

EXHIBIT E.1: KEY CONTRACT TERMS AND CONDITIONS

Described below are selected key terms and conditions that must be included in contracts with the Colleges, using substantially similar language. This is NOT comprehensive, but rather provides certain specific areas that should be addressed in proposals.

Power Purchase Agreements

A. Contract Term

The term will be no longer than 20 years, with 5-year options to extend at the Buyer's request after initial 20-year term.

B. Performance Guarantee

- I. Buyer agrees to purchase all of the Delivered Energy, except as noted below.
- II. In the event that the Delivered Energy exceeds 110% of Expected Annual Contract Quantity at a particular site for any given year, Buyer has the first option, but is not required, to purchase Delivered Energy above 110% of Expected Annual Contract Quantity for such site. If Buyer does not purchase excess Delivered Energy, Seller shall have the right to resell such excess energy to a third party, pursuant to all applicable laws, in which case proceeds from the sale of such electricity will solely accrue to the Seller.
- III. At the end of each three (3) Contract Year Period, if the Delivered Energy is less than 95 percent (95%) of the total Expected Annual Contract Quantity for such three (3) Contract Years, Seller shall pay to Buyer the product of the positive difference between the Replacement Price and the Base Contract Price for the kwh shortfall, if any, between the Delivered Energy and 95% of the Expected Annual Contract Quantity for the three (3) year period.
- IV. If Seller is prevented from generating or delivering the Delivered Energy due to a Force Majeure Event, Seller's obligation under this Section shall be reduced to the extent of such impact.
- V. The Parties recognize and agree that (A) with the exception of an event of a default, payment of amounts by Seller to Buyer pursuant to this Section is an appropriate remedy, and (B) any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.

C. Environmental Attributes

Throughout the Term, except for the first three (3) years, Seller shall transfer to Buyer, and Buyer shall receive from the Seller, all rights, titles and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller agrees that the Base Contract Price, as applicable is the full compensation for all Environmental Attributes.

D. Indemnification and Assumption of Risk

To the extent allowed by law, each Party (each, an "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, its employees, directors, officers, managers, members, shareholders, subsidiaries and agents (each, an "Indemnified Party") from, against and in respect of all liabilities, losses, lawsuits, penalties, claims, settlement payments, costs and expenses, interest, awards, judgments, damages, fines or demands (including the costs,

expenses and reasonable attorneys' fees on account thereof) to the extent arising out of or related to the Indemnifying Party's (i) material breach of any covenant, obligation, representation, or warranty set forth in this Agreement and/or (ii) negligence or willful misconduct. An Indemnified Party shall notify the Indemnifying Party promptly of any written claims or demands against the Indemnified Party from a third party for which the Indemnifying Party is responsible hereunder. The foregoing indemnity shall be in addition to and not in lieu of any other indemnity obligations provided by law and shall not be limited by the insurance provisions contained herein or insurance proceeds. The indemnity provided in this Section also shall apply to the successors and permitted assigns of the Indemnified Party. This Section shall survive the expiration or termination of this Agreement.

E. Assignment by Seller

- I. Collateral Assignment. Buyer acknowledges that Seller may finance the acquisition and installation of the System through a loan, lease or partnership from or with one or more 3rd party capital lenders, lessors, limited liability companies or partnerships ("each a Capital Partner"). Seller may secure such financing with collateral security assignment of this Agreement (including a first security interest in the System). In order to facilitate any such transaction, Buyer:
 - a. consents to such a Collateral Assignment by Seller to the Capital Partner, and
 - b. agrees to take any actions and provide any documentation reasonably requested by Seller in connection with such a transaction.

- II. Full Assignment. Notwithstanding Articles above, Seller shall not sell, transfer or assign (collectively, a "Full Assignment") the Seller's rights and obligations under this Agreement, or any interest in the Agreement, without the prior written consent of Buyer. Upon written request by Seller of Buyer to approve any particular Full Assignment, Buyer must approve or deny such request within thirty (30) days (unless the parties mutually agree in writing to a longer period), or Seller may make the Full Assignment without Buyer's prior written consent. Upon the completion of a Full Assignment by Seller that follows the requirements of this Agreement, the term "Seller" shall apply to the full assignee. Buyer's consent to any other Full Assignment of the Seller's rights and obligations of the Agreement shall not be unreasonably withheld if Buyer has been provided with reasonable proof to the Buyer's reasonable satisfaction that the proposed assignee (and subcontractor(s) with whom it has an active contract):
 - a. has experience in operating and maintaining fuel cell or solar PV systems, as applicable, greater than or equal to that of Seller; and
 - b. has the financial capability and credit rating equal to or greater than that of Seller; and
 - c. has the ability to maintain the System and provide the Services provided pursuant to this Agreement in the manner required by this Agreement and provides all applicable warranties that it shall do so; and
 - d. provides proof that it complies with the Removal Fund requirements of this Agreement.

- III. Seller will not sell, lease, or otherwise make a Full Assignment of the System to any Person unless it also assigns all of its rights and obligations to such Person and such Assignment is permitted by this Article. Assignments or transfers not in compliance with this section will be void. In the case where Seller is not required to get prior written consent of Buyer to make a Collateral Assignment, Seller shall provide prior written notice of any such Collateral Assignment to Buyer. Any Collateral Assignment by Seller shall not release either Party of its obligations hereunder.

- IV. Rights of Assignees Upon Event of Default.
 - a. In the event of a Buyer Default, a Collateral Assignee, shall be entitled to exercise, in the place and stead of Seller, any of Seller's rights under this Agreement that have been assigned to the Collateral Assignee.
 - b. In the case where a Seller Default has occurred and Seller had not assigned its obligations under this Agreement to a Capital Partner, any Capital Partner shall have the right but not the obligation

to assume the Seller's obligations under this Agreement within 45 days of the Seller's default. For avoidance of doubt, in the event that a Capital Partner exercises its right contemplated in this section, such Capital Partner shall assume all obligations under this Agreement as well as assuming all of Seller's rights and interests under the Agreement, and thereafter shall become the Successor-in-Interest to Seller under this Agreement. In the event that a Capital Partner exercises its right to assume all of Seller's rights, interests, and obligations under the Agreement, it shall so assume in writing, and Seller shall have no further obligation to Buyer unless accrued up to that point.

- i. A Successor-in-Interest shall cure any ongoing Seller Defaults promptly after becoming the Successor-in-Interest and no later than 90 days. If the Successor-in-Interest does not cure the Seller Default, it will also be considered to be in default and Buyer shall have all rights afforded to Buyer against such Successor-in-Interest under this Agreement as in the case of a Seller Default.
 - ii. Buyer shall be relieved of its obligations under this Agreement during the Default Period and may exercise its termination rights pursuant to this Agreement (including without limitation, invoking the use of the Removal Fund to have any facilities/equipment removed). If Buyer chooses not to exercise any available termination rights and when the Successor-in-Interest cures any and all Seller Defaults, the respective Buyer and Seller rights and obligations shall resume for the remainder of the Term. No partial or complete waiver of Buyer's rights shall be implied from Buyer's actions pursuant to this paragraph.
 - iii. Payments and Notices. If a Collateral Assignee elects to become the Successor-in-Interest, it will be solely responsible for notifying the Seller and any other Collateral Assignees of this intention. The Buyer shall not be responsible for passing any notices, information and/or communications between the Seller and Collateral Assignees. If a Collateral Assignee does become a Successor-in-Interest, Buyer shall make all payments due under this Agreement to an account specified by such Collateral Assignee. For avoidance of doubt, upon the Collateral Assignee becoming the Successor-in-Interest the previous Seller shall not retain any of its rights or obligations under this Agreement and payments made by Buyer to the Successor-in-Interest shall satisfy Buyer's payment obligations under this Agreement.
- V. Seller shall be solely responsible to provide contact information, including mailing addresses, email addresses and phone numbers for all Collateral and Full Assignees to Buyer. Buyer shall notify all Collateral Assignees for which it has contact information within 15 days of a Seller default. Seller shall be solely responsible for any instance where a Collateral Assignee does not receive notice due to the Seller not providing contact information to Buyer.
- VI. Collateral Assignee Changes. Buyer acknowledges and agrees that Seller, subject to the terms and conditions of this Agreement and terms relating to Assignment in particular, may change one or more Collateral Assignees. In the case that a Seller changes a Collateral Assignee, Seller shall provide Buyer with any relevant, new contact information and payment directions as instructed by Seller. The terms and conditions of this Agreement, and particularly of assignment, shall apply to any change in Capital Partner by Seller.
- VII. Notwithstanding any language to the contrary, when any assignee chooses to exercise any rights against Buyer, it shall indemnify (and shall agree to do so in writing upon request by Buyer) Buyer for any claims arising from exercise of such rights. By way of example and not limitation, such indemnification obligations shall extend to claims by other Capital Partners or Collateral Assignees asserted against Buyer. Any assignee's ability to exercise any rights against Buyer shall be contingent on the assignee's assumption of such indemnification obligations.

F. Cooperation with Review

Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option of the Buyer. Seller shall make itself available onsite to review the progress of the project and Agreement, as requested by the Buyer, upon reasonable advanced notice. Seller agrees to extend to the Buyer or his/her designees and/or designated auditor of the Buyer, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Buyer, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained. The Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Buyer audits. The Seller shall pay to Buyer the full amount of any audit determined to be due as a result of Buyer audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

G. Definitions

"Adjusted Delivered Energy" means the Delivered Energy produced from each Generating Facility as measured and reported via by revenue grade meters.

"Base Contract Price" means the price in \$U.S. per kWh to be paid by Buyer to Seller for the purchase of the Output, as specified in the Contract Price Exhibit.

"Expected Annual Contract Quantity" means the amount of Delivered Energy and Environmental Attributes that Seller expects to deliver to Buyer hereunder in a given Contract Year other than the first and last Contract Years (with may be partial years), as set forth in the Expected Contract Quantity Exhibit.

"Replacement Price" means the current price at which Buyer, acting in a commercially reasonable manner, purchased or purchases a replacement for any Adjusted Delivered Energy required to be, but not delivered by Seller hereunder, plus costs reasonably incurred by Buyer in purchasing such substitute electricity, and additional transmission and distribution charges, if any, reasonably incurred by Buyer, to the Delivery Point.

Force Majeure Events

- a) Excuse. Subject to this Article, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:
 - (i) Such Force Majeure Event is not attributable to fault or negligence or action or inaction on the part of that Party;
 - (ii) Such Force Majeure Event is caused by factors beyond that Party's reasonable control; and
 - (iii) Despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

- b) "Force Majeure Event" may include, subject to this Article:
 - (i) acts of Nature such as storms, floods, lightning and earthquakes;

- (ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
 - (iii) Utility Transmission System outage or failure not caused by Seller or Seller activities;
 - (iv) war, riot, acts of a public enemy or other civil disturbance;
 - (v) strike, walkout, lockout or other significant labor dispute;
 - (vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves not caused by Seller; and
 - (vii) curtailment by the ISO, or its successor, but only to the extent that the ISO declares a “Force Majeure” under the ISO Tariff.
- c) Exclusion. “Force Majeure Event” does not include the following:
- (i) economic hardship of either Party;
 - (ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Article;
 - (iii) failure or delay in the granting of Permits;
 - (iv) failures or delays by the Local Electric Utility or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;
 - (v) curtailment or interruption of transmission services, other than by the ISO where the ISO declares a “Force Majeure” under the ISO Tariff; or
 - (vi) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event