaenergy.com/annotated-ppa-section-11.php)

Hostalt shall be responsible for all ad valorem personal property or real property taxes levied against the Sitealt"Site" means the real property described on Exhibit C attached hereto, which properties include the Premises., improvements thereto and personal property located thereon, except that Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall be responsible for ad valorem personal property or real property taxes levied against the Projectalt. If Hostalt is assessed any taxes related to the existence of the Projectalt on the Premisesalt, Hostalt shall immediately notify Provideralt. Hostalt and Provideralt shall cooperate in contesting any such assessment; provided, however, that Hostalt shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.. If after resolution of the matter, such tax is imposed upon Hostalt related to the improvement of real property by the existence of the Projectalt on the Sitealt, Provideralt shall reimburse Hostalt for such tax.

[(11c) The customer pays personal property or real property taxes levied against the host site; Tioga pays personal property or real property taxes levied against the solar electric system.]

[**(d) Tax Contests.**](http://www.tiogaenergy.com/annotated-ppa-section-11.php)

Each Partyalt has the right to contest taxes in accordance with Applicable Lawalt and the terms of encumbrances against the Sitealt"Site" means the real property described on Exhibit C attached hereto, which properties include the Premises.. Each Partyalt shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Partyalt postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Lawalt"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity..

[(11d) Both Tioga and the customer have the right to contest taxes.]

[**(e) Payment of Delinquent Taxes.**](http://www.tiogaenergy.com/annotated-ppa-section-11.php)

In the event either Partyalt fails to pay any taxes that may become a lien upon the other Partyalt’s property, such Partyalt may pay such amounts and in such event shall be entitled to recover such paid amount from the other Partyalt, together with interest thereon at the rate of one percent (1%) per month, compounded monthly.

[(11e) Both parties have the right to pay taxes assessed against the other party if failure to pay the tax would cause a negative consequence. The paying party will be reimbursed with interest.]

[**(f) Reimbursement Deadline.**](http://www.tiogaenergy.com/annotated-ppa-section-11.php)

Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within twenty (20) Business Days of receiving an invoice therefor from the Partyalt who paid the taxes.

[(11f) Both parties have the right to pay taxes assessed against the other party if failure to pay the tax would cause a negative consequence. The paying party will be reimbursed with interest.]

**Section 12**

**INSURANCE**

**(a) Coverage.**

Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. and Provideralt shall each maintain the insurance coverage set forth in Exhibit F in full force and effect throughout the Termalt.

[**(b) Applicable Solar Program Requirements.**](http://www.tiogaenergy.com/annotated-ppa-section-12.php)

Hostalt and Provideralt will also maintain the additional insurance requirements (if any) specified in Exhibit H to satisfy the requirments of the Applicable Solar Programalt"Applicable Solar Program" means the program indicated on Exhibit H..

[(12b) Each party will meet insurance requirements specified by state solar programs and local utilities.]

[**(c) Insurance Certificates.**](http://www.tiogaenergy.com/annotated-ppa-section-12.php)

Each Partyalt shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Partyalt’s insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Partyalt thirty (30) days written notice before the insurance is cancelled or materially altered.

[(12c) Each party will maintain all relevant insurance documentation and notify the other party of policy changes.]

[**(d) Certain Insurance Provisions.**](http://www.tiogaenergy.com/annotated-ppa-section-12.php)

Each Partyalt’s insurance policy shall be written on an occurrence basis and shall include the other Partyalt as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Each Partyalt’s insurer shall waive all rights of subrogation against the other Partyalt except in the case of such Partyalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider.’s negligence or willful misconduct.

[(12d) Insurance specifications for occurrence, cross liability, and subrogation.]

[**(e) Insurance Providers.**](http://www.tiogaenergy.com/annotated-ppa-section-12.php)

All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder’s Rating in the current edition of Best’s Insurance Guide (or with an association of companies each of the members of which are so rated).

[(12e) Insurance providers must be in good financial standing.]

**Section 13**

**COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS**

[**(a) Cooperation.**](http://www.tiogaenergy.com/annotated-ppa-section-13.php)

The Partiesalt acknowledge that the performance of each Partyalt’s obligations under this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. will frequently require the assistance and cooperation of the other Partyalt. Each Partyalt therefore agrees, in addition to those provisions in this Agreementalt specifically providing for assistance from one Partyalt to the other, that it will at all times during the Termalt cooperate with the other Partyalt and provide all reasonable assistance to the other Partyalt to help the other Partyalt perform its obligations hereunder.

[(13a) Tioga and the customer agree to cooperate with the other party.

*Rationale:* Given the contract’s long duration and the importance of cooperation to successful execution, this provision explicitly states that the Partiesalt agree to cooperate. It is the keystone of an effective relationship and required by Tioga’s financing partners.]

[**(b) Host to Not Restrict Solar Access.**](http://www.tiogaenergy.com/annotated-ppa-section-13.php)

Hostalt, or any lessee, grantee or licensee of Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns., shall not erect any structures on, or make other modifications to, or plantings on, the Sitealt which will interfere with the construction, operation or maintenance of, or solar access of, the Projectalt.

[(13b) The customer will not alter the host site such that it interferes with the Tioga solar electric system.

*Examples:* The host will not add or alter a structure in a way that would cause the solar panels to be shaded, such as planting a tree or building an addition that would cast shade on the solar system.]

[**(c) Adjoining Properties.**](http://www.tiogaenergy.com/annotated-ppa-section-13.php)

If Applicable Lawalt and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Projectalt, then Hostalt and Provideralt shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Projectalt. Such easements shall run for the benefit of both Hostalt and Provideralt. Provideralt shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Hostalt for electric energy from the Projectalt shall be increased by an amount sufficient for Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to fully amortize such costs, over a period equal to the lesser of (i) ten years and (ii) the remaining term of this Agreementalt without regard to Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns.’s option to purchase the Projectalt.

[(13c) Tioga will obtain and fund in advance all easements that protect system productivity from structures on adjoining properties, if necessary. The cost of all easements will be borne by the customer and incorporated into the solar electricity rate specified in this contract.

*Example:* Some state laws allow solar electric system owners to receive easements preventing adjacent property owners from building structures that would shade the panels and inhibit the system’s electricity output.]

**Section 14**

**PRESS RELEASES AND CONFIDENTIALITY**

[**(a) Press Releases.**](http://www.tiogaenergy.com/annotated-ppa-section-14.php)

The Partiesalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. acknowledge that they each desire to publicize information about this Agreementalt and the Projectalt. The Partiesalt therefore agree that each may make independent press releases about entering into this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof., the size and location of the Projectalt, and the identity of the other Partyalt, without the prior written consent of the other Partyalt, so long as only Provideralt has the exclusive right to (i) claim that electric energy provided to Hostalt was generated by the Projectalt, (ii) Provideralt is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provideralt is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.. However, the terms of this Agreementalt and information about the Projectalt other than that described above constitutes Confidential Informationalt, as defined below, and is subject to the remaining provisions of this Section 14.

[(14a) Each party can make press releases contain certain information about the PPA and the project, but only Tioga can claim the “green” attributes. The customer is permitted to issue press releases stating that it is hosting a solar electric system which has positive environmental impacts. This provision ensures that two entities are not claiming the benefits generated by one solar electric system.]

[**(b) Limits on Disclosure of Confidential Information.**](http://www.tiogaenergy.com/annotated-ppa-section-14.php)

Subject to the exceptions set forth below in Section 14(c), each Partyalt agrees that, (i) without the consent of the other Partyalt, it shall not disclose any Confidential Informationalt received from the other Partyalt to any other person and (ii) it shall use any Confidential Informationalt received from the other Partyalt only for the purpose of fulfilling its obligations under this Agreementalt. Notwithstanding the foregoing, the Partiesalt may, and shall, disclose any information required to be disclosed under rules, regulations and contracts implementing the Applicable Solar Programalt or Tax Attributesalt required to be disclosed by any Governmental Authorityalt"Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government. under Applicable Lawalt or pursuant to a validly issued subpoena or required filing.

[(14b) Confidential information may be exchanged between the parties while performing under the PPA. Neither party can disclose confidential information provided by the other party without the other party’s consent.]

[**(c) Permissible Disclosures.**](http://www.tiogaenergy.com/annotated-ppa-section-14.php)

Provideralt may provide this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof., and any correspondence, notices and other information related to this Agreementalt to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Provideralt in connection with the Projectalt. In addition, if a receiving Partyalt is required by Applicable Lawalt, validly issued subpoena, required filing, or the rules of any stock exchange, to disclose any Confidential Informationalt provided by the disclosing Partyalt, the receiving Partyalt may make disclosure as required by law, but the receiving Partyalt shall prior to making any disclosure notify the disclosing Partyalt of the requested disclosure and shall use its reasonable efforts to cooperate with the disclosing Partyalt, but at the expense of the disclosing Partyalt, in any efforts by the disclosing Partyalt to minimize the extent of the Confidential Informationalt"Confidential Information" means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party. disclosed and the persons to whom disclosed.

[(14c) Tioga is allowed to share this PPA contract and relevant information with financing partners. Either party is allowed to share this PPA contract and relevant information when required by law. When the customer is a public entity, additional language can be added to reflect the obligations of public entities to make information available to the public.]

[**(d) Enforcement of Confidentiality Provisions.**](http://www.tiogaenergy.com/annotated-ppa-section-14.php)

Each Partyalt acknowledges that it may be impossible to measure the damages which may result from a breach of this Section 14 and agrees that the provisions of this Section 14 may be required to be specifically performed and each Partyalt shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of this Section 14. The provisions of this Section 14 shall survive until three years after the effective date of any termination of this Agreementalt.

[(14d) The Partiesalt agree that a party harmed by the other releasing confidential information may seek an injunction to prevent further disclosure.]

**Section 15**

[**INDEMNIFICATION.**](http://www.tiogaenergy.com/annotated-ppa-section-15.php)

[(15) Each party indemnifies (i.e. agrees to compensate) the other against claims for injuries arising from negligence, violation of law, or hazardous materials. Tioga also agrees to indemnify for losses from failure to comply with utility requirements. If one party has a claim, they will provide notice of that claim to the other party as soon as possible. Any indemnification payments will be adjusted to account for taxes.]

**(a) Provider Indemnification.**

Provideralt shall indemnify, defend and hold Hostalt and its directors, officers, employees, agents, volunteers, and invitees (“Hostalt’s Indemnified Partiesalt”), harmless from and against all Lossaltesalt incurred by the Hostalt Indemnified Partiesalt to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any Personalt or loss or damage to property to the extent arising out of Provideralt’s (or its contractor’s) negligence or willful misconduct; (ii) Provideralt’s violation of Applicable Lawalt; (iii) any failure to properly interconnect or comply with the procedures of the Local Electric Utilityalt; or (iv) any failure to properly handle or dispose of any Hazardous Materialsalt brought onto the Sitealt by Provideralt or by any of Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Projectalt shall not extend to incidents occurring on Hostalt’s side of the Point of Deliveryalt except to the extent caused by incidents on Provideralt’s side of the Point of Deliveryalt. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provideralt shall not be obligated to indemnify Hostalt or any Hostalt Indemnified Partyalt for any Lossalt to the extent such Lossalt is due to the negligence or willful misconduct of Hostalt or any Hostalt Indemnified Partyalt.

**(b) Host Indemnification.**

Hostalt shall indemnify, defend and hold Provideralt, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Partyalt (“Provideralt’s Indemnified Partiesalt”), harmless from and against all Lossaltesalt incurred by the Provideralt’s Indemnified Partiesalt to the extent arising from or out of (i) any claim for or injury to or death of any Personalt or loss or damage to property to the extent arising out of the negligence or willful misconduct of any of Hostalt’s Indemnified Partiesalt; (ii) Hostalt’s violation of Applicable Lawalt"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.; or (iii) the presence, removal or remediation of any Hazardous Materialsalt on the Sitealt (other than any Hazardous Materialsalt brought on to the Sitealt by Provideralt’s Indemnified Partiesalt). Hostalt shall not be obligated to indemnify Provideralt or any Provideralt Indemnified Partiesalt for any Lossalt to the extent such Lossalt is due to the negligence or willful misconduct of Provideralt or any Provideralt Indemnified Partyalt.

**(c) Notice of Claims.**

Whenever any claim arises for indemnification under this Agreementalt, the Indemnified Personalt shall notify the Indemnifying Partyalt in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Partyalt will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Personalt has knowledge of the facts constituting the basis for such claim (the “Notice of Claim”). Such Notice of Claim shall specify all facts known to the Indemnified Personalt giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

**(d) Defense of Claims.**

The Indemnifying Partyalt has the right, but not the obligation to assume the defense or the matter for which indemnification is sought hereunder. If the Indemnifying Partyalt does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by Indemnified Personalt"Indemnified Person" means the person who asserts a right to indemnification under Section 15. in connection with the defense, when and as incurred. If the Indemnifying Partyalt assumes the defense, the Indemnified Personalt has the right to hire its own counsel to defend it, but the Indemnified Personalt shall be responsible for the reasonable costs of such counsel. The Indemnifying Partyalt shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Personalt (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

**(e) Payments.**

At the time that the Indemnifying Partyalt makes any indemnity payments under this Agreementalt, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Personalt"Indemnified Person" means the person who asserts a right to indemnification under Section 15. receiving an indemnity payment equal to the Lossalt after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Personalt with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Personalt"Indemnified Person" means the person who asserts a right to indemnification under Section 15. for any items of loss and deduction for which the Indemnifying Partyalt is being indemnified.

**(f) Survival of Indemnification.**

The obligations of indemnification hereunder shall survive termination of this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof..

**Section 16**

**REPRESENTATIONS AND WARRANTIES**

[**(a) Mutual Representations.**](http://www.tiogaenergy.com/annotated-ppa-section-16.php)

Each Partyalt hereby represents and warrants to the other, as of date hereof, that:

[(16a) Representation and warranties confirm assumptions made by the Parties in entering the agreement. The representations in 16(a) are customary representations that the Party exists and has complied with its corporate procedures, that the agreement is enforceable and not subject to any litigation.]

1. Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premisesalt are located, respectively, and has the power and authority to enter into this Agreementalt and to perform its obligations hereunder.
2. No Conflict. The execution and delivery of this Agreementalt and the performance of and compliance with the provisions of this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.
3. Enforceability. (1) All actions required to be taken by or on the part of such Partyalt necessary to make this Agreementalt effective have been duly and validly taken; (2) this Agreementalt has been duly and validly authorized, executed and delivered on behalf of such Partyalt; and (3) this Agreementalt constitutes a legal, valid and binding obligation of such Partyalt, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.
4. No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreementalt, or the validity or enforceability of this Agreementalt.

[**(b) Host Representations.**](http://www.tiogaenergy.com/annotated-ppa-section-16.php)

In addition to the representations and warranties in Section 16(a), Hostalt hereby represents and warrants to Provideralt, as of date hereof, that:

[(16b) This section provides representations specific to the project to confirm the information which the project is based on. The customer has provided Tioga with complete and correct records of historical electricity consumption, record of the host site’s condition, at least two years of audited financial statements, and title to the site.]

1. Electric Usage. Hostalt has provided to Provideralt complete and correct records of its electric usage at the Sitealt for the preceding [\_\_] years.
2. Condition of Premisesalt. Hostalt has provided to Provideralt Hostalt’s complete and correct records of the physical condition of the Premisesalt"Premises" means the portions of the Site described on Exhibit D.. If it is discovered that the actual site conditions on part of, or on the entire Premisesalt upon which all or part of the Projectalt is to be installed, are materially different from the information presented by Hostalt, then if practicable the rates payable by Hostalt hereunder shall be adjusted to compensate Provideralt for the cost of design and construction changes and delays incurred to adapt the Projectalt to the unknown conditions. If such adjustment is not practicable, Provideralt shall have other rights under this Agreementalt.
3. **[to be used if Hostalt is not a public corporation]** Financial Information. The financial statements Hostalt has provided to Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. present fairly in all material respects the financial condition and results of operations of Hostalt.

**Section 17**

**FORCE MAJEURE**

[**(a) Excuse for Force Majeure Event.**](http://www.tiogaenergy.com/annotated-ppa-section-17.php)

Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Partyalt shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Eventalt; provided that the Partyalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. claiming relief as a result of the Force Majeure Eventalt"Force Majeure Event" means any act or event that prevents the affected Party from performing it obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events. shall promptly (i) notify the other Partyalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. in writing of the existence and details of the Force Majeure Eventalt; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Eventalt; (iii) notify the other Partyalt in writing of the cessation of such Force Majeure Eventalt"Force Majeure Event" means any act or event that prevents the affected Party from performing it obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

[(17a) In the event of a Force Majeure, the affected party will not be liable for non-performance so long as it notifies the other party, makes efforts to minimize the effect of a Force Majeure event and resumes performance as soon as possible.]

[**(b) No Excuse for Payment for Prior Services.**](http://www.tiogaenergy.com/annotated-ppa-section-17.php)

Obligations to make payments for services already provided shall not be excused by a Force Majeure Eventalt"Force Majeure Event" means any act or event that prevents the affected Party from performing it obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events..

[(17b) The customer will not be excused from making payments for service rendered (e.g. last month’s bill).]

[**(c) Restoration.**](http://www.tiogaenergy.com/annotated-ppa-section-17.php)

In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Eventalt, which destroys all or a substantial portion of the Premisesalt, Hostalt shall elect, within ninety (90) days of such event, whether it will restore the Premisesalt"Premises" means the portions of the Site described on Exhibit D., which restoration will be at the sole expense of Hostalt. If Hostalt does not elect to restore the Premisesalt, then Provider shall not restore the Projectalt and this Agreement will terminate. If Hostalt does elect to restore the Premisesalt, Hostalt shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Projectalt, subject to the Partiesalt agreeing on a schedule for the restoration of the Premisesalt"Premises" means the portions of the Site described on Exhibit D. and an equitable extension to the Termalt of this Agreement. If the Partiesalt are not able to so agree or if Provider does not elect to restore the Projectalt, Provider shall promptly remove any portions of the Projectalt remaining on the Premisesalt, and this Agreement shall terminate. If Provider does elect to restore the Projectalt, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Partiesalt shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreement.

[(17c) This section describes the procedures if the host site is significantly damaged or destroyed by a force majeure event. Neither Customer or Tioga is obligated to rebuild.]

[**(d) Termination for Force Majeure Event.**](http://www.tiogaenergy.com/annotated-ppa-section-17.php)

Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Eventalt continues beyond a continuous period of three hundred and sixty-five (365) days, then either Partyalt shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. from the applicable Sitealt in accordance with the provisions of Section 9(d) (unless there has been a casualty event, in which case the provisions of clause (c) above shall apply to the removal of the Projectalt). In the event of such a termination of this Agreement with respect to the Projectalt, the Partiesalt shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Projectalt or the Premisesalt, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

[(17d) If non-performance under this contract due to a Force Majeure Eventalt continues for more than 1 year, either party can terminate this contract.]

# Section 18

## [CHANGE IN LAW.](http://www.tiogaenergy.com/annotated-ppa-section-18.php)

In the event there is a Change in Lawalt that is applicable to the operation of the Projectalt, the sale of electric energy produced by the Projectalt, or any other obligation of the Provideralt hereunder, and compliance with the Change in Lawalt results in an increase in Provideralt’s costs to operate and/or maintain the Projectalt, Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. will promptly submit to Hostalt a written notice setting forth (i) the applicable Change in Lawalt; (ii) the manner in which such Change in Lawalt increases Provideralt’s costs; and (iii) Provideralt’s proposed adjustment to the then applicable and future rates for electric energy in this Agreementalt to reflect such increases in costs. Hostalt agrees to an adjustment in the then applicable and future rates such that the new rates compensate Provideralt for the total cost increase arising from the Change in Lawalt"Change in Law" means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law. and said adjustment will remain in effect for as long as the costs arising from the Change in Lawalt continue to be incurred by the Provideralt; provided, however any such increase shall be no greater than ten percent (10%) of the rates set forth in Exhibit A.

[(18) If a change in law causes the cost of generating solar electricity to increase, Tioga may increase the customer’s solar electricity rate in order to recover the increased cost to operate the solar electric system caused by the change in law. The increase in the customer’s electricity rate will not exceed 10% regardless of whether Tioga’s cost to operate the system increases by more than 10%.]

**Section 19**

**PROVIDER DEFAULT AND HOST REMEDIES**

[**(a) Provider Events of Default.**](http://www.tiogaenergy.com/annotated-ppa-section-19.php)

Provideralt shall be in default of this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. if any of the following (“Provideralt Events of Default”) shall occur:

[(19a) Tioga’s financial parties must be given the opportunity to rectify a default by Tioga, although they are not required to do so. If the financing parties do not cure the default, the customer may terminate this agreement, seek to recover damages, or pursue other remedies against Tioga.]

1. Misrepresentation. Any representation or warranty by Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. under Section 16 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Hostalt identifying the defect.
2. Abandonment During Installation. After commencement of installation of the Projectalt, Provideralt abandons installation of the Projectalt for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Hostalt stating that, in Hostalt’s reasonable determination, Provideralt has abandoned installation of the Projectalt;
3. Failure to Operate. After the Commercial Operation Datealt, Provideralt fails to operate the Projectalt for a period of 90 days which failure is not due to equipment failure, or damage to the Projectalt, act of governmental authority, or exercise of Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s rights under this Agreementalt, or otherwise excused by the provisions of Section 17(b) (relating to Force Majeure Eventalts); and Provideralt fails to resume operation within thirty (30) days after receipt of notice from Hostalt stating that, in Hostalt’s reasonable determination, Provideralt has ceased operation of the Projectalt, provided, however, that the cure period shall be extended by the number of calendar days during which Provideralt is prevented from taking curative action if Provideralt had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.
4. Obligation Failure. Provideralt fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Eventalts), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Hostalt identifying the failure.
5. Insolvency. Provideralt (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provideralt in an involuntary case under bankruptcy law or seeking to dissolve Provideralt under other Applicable Lawalt; or (G) takes any action authorizing its dissolution.

[**(b) Financing Party Opportunity to Cure; Host Remedies.**](http://www.tiogaenergy.com/annotated-ppa-section-19.php)

Upon an Event of Default by Provideralt, provided that Hostalt complies with its obligations under Section 21 and Financing Partyalt does not cure such Event of Default by Provideralt, Hostalt may terminate this Agreementalt, seek to recover damages for costs of replacement electricity and pursue other remedies available at law or equity.

[(19b) Tioga’s financial parties must be given the opportunity to rectify a default by Tioga, although they are not required to do so. If the financing parties do not cure the default, the customer may terminate this agreement, seek to recover damages, or pursue other remedies against Tioga.]

**Section 20**

**HOST DEFAULT AND PROVIDER REMEDIES**

**(a) Hoast Events of Default.**

Hostalt shall be in default of this Agreementalt if any of the following (“Hostalt Events of Default”) shall occur:

1. Misrepresentation. Any representation or warranty by Hostalt under Section 16 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Provideralt identifying the defect.
2. Obstruction. Hostalt obstructs commencement of installation of the Projectalt or fails to take any actions necessary for the interconnection of the Projectalt, or fails to take electric energy produced by the Projectalt, and fails to correct such action within ten (10) days of when such payment was due.
3. Payment Failure. Hostalt fails to make any payment due under the terms of this Agreementalt, and fails to make such payment within ten (10) days after receipt of notice thereof from Provideralt.
4. Obligation Failure. Hostalt fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Eventalts), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provideralt identifying the failure.
5. Insolvency. Hostalt (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Hostalt in an involuntary case under bankruptcy law or seeking to dissolve Hostalt"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. under other Applicable Lawalt; or (G) takes any action authorizing its dissolution.

[**(b) Default Damages.**](http://www.tiogaenergy.com/annotated-ppa-section-20.php)

Upon an Event of Default by Hostalt, Provideralt may require Hostalt to pay to Provideralt the Early Termination Amountalt, sell electricity produced by the Projectalt to persons other than Hostalt, and recover from Hostalt any loss in revenues resulting from such sales; and/or pursue other remedies available at law or in equity. After Provideralt’s receipt of such Early Termination Amountalt pursuant to this Section 20(b), Provideralt shall collect no additional damages resulting from lost revenues from sales of electricity from the Projectalt.

**Section 21**

**COLLATERAL ASSIGNMENT, FINANCING PROVISIONS**

[**(a) Financing Arrangements.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

Provideralt may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreementalt to any persons providing financing for the Projectalt. Hostalt acknowledges that Provideralt will obtain construction financing for the Projectalt from third party and that Provideralt may either obtain term financing secured by the Projectalt or sell or assign the Projectalt to a Financing Partyalt or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Hostalt acknowledges that in connection with such transactions Provideralt may secure Provideralt’s obligations by, among other collateral, an assignment of this Agreementalt and a first security interest in the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. . In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Hostalt agrees as follows:

[(21a) Tioga may enter into a variety of financing agreements in order to build and operate the solar electric system and may assign the PPA and the project as collateral to its financing partners. This is essential to financing the project.]

1. [**Consent to Collateral Assignment.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

Hostalt hereby consents to both of the sale of the Projectalt to a Financing Partyalt and the collateral assignment to the Financing of the Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s right, title and interest in and to this Agreementalt.

[(21a,i) The customer explicitly agrees that Tioga may assign this contract and the system as collateral in connection with financing the project.]

1. **Rights of Financing Party.**

Notwithstanding any contrary term of this Agreementalt:

* 1. [**Step-In Rights.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

The Financing Partyalt, as owner of the Projectalt, or as collateral assignee of this Agreementalt, shall be entitled to exercise, in the place and stead of Provideralt, any and all rights and remedies of Provideralt under this Agreementalt in accordance with the terms of this Agreementalt. The Financing Partyalt"Financing Party" means a Project Lessor or Lender. shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreementalt and the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. ;

[(21a,ii,A) Tioga’s financing partners have the right to take the place of Tioga in exercising Tioga’s rights and remedies under the PPA.]

* 1. [**Opportunity to Cure Default.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

The Financing Partyalt shall have the right, but not the obligation, to pay all sums due under this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. and to perform any other act, duty or obligation required of Provideralt thereunder or cause to be cured any default of Provideralt thereunder in the time and manner provided by the terms of this Agreementalt. Nothing herein requires the Financing Partyalt to cure any default of Provideralt under this Agreementalt or (unless the Financing Partyalt has succeeded to Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s interests under this Agreementalt) to perform any act, duty or obligation of Provideralt under this Agreementalt, but Hostalt hereby gives it the option to do so;

[(21a,ii,B) Tioga’s financing parties have the right, to cure any default by Tioga. The financing parties, however, are not obligated to cure the default. This assures the financing parties that it will be able to rescue this contract in order to generate revenue from the system to repay the loan needed to build it.]

* 1. [**Exercise of Remedies.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

Upon the exercise of remedies, including any sale of the Projectalt by the Financing Partyalt, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provideralt"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to the Financing Partyalt"Financing Party" means a Project Lessor or Lender. (or any assignee of the Financing Partyalt as defined below) in lieu thereof, the Financing Partyalt shall give notice to Hostalt of the transferee or assignee of this Agreementalt. Any such exercise of remedies shall not constitute a default under this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.;

[(21a,ii,C) If the financing party takes over the project from Tioga, the financing party has the right to sell the Projectalt and the PPA to a new party in order to recover its investment.]

* 1. [**Cure of Bankruptcy Rejection.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

Upon any rejection or other termination of this Agreementalt pursuant to any process undertaken with respect to Provideralt under the United States Bankruptcy Code, at the request of Financing Partyalt"Financing Party" means a Project Lessor or Lender. made within ninety (90) days of such termination or rejection, Hostalt shall enter into a new agreement with Financing Partyalt or its assignee having substantially the same terms and conditions as this Agreementalt.

[(21a,ii,D) Tioga’s financing partner may require the customer to enter into a new contract with it if Tioga goes bankrupt and, in its bankruptcy, Tioga terminates the agreement. The new contract will be on the same terms as the original PPA. This assures the financing parties that it will be able to rescue this contract in order to generate revenue from the system to repay the loan needed to build it.]

1. **Right to Cure.**
   1. [**Cure Period.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

Hostalt will not exercise any right to terminate or suspend this Agreementalt unless it shall have given the Financing Partyalt prior written notice of its intent to terminate or suspend this Agreementalt, as required by this Agreementalt, specifying the condition giving rise to such right, and the Financing Partyalt shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreementalt; provided that if such Provideralt default reasonably cannot be cured by the Financing Partyalt within such period and the Financing Partyalt commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days. The Partiesalt’ respective obligations will otherwise remain in effect during any cure period.

[(21a,iii,A) Financing partners will have 30 to 120 days to reconcile a default by Tioga. The duration will depend on the type of default by Tioga.]

* 1. [**Continuation of Agreement.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

If the Financing Partyalt or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Partyalt"Financing Party" means a Project Lessor or Lender., shall acquire title to or control of Provideralt’s assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. existing as of the date of such change in title or control in the manner required by this Agreementalt and which are capable of cure by a third person or entity, then such Personalt"Person" or "person" means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority. shall no longer be in default under this Agreementalt, and this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. shall continue in full force and effect.

[(21a,iii,B) This PPA contract remains in effect if a financing party (or its assignee) corrects Tioga’s default within the allowed time period.]

**(b) Financing Party a Third Party Beneficiary.**

Hostalt agrees and acknowledges that Financing Partyalt"Financing Party" means a Project Lessor or Lender. is a third party beneficiary of the provisions of this Section 21.

[**(c) Entry to Consent to Assignment.**](http://www.tiogaenergy.com/annotated-ppa-section-21.php)

Hostalt agrees to (i) execute any consents to assignment or acknowledgements and (ii) provide such opinions of counsel as may be reasonably requested by Provideralt and/or Financing Partyalt in connection with such financing or sale of the Projectalt.

[(21c) If there is an assignment of this contract associated with financing, the customer agrees to sign documents explicitly consenting to such assignment and agrees to have its counsel provide an opinion that the contract is valid and enforceable.

*Rationale:* Under most circumstances, Tioga will assign this agreement to its financing partner. The customer is required to explicitly consent to this assignment through the execution of additional documents between the customer, Tioga and the financing party. If there is a question about whether these assignment clauses may conflict with local procurement laws or otherwise call into question the enforceability or validity of the contract, Tioga will request that the customer’s counsel confirm the agreement is valid and enforceable.]

# Section 22

## [22. LIMITATIONS ON DAMAGES.](http://www.tiogaenergy.com/annotated-ppa-section-22.php)

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENTalt (including, without limitation, in Sections 10 and 20(b)), NEITHER PARTYalt NOR ANY OF ITS INDEMNIFIED PERSONSalt SHALL BE LIABLE TO THE OTHER PARTYalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. OR ITS INDEMNIFIED PERSONSalt"Indemnified Person" means the person who asserts a right to indemnification under Section 15. FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENTalt.

[(22) Partiesalt are not liable for punitive or consquential damages outside the scope of the PPA.

Rationale: Legal requirement to avoid unrelated claims for damages. It is written in all capitals for emphasis.]

**Section 23**

**DISPUTE RESOLUTION**

[**(a) Negotiation Period.**](http://www.tiogaenergy.com/annotated-ppa-section-23.php)

The Partiesalt shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreementalt (a “Disputealt”) within 30 days after the date that a Partyalt gives written notice of such Disputealt"Dispute" means a controversy or claim arising out of or relating to this Agreement. to the other Partyalt.

[(23a) Tioga and the customer will act in good faith and will work to resolve disputes within 30 days.]

[**(b) Mediation.**](http://www.tiogaenergy.com/annotated-ppa-section-23.php)

If, after such negotiation in accordance with Section 23(a), the Disputealt"Dispute" means a controversy or claim arising out of or relating to this Agreement. remains unresolved, either Partyalt may require that a non-binding mediation take place. In such mediation, representatives of the Partiesalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. with authority to resolve the dispute shall meet for at least three (iii) hours with a mediator whom they choose together. If the Partiesalt are unable to agree on a mediator, then either Partyalt is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator’s fee and expenses shall be paid one-half by each Partyalt.

[(23b) Disputealts that remain unresolved after 30 days will be mediated by an independent third party. Mediation will be non-binding and expenses will be split equally between parties.]

[**(c) Arbitration of Disputes.**](http://www.tiogaenergy.com/annotated-ppa-section-23.php)

1. Rules of Arbitration. Any Disputealt that is not settled to the mutual satisfaction of the Partiesalt pursuant to Sections 23(a) or 23(b) shall (except as provided in Section 23(d)) be settled by binding arbitration between the Partiesalt conducted in [\_\_\_\_\_], or such other location mutually agreeable to the Partiesalt, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) in effect on the date that a Partyalt gives notice of its demand for arbitration.
2. Disputealt Submission. The Partyalt initiating the Arbitration (the “Submitting Partyalt”) shall submit such Disputealt to arbitration by providing a written demand for arbitration to the other Partyalt (the “Responding Partyalt”), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Partyalt, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.
3. Arbitrator Selection. The arbitrator(s) selected shall have contract resolution experience and experience in the electric power business and shall not have any current or past substantial business or financial relationships with the Partiesalt or their Affiliatealt. Arbitrators must agree to be bound by the confidentiality provisions of this Agreementalt. If the amount in controversy is less than $250,000, the Disputealt will be determined by a single neutral arbitrator, who will be chosen by the Partiesalt within forty-five (45) days of submission of the demand on the Responding Partyalt. If the Partiesalt cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is $250,000 or greater, the Disputealt will be determined by a Panel of three (3) arbitrators. Each Partyalt shall select one arbitrator, but if a Partyalt fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Partyalt, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Partiesalt may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA. As used herein, “Panel” means either a single arbitrator or a group of three arbitrators selected as provided herein.
4. Discovery. Within fifteen days (15) of the selection of the third arbitrator, the Partiesalt shall submit statements to the Panel summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Partiesalt, the Panel will meet with the Partiesalt and issue orders on the scheduling of the case and any discovery to be permitted.
5. Decision. Upon ten (10) days of completion of the hearing conducted by the Panel, each Partyalt shall submit to the Panel its proposal for resolution of the dispute. The Panel in its award shall be limited to selecting only one of the two proposals submitted by the Partiesalt. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Partiesalt, and shall be the sole and exclusive remedy between the Partiesalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. regarding any claims and counterclaims presented to the Panel. The Panel shall be permitted, in its discretion, to add pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.
6. Expenses. Unless otherwise ordered by the Panel, each Partyalt shall bear its own expenses and one-half of the cost of the Panel. Payments of the Panel’s costs shall be made on a monthly basis prior to the Award.

[(23c) Disputealts that remain unresolved after mediation will be resolved through binding arbitration. This section includes details on dispute submission, arbitrator requirements and selection, arbitration process, resolution, and expenses. Part V uses what is called “baseball arbitration.” This process only allows the arbitrator to pick from the proposal made by the parties. Tioga believes this process is more likely to lead to settlement of a dispute.]

[**(d) Exceptions to Arbitration.**](http://www.tiogaenergy.com/annotated-ppa-section-23.php)

The obligation to arbitrate shall not be binding upon any Partyalt with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Disputealt; (ii) actions to enforce an award of a Panel or otherwise to collect payments not subject to bonafide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Disputealt.

[(23d) Certain types of actions that only the court has the authority to enforce will not be subject to arbitration.

*Example:* Either party could ask the court to issue an injunction associated with a breach of confidentiality.]

**(e) Survival of Arbitration Provisions.**

The provisions of this Section 23 shall survive any termination of this Agreementalt and shall apply (except as provided herein) to any disputes arising out of this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordanc

**Section 24**

[**NOTICES**](http://www.tiogaenergy.com/annotated-ppa-section-24.php)

Delivery of Notices. All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreementalt shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

[(24) Notices required by or otherwise regarding this contract will be in writing and can be delivered by mail, private courier, fax, or email. Notices will take effect when delivered.]

If to Hostalt:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

If to Provideralt:

Tioga Solar [\_\_\_] LLC

c/o Tioga Energy, Inc.

123 Mission Street, 9th Floor

San Francisco, CA 94105

Attention:

Email:

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Partyalt to whom the notice is sent.

Each Partyalt may designate by Notice in accordance with this section to the other Partyalt a new address to which any notice may thereafter be given.

**Section 25**

**MISCELLANEOUS**

[**(a) Governing Law.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

This Agreementalt shall be governed by the laws of the State of [\_\_\_\_], including principles of good faith and fair dealing that will apply to all dealings under this Agreementalt.

[(25a) This section specifies the law which will govern the PPA. Tioga’s practice is for the PPA to be governed by the laws of the state in which the solar electric system is built.]

[**(b) Rules of Interpretation.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

Section headings are for convenience only and shall not affect the interpretation of this Agreementalt. References to sections are, unless the context otherwise requires, references to sections of this Agreementalt. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreementalt as a whole and not to any particular provision of this Agreementalt. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreementalt and the contents of an Exhibit hereto, the text of this Agreementalt shall govern.

[(25b) Clarifies the scope of certain terms which are used frequently in the agreement.]

[**(c) Severability.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

If any non-material part of this Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. is held to be unenforceable, the rest of the Agreementalt will continue in effect. If a material provision is determined to be unenforceable and the Partyalt which would have been benefited by the provision does not waive its unenforceability, then the Partiesalt shall negotiate in good faith to amend the Agreementalt to restore to the Partyalt that was the beneficiary of such unenforceable provision the benefits of such provision. If the Partiesalt are unable to agree upon an amendment that restores the Partyalt’s benefits, the matter shall be resolved under Section 23(c) in order to restore to the Partyalt that was the beneficiary of the unenforceable provision the economic benefits of such provision.

[(25c) If any material part of this PPA is deemed unenforceable, the rest of the contract will continue, and both parties will agree on a new provision with the same intention.]

[**(d) Amendment and Waiver.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

This Agreementalt may only be amended by a writing signed by both Partiesalt. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Partyalt against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

[(25d) Both parties must agree on amendments to the PPA. If a party waives compliance with an obligation in the PPA, the waiver must be in writing, is only for the particular event and will not be applied to future occurrences.

*Example:* Tioga may choose to waive the right to reimbursement if the customer is required to shut the system down but the waiver does not extend to future rights to reimbursement.]

[**(e) Both parties must agree on amendments.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

Waivers can only be for particular events and will not be applied to future occurrences of the waived event or to the rest of the agreement.

*Example:* Tioga may waive the right to reimbursement if the customer is required to shut the system down for an hour for site maintenance, though waiver in this instance does not extend to future rights to reimbursement.

[(25e) Neither party can assign this contract without the consent of the other party, except Tioga may assign its rights and obligations under this agreement to another Tioga entity or a financing partner according to Section 21.]

[**(f) Service Contract.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

This Agreementalt is a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code.

[**(g) No Joint Venture.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

This Agreementalt does not create a joint venture, partnership or other form of business association between the Partiesalt"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider..

[**(h) Counterparts.**](http://www.tiogaenergy.com/annotated-ppa-section-25.php)

This Agreementalt"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Partyalt hereto.

(rest of page left blank intentionally – signatures appear on next page)

IN WITNESS WHEREOF, intending to be legally bound hereby, Provideralt and Hostalt have executed this Power Purchase Agreementalt as of the date first set forth above.

TIOGA SOLAR [\_\_\_\_], LLC

By: Tioga Energy, Inc., sole member

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (printed): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[\_\_\_\_\_]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (printed): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[(25f) This PPA contract can be signed by each party on a separate signature sheet.

*Rationale:* To simplify the signing process.]

**Annotated PPA - GLOSSARY OF TERMS**

**GLOSSARY OF TERMS (A - K)**

[“Access Rights”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project.

Access Rights: Access to the customer-owned site required by Tioga or its contractors described in Section 3 of the PPA.

[“Affiliate”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

Affiliate: Refers to a related organization, such as a sister company, parent company, or subsidiary.

[“Agreement”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

Agreement: This PPA and future amendments, if any.

[“Applicable Law”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.

Applicable Law: Federal, state, or local law.

[“Applicable Solar Program”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means the program indicated on Exhibit H.

Applicable Solar Program: The government-run solar subsidy program in the state where the system will be built.

[“Business Day”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.

“Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.

[“Change in Law”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.

Change in Law: Can refer to a change in law or a change in interpretation of a law. Does not include income tax changes. Relevant to Section 18.

[“Commercial Operation Date”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

Commercial Operation Date: The date when the project has passed performance tests and begins generating electricity for sale to customer.

[“Confidential Information”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party.

Confidential Information: Defines confidential information and describes information that is not confidential.

[“Dispute”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means a controversy or claim arising out of or relating to this Agreement.

[“Early Termination Amount”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means an amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, or Tax Attributes.

Early Termination Amount: Predetermined amount specified in Exhibit B of the PPA. May be used in purchase with the Projectalt"Project" means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement. by customer or in the event customer defaults under the PPA.

[“Electric Service Provider”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means any person, including the Local Electric Utility, authorized by the State of [\_\_\_\_\_] to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

Electric Service Provider: The entity from whom the customer buys its grid electricity, typically the local electric utility, the grid operator, or a third party competitive electricity supplier.

[“Environmental Attributes”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.

Environmental Attributes: REC’s (Renewable Energy Certificates) and other certificates with market value that are generated by producing solar electricity. Does not include tax attributes of the solar system or incentives from the Applicable Solar Program.

[“Fair Market Value”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means the price that would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

Fair Market Value: This definition sets out principal factors to be considered in determining the value of the project.

[“Financing Party”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means a Project Lessor or Lender.

Financing Party: The entity that finances the solar electric system. The entity may be a Lessor (in a sale/leaseback transaction) or a Lender.

[“Force Majeure Event”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means any act or event that prevents the affected Party from performing it obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.

Force Majeure Event: An unavoidable event such as a hurricane or labor strike that is outside the control of Tioga or the customer that prevents it from performing its obligations.

[“Governmental Authority”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

**“Governmental Authority”** means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

[“Hazardous Materials”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

Hazardous Materials: Refers to dangerous materials with special requirements for handling and disposing under environmental law.

[“Host”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns.

Host: The customer who hosts the solar electric system and enters into the PPA contract with Tioga.

[“Indemnified Person”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means the person who asserts a right to indemnification under Section 15.

Indemnified Person: The party (either Tioga or the customer) which seeks to collect damages. The indemnified person is protected from liability for damages caused by the other party. Refers to Section 15.

[“Indemnifying Party”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means the Party who has the indemnification obligation under Section 15 to the Indemnified Person.

Indemnifying Party: The party (either Tioga or the customer) that is required to pay damages. The indemnifying party will not hold the indemnified person liable for damages caused by the indemnifying party.

[“Initial Period”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) has the meaning provided in Section 2.

Initial Period: Period after this PPA agreement is signed and before the solar electric system becomes operational. Under Section 4 of the PPA Tioga will conduct a site assessment and financial due diligence on the customer during this period.

[“Installer”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-a-k.php) means the person designated by Provider to install the Project on the Premises.

Installer: The sub-contractor designated by Tioga to construct the solar electric system at the host site.

**GLOSSARY OF TERMS (L - Z)**

[“Land Registry”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means the office where real estate records for the Site are customarily filed.

Land Registry: Local government office where the host’s property records are filed, often a town or county office.

[“Lender”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means persons providing construction or permanent financing to Provider in connection with installation of the Project.

Lender: One or more entities that provide loans to Tioga to build and own the solar system. Often there may be a construction lender and a permanent lender.

[“Liens”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) has the meaning provided in Section 8(c).

“Liens” has the meaning provided in Section 8(c).

[“Local Electric Utility”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means the local electric distribution owner and operator which under the laws of the State of [\_\_\_\_\_\_\_\_\_] is responsible for providing electric distribution and interconnection services to Host at Site.

Local Electric Utility: The electric utility that provides electric distribution service to the Host.

[“Losses”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

Losses: Indicates the amount of damages that either party may seek from the other in the event of an indemnity claim. Used in Section 15.

[“Operations Period”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) has the meaning provided in Section 2.

Operations Period: The period beginning after the solar system has been constructed and is operational. It will last for an agreed length of time (generally 20 years).

[“Operations Year”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date.

“Operations Year” means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date.

[“Party”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means either Host or Provider, as the context shall indicate, and “Parties” means both Host and Provider.

Party: Either the customer or Tioga. “Parties” means both the customer and Tioga.

[“Point of Delivery”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) has the meaning set forth in Section 5(a) and Exhibit E.

Point of Delivery: The connection between the solar electric system and the host site’s electrical system.

[“Premises”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means the portions of the Site described on Exhibit D.

Premises: Portion of the site that Tioga will be using to operate the solar electric system, e.g. the building on which the solar electric system is installed, the area of the parking lot where the inverter is located, the parcel of land where the solar system is installed, etc.

[“Project”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement.

Project: The solar electric system, which is comprised of photovoltaic panels and other equipment, and is constructed and installed at the customer host site.

[“Project Lessor”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means, if applicable, any Person to whom Provider transferred the ownership interest in the Project, subject to a leaseback of the Project from such Person.

Project Lessor: The financial entity to which Tioga transfers permanent ownership of the solar electric system through a sale-leaseback financing transaction. Tioga regularly uses a sale-leaseback financing structure to fund solar electric systems. In a sale/leaseback transaction, Tioga will sell the Project to the financing entity and the financing entity will lease the Project back to Tioga for Tioga to operate and Tioga will pay a regular lease payment to the Lessor.

[“Provider”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.

Provider: Refers to the special purpose company organized by Tioga Energy, Inc., to install and operate the Project..

[“Relocation Event”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.

Relocation Event: Time period during which the solar electric system is not in operation because it is being relocated to another location.

[“Renewable Energy Certificate”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project.

REC: A certificate with market value that is generated by producing solar electricity. One REC is allocated to the owner of a solar electric system when it generates one megawatt-hour of electricity. One solar panel produces about 0.3 RECs per year, depending on several factors including the size and location of the panel. The value of one REC varies depending on the state in which the solar system is located.

[“Site”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means the real property described on Exhibit C attached hereto.

Site: The land owned by the customer.

[“Tax Attributes”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

Tax Attributes: Tax credits, deductions, or other tax-based rebates available to the owner of the solar electric system.

[“Term”](http://www.tiogaenergy.com/annotated-ppa-glossary-of-terms-l-z.php) shall have the meaning provided in Section 2 hereof.

Term: Includes the “Initial Period” and the “Operations Period”. It begins when the PPA is signed, and ends at an agreed time (usually 20 years) at which time the project will be sold to Host (if Host exercises its option to purchase) or is decommissioned (is removed from the Premises) by Tioga.