**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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**Exhibits**

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 Project. 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 Project, the amount of energy the Project"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 Attributes"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 Project"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 Amount"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 Party 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 Project 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 “Site” 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 Party"Financing Party" means a Project Lessor or Lender. in the Project.

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 Site and access and interconnection routes for the Project. 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 Project in relation to existing buildings and boundaries of the Site.

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 Project. When filed, this document notifies third parties with an interest in the customer’s property of Tioga’s interest in the Project.

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 Project. 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 [Host], a Delaware corporation.

WHEREAS, [Host] 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 Provider the electric energy produced by the project.

WHEREAS, Tioga Solar [\_\_\_\_\_\_\_], LLC desires to develop, design, construct, own and operate the project located on Host's property, and sell to Host 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 Parties"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 Agreement shall consist of an Initial Period and an Operations Period. As used herein, "Term" shall mean all of the Initial Period"Initial Period" has the meaning provided in Section 2. and the Operations Period, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement.

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

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

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Use of the two periods recognizes that the Parties 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 Period will begin on the date set forth above and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement"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 Period"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 Period.]

(2b) The Initial Period 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 Period.

Close »

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

If applicable, the Operations Period will commence on the Commercial Operation Date"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 Date occurs.

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

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Close »

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

Twenty-four months prior to the end of the Operations Period"Operations Period" has the meaning provided in Section 2., the Parties will meet to discuss the extension of this Agreement 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 Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

[(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 Period"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)

Host hereby grants Provider and its designees (including Installer, persons responsible for implementing the Applicable Solar Program"Applicable Solar Program" means the program indicated on Exhibit H., and Financing Party) access to the Premises, for the Term, at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing and removing the Project, and any other purpose set forth in this Agreement"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 Agreement. Access Rights with respect to the Site 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 Project.

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 Agreement like many other PPA and construction contracts, Tioga has chosen to include these provisions within the PPA Agreement"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 Site to the Premises as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.
2. Transmission Lines & Communication Cables. The right to locate transmission lines and communications cables across the Site"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 Host’s approval and shall be at locations that minimize any disruption to Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns.’s activities occurring on the Site.
3. Storage. Adequate storage space on the Site convenient to the Premises for materials and tools used during construction, installation, and maintenance of the Project"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. . Provider 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 Premises for use by Provider in installing, operating and maintaining the Project.

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

Upon request by Provider, the Parties"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 Registry easements and other instruments documenting the Access Rights granted by Host to Provider in this Agreement, and which shall be in form and substance indicated on Exhibit G or other form agreed by the Parties. The cost of preparation and recording shall be borne by the Provider.

[(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)

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

[(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 Period, Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project 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 Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Project under the Applicable Solar Program; 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 Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project.

[(4a) During the Initial Period 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 Period, Provider shall have the right to cease development of the Project on the Premises, for any reason, in its sole discretion. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement"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 Agreement.

[(4b) Tioga has the right to stop the development of the solar electric system at any time during the Initial Period if it determines that it will not be able to complete development and installation of the Project. Tioga needs this right because signing the PPA is an essential but not the final step in development of the Project. 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 Period, there are two primary reasons why Tioga might choose to cease development of the Project: (1) previously unknown site conditions are discovered and (2) failure to secure Project financing.

(1) Site 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 Project 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 Project is very expensive, and does not commence until AFTER a PPA is executed.** Once this process commences, a Project"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 Project, Tioga may cease Project 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 Period, upon at least ten (10) Business Days notice to Host, Provider shall have the right to commence installing the Project on the Premises.

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

[(4c) Tioga can start building the solar electric system at any time, with 10 or more business days’ notification, during the Initial Period. 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 Period, 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 Agreement"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 Event existed), Provider has not commenced the installation of the Project on the Premises"Premises" means the portions of the Site described on Exhibit D., Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Provider shall terminate twenty-one (21) days after Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s receipt of such notice; provided, that if Provider commences installation of the Project within such twenty-one (21) day period, this Agreement shall not terminate. Upon any termination in accordance with this Section 4(d) neither Party shall have any further liability to the other with respect to the Facility, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their condition prior to the commencement of construction; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement 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 Agreement.

[(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)

Provider shall use licensed contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, subject to the reasonable approval of Host. Provider shall advise Host of the Installer prior to commencement of the work on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer’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. “Installer” 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 Installer 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 Project economics.]

**Section 4 - Part 2**

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

Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Host 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 Provider and Installer"Installer" means the person designated by Provider to install the Project on the Premises.. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of the Local Electric Utility, has been installed in accordance with all Applicable Law"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, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date"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 Project, which may be immediately upon delivery of such notice to Host. All electricity produced by the Project prior to the Commercial Operation Date shall be delivered to Host and Host shall pay for such electricity at the rate applicable to the first Operations Year�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 Host to the Electric Service Provider"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 Date"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)

Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws 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 Provider’s sole expense. Except for emergency situations or unplanned outages, Provider"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 Host and Host’s employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site"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)

Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority"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 Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law"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 Materials discovered at the Site. Host may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. and Installer"Installer" means the person designated by Provider to install the Project on the Premises. that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority"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 Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host 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)

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

Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, 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 Period"Operations Period" has the meaning provided in Section 2., subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all electric energy produced by the Project, whether or not Host is able to use all such electric energy. The Point of Delivery 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 Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to Host at the Point of Delivery.

[(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 Project"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 Provider to Host at the specifications set forth in Exhibit E and otherwise in compliance with all requirements of the Local Electric Utility.

[(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)

Provider does not warrant or guarantee the amount of electric energy to be produced by the limits on Project for any hourly, daily, monthly, annual or other period. Provider is not a utility or public service company and does not assume any obligations of a utility or public service company to supply Host's electric requirements. Provider 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)

Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall install one or more meter(s) at the Project, as Provider deems appropriate, to measure the output of the Project at the Point of Delivery. Provider shall install an Interval Data Recorder (IDR) with industry standard telemetry at the Project. Provider 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. Host shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Host deems necessary, except if, after such testing, the meter is shown to be in error in Provider’s favor by more than 2%, Provider"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 Project 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%, Provider shall adjust the next invoice to be provided to Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. under Section 6(b) hereof, to either charge the Host additional amounts for energy produced over the stated meter amount during the applicable period at the applicable rate or provide Host"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 Period 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)

Host shall pay Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. for electricity produced by the Project 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)

Host shall pay for the electricity produced by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project"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)

Host"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 Provider in the invoice or in a written notice delivered to Host. 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 Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. objects to all or a portion of an invoice, Host 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 Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host"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 Host"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 Agreement.

[(6e) If customer disputes an invoice, the customer will pay the undisputed amount and will act to promptly resolve the dispute. Disputes 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 Term"Term" shall have the meaning provided in Section 2 hereof., Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Project and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider"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 Project is greater than Host’s requirements at such time, Host shall nevertheless pay Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. for all of the electricity produced by the Project (other than as provided in Section 13(e) of this Agreement) at the rates and in the manner provided in this Agreement. Host may make arrangements with the Local Electric Utility so that power in excess of Host’s requirements may be delivered to the Local Electric Utility through the Point of Delivery"Point of Delivery" means the connection between the solar electric system and the host site�s electrical system. and Host shall receive any credits or payments from the Local Electric Utility may be available under net metering or similar programs. If Applicable Law or the practice of the Local Electric Utility restricts the ability of the Host to deliver electricity produced by the Project to the Local Electric Utility, then the Parties shall agree on alternate arrangements to enable Host, insofar as possible, to receive benefits from the Local Electric Utility comparable to those available under net metering programs, provided that the economic benefits to Provider 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)

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

[(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)

Provider (and/or Financing Party"Financing Party" means a Project Lessor or Lender.) shall be the owner of any Tax Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider"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 Project. Under certain financing structures the Financing Party 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)

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

[(7f) Tioga, not the customer, receives all Environmental Attributes"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 Certificate"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 Attributes 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)

Provider"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 Project. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.. If Host"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 Provider.

[(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 Host from Provider under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Provider, which approval shall not be unreasonably withheld, and Host shall not take any action which would cause Host or Provider 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 Party shall assert that Provider"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 Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s obligations or performance under this Agreement.

[(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)

Provider shall pay for and obtain all approvals from governmental entities necessary for the construction and operation of the Project, 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, Provider or Financing Party shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Host and/or Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall make any necessary filings to disclaim the Project as a fixture of its respective Premises"Premises" means the portions of the Site described on Exhibit D. and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.

[(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 Project will be built on the property and belongs to Tioga. These provisions are included to help ensure that the Project 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 Law, each Party 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 Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall, to the extent allowed under Applicable Law, have Installer and its subcontractors execute lien waivers with respect to any mechanic's or materialman's lien against Host’s interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer"Installer" means the person designated by Provider to install the Project on the Premises. and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, 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 Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss 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)

Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Project, Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. shall promptly upon request of Provider, provide an acknowledgement and consent from such lienholder, in form and substance reasonably acceptable to Financing Party"Financing Party" means a Project Lessor or Lender., stating that the ownership of the Project"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 Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. in the Project and under this Agreement. If Host is the fee owner of the Premises, Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host’s expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s (and/or Financing Party’s) rights in the Project and the Access Rights"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 Project is not subject to any liens against the customer is required for financing the Project]"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 Date, provided no Host Event of Default has occurred and is continuing, the Host shall have the option to purchase the Project from Provider"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 Value of the Project at such anniversary date or (ii) the Early Termination Amount, plus, if applicable, repayment or recapture of Applicable Solar Program"Applicable Solar Program" means the program indicated on Exhibit H. or other governmental payments occasioned by the exercise of such option. If Host desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Provider of its election to exercise the option, and on or before ninety (90) days after such anniversary date shall pay the purchase price to Provider by electronic transfer in immediately available funds to an account designated by Provider. At any time following receipt of the notice from Host, but no later than thirty (30) days after the date Host gives notice of its election to exercise the option, Provider may notify Host if it believes the Fair Market Value"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 Project exceeds the Early Termination Amount, and, in the same notice, Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. shall provide Host an appraisal of the Fair Market Value. If Host agrees with the appraisal of the Fair Market Value it shall pay such sum to Provider. If Host disagrees with the appraisal’s estimate of the Fair Market Value of the Project, Host may request that the Parties meet to discuss the appraisal. If the Parties cannot agree within ten (10) days of the Host’s receipt of the appraisal of the Fair Market Value, the Parties will be deemed to enter into a Dispute for purposes of Section 23(a) and shall follow the procedures in Section 23(c) for resolution of the Dispute. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project"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 Agreement"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 Value of the Project and shall be undertaken consistently with the terms of such transaction so that the process for determining Fair Market Value"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 Agreement 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)

Host shall have the right to purchase the Project"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 Provider at the expiration of the Operations Period at the then Fair Market Value"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 Project. No earlier than twelve months prior to the expiration of such Operations Period"Operations Period" has the meaning provided in Section 2. and no later than nine (9) months prior to the expiration of the Operations Period, Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Project at the end of the Term. Host may, but is not obligated to, accept such appraisal. If Host does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host’s receipt of the appraisal from Provider, the Parties 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 Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement 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 Value"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 Project and shall be undertaken consistently with the terms of such transaction so that the process for determining Fair Market Value under this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction.

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

[(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 Project, 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 Host’s purchase of the Project under Section 9(a) or 9(b), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project"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 Host’s purchase of the Project. However, neither Party 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 Host does not exercise the option set forth in Section 9(b) above, then Provider, at its expense, shall promptly decommission and remove the Project following the expiration of the Operations Period"Operations Period" has the meaning provided in Section 2.. Provider shall not be obligated, however, to remove any support structures for the Project which are affixed to Host’s structures or any below grade structures, including foundations and conduits, or any roads. Host grants Provider and its representatives reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the Project. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Host will provide Provider adequate storage space on the Site convenient to the Premises for materials and tools used during decommissioning. Provider shall be responsible for providing shelter and security for stored items during de-commissioning and removal. Host further agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the Project. During decommissioning, Provider will comply with all Applicable Laws.

[(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 Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. to purchase the Project under Sections 9(a) and 9(b) shall not survive the termination of this Agreement"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)

Host from time to time may request Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to temporarily stop operation of the Project for a period no longer than thirty (30) days, such request to be reasonably related to Host’s activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program"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 Attributes"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 Attributes that Provider would have received with respect to electric energy that would have been produced by the Project 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 Year, on estimated levels of production and, after the first Operations Year, based on the actual operation of the Project during the same period in the previous Operations Year, unless Provider and Host"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 Provider to shut down the Project for maintenance as provided in Section 4(j), Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. In the event of such a shutdown, Host shall be deemed to have acted under Section 10(a) to shut down the Project, and shall pay Provider the amounts described in Section 10(a) with respect to the period of the shutdown, except that Host shall not be required to pay such amounts relative to any time period prior to Provider’s notice of the shutdown or during any Force Majeure Event. If a shutdown pursuant to this Section 10(b) continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

[(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)

Host may request to move the Project"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 Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider and Financing Party"Financing Party" means a Project Lessor or Lender. in each of their sole discretion. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, during the Relocation Event, Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project"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 Event; (ii) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event"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 Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host 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 Premises are closed as a result of an event that is not (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall nevertheless continue to pay Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery. If an interconnection with the Local Electric Utility becomes deactivated for reasons that are not (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider such that the Project is no longer able to produce electricity or transfer electricity to its respective Premises or to the Local Electric Utility, Host will pay Provider an amount equal to the sum of (A) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project following such closure; (B) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced following such closure; and (C) revenues from Environmental Attributes"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 Provider would have received with respect to electric energy that would have been produced by the Project following such closure. Determination of the amount of energy that would have been produced following such closure shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host 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, Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. may terminate this Agreement and require Host to pay the Early Termination Amount.

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

[(10e) If the customer sells the site where the Project is located, the customer will continue to pay Tioga for electricity generated by the Project 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)

Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

[(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)

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

[(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)

Host shall be responsible for all ad valorem personal property or real property taxes levied against the Site"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 Provider"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 Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider"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 Host related to the improvement of real property by the existence of the Project on the Site, Provider shall reimburse Host 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 Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site"Site" means the real property described on Exhibit C attached hereto, which properties include the Premises.. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party 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 Law"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 Party fails to pay any taxes that may become a lien upon the other Party’s property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, 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 Party 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.**

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

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

Host and Provider will also maintain the additional insurance requirements (if any) specified in Exhibit H to satisfy the requirments of the Applicable Solar Program"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 Party shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Party’s insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party 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 Party’s insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Each Party’s insurer shall waive all rights of subrogation against the other Party except in the case of such Party"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 Parties acknowledge that the performance of each Party’s obligations under this Agreement"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 Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party 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 Parties 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)

Host, or any lessee, grantee or licensee of Host"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 Site which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

[(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 Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Host and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Host and Provider. Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Host for electric energy from the Project shall be increased by an amount sufficient for Provider"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 Agreement without regard to Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns.’s option to purchase the Project.

[(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 Parties"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 Agreement and the Project. The Parties therefore agree that each may make independent press releases about entering into this Agreement"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 Project, and the identity of the other Party, without the prior written consent of the other Party, so long as only Provider has the exclusive right to (i) claim that electric energy provided to Host was generated by the Project, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement"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 Agreement and information about the Project other than that described above constitutes Confidential Information, 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 Party agrees that, (i) without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other person and (ii) it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its obligations under this Agreement. Notwithstanding the foregoing, the Parties may, and shall, disclose any information required to be disclosed under rules, regulations and contracts implementing the Applicable Solar Program or Tax Attributes required to be disclosed by any Governmental Authority"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 Law 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)

Provider may provide this Agreement"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 Agreement to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Provider in connection with the Project. In addition, if a receiving Party is required by Applicable Law, validly issued subpoena, required filing, or the rules of any stock exchange, to disclose any Confidential Information provided by the disclosing Party, the receiving Party may make disclosure as required by law, but the receiving Party shall prior to making any disclosure notify the disclosing Party of the requested disclosure and shall use its reasonable efforts to cooperate with the disclosing Party, but at the expense of the disclosing Party, in any efforts by the disclosing Party to minimize the extent of the Confidential Information"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 Party 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 Party 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 Agreement.

[(14d) The Parties 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.**

Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, volunteers, and invitees (“Host’s Indemnified Parties”), harmless from and against all Losses incurred by the Host Indemnified Parties 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 Person or loss or damage to property to the extent arising out of Provider’s (or its contractor’s) negligence or willful misconduct; (ii) Provider’s violation of Applicable Law; (iii) any failure to properly interconnect or comply with the procedures of the Local Electric Utility; or (iv) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or by any of Provider"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 Project shall not extend to incidents occurring on Host’s side of the Point of Delivery except to the extent caused by incidents on Provider’s side of the Point of Delivery. 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. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

**(b) Host Indemnification.**

Host shall indemnify, defend and hold Provider, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party (“Provider’s Indemnified Parties”), harmless from and against all Losses incurred by the Provider’s Indemnified Parties to the extent arising from or out of (i) any claim for or injury to or death of any Person or loss or damage to property to the extent arising out of the negligence or willful misconduct of any of Host’s Indemnified Parties; (ii) Host’s violation of Applicable Law"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 Materials on the Site (other than any Hazardous Materials brought on to the Site by Provider’s Indemnified Parties). Host shall not be obligated to indemnify Provider or any Provider Indemnified Parties for any Loss to the extent such Loss is due to the negligence or willful misconduct of Provider or any Provider Indemnified Party.

**(c) Notice of Claims.**

Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person 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 Person 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 Party has the right, but not the obligation to assume the defense or the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by Indemnified Person"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 Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party 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 Person (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 Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person"Indemnified Person" means the person who asserts a right to indemnification under Section 15. receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person"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 Party is being indemnified.

**(f) Survival of Indemnification.**

The obligations of indemnification hereunder shall survive termination of this Agreement"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 Party 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 Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.
2. No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement"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 Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, 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 Agreement, or the validity or enforceability of this Agreement.

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

In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, 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. Host has provided to Provider complete and correct records of its electric usage at the Site for the preceding [\_\_] years.
2. Condition of Premises. Host has provided to Provider Host’s complete and correct records of the physical condition of the Premises"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 Premises upon which all or part of the Project is to be installed, are materially different from the information presented by Host, then if practicable the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions. If such adjustment is not practicable, Provider shall have other rights under this Agreement.
3. **[to be used if Host is not a public corporation]** Financial Information. The financial statements Host has provided to Provider"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 Host.

**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 Party 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 Event; provided that the Party"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 Event"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 Party"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 Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event"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 Event"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 Event, which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises"Premises" means the portions of the Site described on Exhibit D., which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Host does elect to restore the Premises, Host 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 Project, subject to the Parties agreeing on a schedule for the restoration of the Premises"Premises" means the portions of the Site described on Exhibit D. and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties 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 Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party 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 Project"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 Site 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 Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, 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 Event 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 Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider’s costs to operate and/or maintain the Project, Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. will promptly submit to Host a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider’s costs; and (iii) Provider’s proposed adjustment to the then applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Host agrees to an adjustment in the then applicable and future rates such that the new rates compensate Provider for the total cost increase arising from the Change in Law"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 Law continue to be incurred by the Provider; 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)

Provider shall be in default of this Agreement"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 (“Provider 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 Provider"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 Host identifying the defect.
2. Abandonment During Installation. After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host’s reasonable determination, Provider has abandoned installation of the Project;
3. Failure to Operate. After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of governmental authority, or exercise of Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s rights under this Agreement, or otherwise excused by the provisions of Section 17(b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host’s reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.
4. Obligation Failure. Provider 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 Events), 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 Host identifying the failure.
5. Insolvency. Provider (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 Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; 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 Provider, provided that Host complies with its obligations under Section 21 and Financing Party does not cure such Event of Default by Provider, Host may terminate this Agreement, 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.**

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

1. Misrepresentation. Any representation or warranty by Host 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 Provider identifying the defect.
2. Obstruction. Host obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within ten (10) days of when such payment was due.
3. Payment Failure. Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) days after receipt of notice thereof from Provider.
4. Obligation Failure. Host 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 Events), 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 Provider identifying the failure.
5. Insolvency. Host (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 Host in an involuntary case under bankruptcy law or seeking to dissolve Host"Host" means [Host], a [\_\_\_\_\_] [corporation], and all successors and assigns. under other Applicable Law; 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 Host, Provider may require Host to pay to Provider the Early Termination Amount, sell electricity produced by the Project to persons other than Host, and recover from Host any loss in revenues resulting from such sales; and/or pursue other remedies available at law or in equity. After Provider’s receipt of such Early Termination Amount pursuant to this Section 20(b), Provider shall collect no additional damages resulting from lost revenues from sales of electricity from the Project.

**Section 21**

**COLLATERAL ASSIGNMENT, FINANCING PROVISIONS**

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

Provider may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Project. Host acknowledges that Provider will obtain construction financing for the Project from third party and that Provider may either obtain term financing secured by the Project or sell or assign the Project to a Financing Party 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. Host acknowledges that in connection with such transactions Provider may secure Provider’s obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Project"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, Host 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)

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

[(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 Agreement:

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

The Financing Party, as owner of the Project, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Financing Party"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 Agreement and the Project"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 Party shall have the right, but not the obligation, to pay all sums due under this Agreement"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 Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns.’s interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host 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 Project by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider"Provider" means Tioga Solar [\_\_\_], LLC, a [\_\_\_\_\_] limited liability company, and all successors and assigns. to the Financing Party"Financing Party" means a Project Lessor or Lender. (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement"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 Project 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 Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Financing Party"Financing Party" means a Project Lessor or Lender. made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.

[(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)

Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party 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 Agreement; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party 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 Parties’ 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 Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party"Financing Party" means a Project Lessor or Lender., shall acquire title to or control of Provider’s assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreement"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 Agreement and which are capable of cure by a third person or entity, then such Person"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 Agreement, and this Agreement"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.**

Host agrees and acknowledges that Financing Party"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)

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

[(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 AGREEMENT (including, without limitation, in Sections 10 and 20(b)), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider. OR ITS INDEMNIFIED PERSONS"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 AGREEMENT.

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

[(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 Dispute"Dispute" means a controversy or claim arising out of or relating to this Agreement. remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties"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 Parties are unable to agree on a mediator, then either Party 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 Party.

[(23b) Disputes 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 Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 23(a) or 23(b) shall (except as provided in Section 23(d)) be settled by binding arbitration between the Parties conducted in [\_\_\_\_\_], or such other location mutually agreeable to the Parties, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) in effect on the date that a Party gives notice of its demand for arbitration.
2. Dispute Submission. The Party initiating the Arbitration (the “Submitting Party”) shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the “Responding Party”), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, 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 Parties or their Affiliate. Arbitrators must agree to be bound by the confidentiality provisions of this Agreement. If the amount in controversy is less than $250,000, the Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties 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 Dispute will be determined by a Panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, 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 Parties 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 Parties 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 Parties, the Panel will meet with the Parties 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 Party 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 Parties. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties"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 Party 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) Disputes 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 Party 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 Dispute; (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 Dispute.

[(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 Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement"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 Agreement 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 Host:

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

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

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

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

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

If to Provider:

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 Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party 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 Agreement 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 Agreement.

[(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 Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. 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 Agreement and the contents of an Exhibit hereto, the text of this Agreement 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 Agreement"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 Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Section 23(c) in order to restore to the Party 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 Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party 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 Agreement 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 Agreement does not create a joint venture, partnership or other form of business association between the Parties"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 Agreement"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 Party hereto.

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

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement 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 Project"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.